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				manhole or other conduit facility onto public or private property, including but not limited to any storm water drainage system, without first determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person. AT&T will be expected to test such water or substance for hazardous substances in accordance with then-applicable SWBT standards and practices. (d) AT&T and SWBT and all personnel performing work on AT&T's or SWBT's behalf shall, when working on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, comply with such additional standards, practices, and requirements as SWBT may from time to time adopt to comply with environmental laws, provided that such standards are communicated in writing to AT&T at least 60 days in advance of AT&T's work. 10.01 <u>Response Within 45 Days.</u> Within 45 days of AT&T's submission of a license application pursuant to Section 9.02 of this Appendix, or within such other period of time as may be mutually agreed upon in writing by the parties, SWBT shall respond to the application. The response shall state whether the application is being granted or denied. If denial is anticipated, or if SWBT personnel involved in the processing of AT&T's request for
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					access become aware of hazardous substances at the site requested by AT&T, SWBT shall promptly advise AT&T and shall, at AT&T's request, discuss alternatives to denial and issues associated with the presence of such hazardous substances. (a) If access is granted, SWBT shall, no later than 45 days after AT&T's submission of the license application, further advise AT&T in writing (1) what facilities modifications, capacity expansions, or make-ready work, if any, will be required to prepare SWBT's pole or conduit facilities, (2) provide AT&T an estimate of charges for such facilities modifications, capacity expansions, or make-ready work, and (3) disclose to AT&T any hazardous substances known by SWBT to be present at the site. 21.10 Indemnification for Environmental Claims. The parties acknowledge that hazardous substances may be present on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way; that employees and other persons acting on the parties' behalf working on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way should be familiar with environmental laws and environmental concerns which arise in outside plant contexts; that all such employees and other persons should be prepared to recognize and deal with environmental contingencies existing at specific sites; and that
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Disputed Issue	AT&T Position	SWBT Position	Resolution	Comments
				liabilities associated with environmental claims arising out of or in connection with the subject matter of this Appendix shall be allocated between the parties as set forth in this section. (a) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the violation or breach, by any employee of the indemnifying party or other person acting on the indemnifying party's behalf, of (1) any federal, state, or local environmental statute, rule, regulation, ordinance, or other law or (2) any provision or requirement of this Appendix dealing with hazardous substances or protection of the environment. (b) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the release or discharge, onto

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					any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of the indemnifying party, or by any person acting on the indemnifying party's behalf, while present on, within, or in the vicinity of any SWBT pole, duct, conduit, or right-of-way. Indemnities provided by this subsection include but are not limited to indemnities arising out of or in connection with the release or discharge of water and other substances from SWBT's manholes or other conduit facilities. (c) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the removal or disposal of any hazardous substances by the indemnifying party or by any person acting on the indemnifying party's behalf, or arising out of or in connection with the subsequent storage, processing or other handling of such hazardous substances by any person or entity after they have been removed by the indemnifying party or persons acting on the indemnifying party's behalf from
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				13.a. <u>SWBT Statement of Issue</u> Should SWBT's proposed contract language relating to "immediate occupancy" be approved? <u>AT&T Statement of Issue:</u> Should SWBT be able to limit the
			The Arbitrator ruled as follows: "SWBT shall make available to the LSP for immediate occupancy any duct, conduit, or pole space that is not currently assigned to an LSP or other entity. Availability shall be based on space assignment/occupancy records to be maintained by SWBT but which will be made available for viewing by the LSP upon request within two	[8.X] Notwithstanding such provisional assignment, AT&T shall not occupy such space without first obtaining a license except as otherwise provided in <u>this Appendix</u> or as may otherwise be permitted by law. [remainder of language in subsection not disputed] 8.X Immediate Occupancy. AT&T may immediately occupy space on
			The parties have, through negotiation, worked out most of their differences relating to immediate occupancy issues. To place the issue in proper context, the Commission made two rulings which have now been reconciled in the agreed provisions. First, the Commission approved SWBT's use of what is sometimes	8.02 Pole, Duct, and Conduit Space Assignments. ... (b) SWBT shall, within 60 days after the effective date of this Appendix, adopt interim procedures which will enable pole, duct, and conduit space to be provisionally assigned to AT&T and other applicants prior to the submission of formal applications required pursuant to Section 9.02 of
			the site of any SWBT pole, duct, conduit, or right-of-way. For the purposes of this subsection, any person or entity removing or disposing of hazardous substances at the request of the indemnifying party or at the request of any person acting on the indemnifying party's behalf, and any person or entity subsequently receiving, storing, processing, or otherwise handling such hazardous substances shall be considered to be a person acting on the indemnifying party's behalf. (d) Except as otherwise specifically provided in this section, neither party shall be required to indemnify or defend the other party against, or hold the other party harmless from any loss, damage, claim, demand, suit, liability, fine, penalty or expense for which the other party may be liable under any federal, state, or local environmental statute, rule, regulation, ordinance, or other law.	

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Arbitrator's ruling that AT&T may have immediate occupancy of certain duct, conduit, or pole space? ----- 13.b. <u>SWBT Statement of Issue</u> Should SWBT's proposed contract language relating to "immediate occupancy" be approved? <u>AT&T Statement of Issue:</u> May AT&T make its own determinations of whether space is available and ready for immediate occupancy, and whether make-ready work is required? 13.c. <u>SWBT Statement of Issue</u> When AT&T avails itself of the "immediate occupancy" provisions of the Poles Appendix, should the field inspection portion of the "prelicense survey" be replaced with a post-installation inspection of the facilities installed? 13.d. <u>SWBT Statement of Issue</u> Are SWBT's provisions relating to inspections appropriate in an environment in which telecommunications carriers and cable	business days notification." (Emphasis added). SWBT now insists on delaying occupancy until a license has been issued, contrary to the Arbitrator's ruling and to SWBT's own stipulation in other states, and delaying occupancy for at least a 45-day period. SWBT proposed its own procedure for "immediate occupancy" for Missouri in Section 8.X. While AT&T objects to restrictions not imposed by the Arbitrator on immediate occupancy, it has proposed its own Section 8.X that is an attempt to resolve the dispute. However, AT&T's preference is to be able to immediately occupy any pole, duct, or conduit space not already assigned, as explicitly ordered by the Arbitrator, without further restrictions, by review of records on two business days' notice as the Arbitrator ruled but to which SWBT objects in Sec. 10.X. In subsection 9.X, AT&T has no objection to including on its application the information that it has occupied the space; it does, however, object to the implication in SWBT's proposal that SWBT's procedure in Section 8.X is the only manner in which AT&T may have occupied space. Finally, AT&T should be able to make its own determinations of whether space is available and whether make-ready work is required through a review of SWBT's records and AT&T's own site survey and engineering work. Just as SWBT makes its own such determinations, AT&T should be able to do so for itself under the principle of	<u>SWBT's poles or in SWBT's conduit system that is not currently assigned as follows:</u> (a) <u>AT&T will verify space availability per SWBT's records and may mark the appropriate SWBT record to show the available space it contemplates occupying.</u> (b) <u>AT&T will then visit the site to determine whether the space is in fact unoccupied and suitable. If AT&T determines that the space is unsuitable or is already occupied, AT&T will delete its space occupancy notation from SWBT's records made under subparagraph (a).</u> (c) <u>If AT&T determines that the space is unoccupied and suitable, it may install its facilities. AT&T will notify SWBT in writing or revise its notation on SWBT's record within one business day if AT&T's facility installation differs from the original notation.</u> (d) <u>Within one business day of the installation, AT&T will notify SWBT by either filing a notice of intent to occupy as described in subparagraph 8.X(b) above, or at AT&T's election, filing an application as provided in Article 9 of this Appendix.</u> (e) <u>AT&T's notice of intent to occupy or its application filed under subparagraph (d) above is</u>	referred to as the 15-step approval process. (The Commission finds that SWBT should be allowed to use its proposed 15-step method for administrative approval of LSP requests for pole attachments and conduit space.") This process provide for SWBT's performance of a prelicense survey, including a field inspection of the premises to determine whether an LSP's application was consistent with conditions existing in the field. Second, the Commission directed SWBT, in the context of the 15-step approval process, to provide LSPs "immediate occupancy" when no make-ready work is required. The parties have now agreed that AT&T may make the initial determination that no make-ready work is required and may, as provided in Section 8.03, immediately occupy space assigned to it even before it submits a formal application for the space. These provisions provide AT&T (and other telecommunications carriers and cable system operators) unprecedented freedom in using SWBT's poles, ducts, and conduits without any SWBT-controlled steps slowing down that access. The key to the successful working of these unprecedented provisions is the performance by AT&T and other telecommunications carriers and cable system operators of high quality engineering work. They will be entrusted with great flexibility	this Appendix. Where indicated below, the interim procedures shall apply, on a nondiscriminatory basis, to the assignment of space to SWBT as well as to AT&T and other applicants. SWBT may, on 60 days advance notice to AT&T, revise such interim procedures if such procedures prove to be unworkable, in which event AT&T may challenge SWBT's decision to revise or terminate such interim procedures in accordance with procedures available to AT&T under applicable federal and state laws and regulations. The procedures shall enable AT&T and other applicants, by written notice, to advise SWBT of their intent to occupy unassigned space which appears, from SWBT's records, to be available for assignment. Upon receipt of such notice, SWBT shall date- and time-stamp the notice and provisionally assign the space selected by AT&T and recording the assignment (and date and time of assignment) in the appropriate SWBT records, which records will be available for inspection as provided in Section 7.03 of this Appendix. Space provisionally assigned to AT&T or such other applicant shall not be available for assignment to any other person or entity, including SWBT. Notwithstanding such provisional assignment, AT&T shall not occupy such provisionally assigned space without first obtaining a license, except as provided in Section 8.03. The following additional requirements shall apply.
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system operators will have access to SWBT's poles, ducts, and conduits on an "immediate occupancy" basis and SWBT will not have the ability, before installations occur, to stop inappropriate and substandard installations.	nondiscriminatory access.	<u>its representation that no make-ready work is necessary before occupancy.</u> <u>(f) If AT&T files a notice of intent to occupy, it will file an application for a license for the space within 30 days of the filing of the notice. If AT&T's occupancy of the space is as described in the notice of intent to occupy, then the application may be limited to a confirmation that AT&T has occupied the space as described in its notice of intent.</u> <u>(g) AT&T will bear all risks resulting from the possibility that space which appears from the records to be available is not in suitable condition to be used by AT&T.</u> <u>(9.X) If AT&T has occupied or intends to occupy the space before the issuance of a license, the application shall include a statement that AT&T has already occupied the space or intends to occupy the space immediately.</u> <u>[10.X] SWBT shall make available to AT&T for immediate occupancy any duct, conduit, or pole space that is not currently assigned. Availability determinations will be based on the appropriate SWBT records to be maintained by SWBT and made available for viewing by AT&T on two business days notice as provided in Section 7.X of this Appendix.</u> <u>10.X Issuance of Licenses and</u>	based on their acceptance of responsibility for meeting SWBT's standards and specifications. If the system is to work effectively, SWBT must have the ability to inspect the installed facilities within a short period of their installation, this inspection replacing the field inspection portion of the prelicense survey. SWBT submits that it is appropriate to charge for these post-installation inspections and that SWBT's ability to conduct post-installation inspections will serve as a deterrent to shoddy engineering practices which might otherwise occur if no one is minding the store. In this regard, SWBT has had recent problems with installations made by parties having access rights under pole attachment agreements. Contractors with deadlines to meet have a tendency to cut corners. When they do, they create safety hazards and other problems for all parties who share the use of SWBT's poles. SWBT believes that if AT&T experiences charges by SWBT for post-installation inspections which AT&T considers excessive, those charges may be challenged through dispute resolution procedures or other complaint mechanisms available to AT&T. The parties have reached agreement on the immediate occupancy provisions of Sections 8.02, 8.03, 9.02, part of 10.01, 10.03, and 10.09.	(1) ... (2) With respect to unassigned conduit occupancy space, the notice must include all information required to enable SWBT and joint users, including other persons or entities which may from time to time seek space in the same ducts and conduits, to determine the specific space which AT&T desires to occupy. The notice must, therefore, include, at a minimum, the following information: (i) ... (vi) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital letters) or indication that AT&T intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix... (3) With respect to unassigned pole space, such notice must include all information required to enable SWBT and other joint users, including other persons or entities seeking space on the same poles, to determine the specific space which AT&T desires to occupy. The notice must, therefore, include, at a minimum, the following information: (i) ... (vi) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital
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		<u>Immediate Access When No Make-ready Work is Required. If AT&T demonstrates that no make-ready work is necessary to accommodate AT&T's facilities, SWBT will issue a license without performing make-ready work and pole attachment or conduit occupancy space will be made available to AT&T for immediate occupancy; further, SWBT agrees to make available to AT&T in advance of the issuance of a license any duct, conduit, or pole space that is not currently assigned, in accordance with the provisions of Section 10.X.</u>	What remains in dispute are the inspection provisions and that portion of Section 10.01(d) which states that "AT&T will bear all risks resulting from the possibility that space which appears from the records to be available is not in suitable condition to be used by AT&T." SWBT does not understand why AT&T objects to this statement. Section 9.05(a) provides that if AT&T avails itself of the immediate occupancy option, a post installation inspection may be performed in place of the field inspection portion of the pre-license survey which is an integral part of the 15-step process approved by the Commission. In Texas, AT&T agreed to this language after SWBT added the sentence "In performing such inspection, SWBT will not, without due cause and justification, repeat pre-occupancy survey work performed by AT&T." In Section 9.05(c), SWBT proposes that no special authorization be required before SWBT performs a post-installation inspection following AT&T's use of the "immediate occupancy" option. By availing itself of that option, AT&T would be deemed to have consented. In Section 16.01, SWBT describes the inspection process. Parties using SWBT's poles, ducts, conduits, and rights-of-way expect other parties using the facilities to play by the rules. If one party	letters) or indication that AT&T intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix. 8.03 <u>Immediate Occupancy.</u> SWBT shall, within 60 days after the effective date of this Appendix, adopt interim procedures which will provide AT&T the ability to attach or place facilities on or in SWBT's poles, ducts, conduits, and rights-of-way on an immediate basis when such space is available for AT&T's use and no make-ready work or infrequent construction techniques or connectivity solutions are required. SWBT may, on 60 days advance notice to AT&T, revise or terminate such interim procedures if they prove to be unworkable, in which event AT&T may seek renegotiation of this Appendix or challenge SWBT's decision in accordance with procedures available to AT&T under applicable federal and state laws, regulations, and commission orders. The special procedures established under this section shall supplement, rather than replace, the regular assignment and licensing procedures set forth in Articles 8-10 of this Appendix, are intended to be used only under special circumstances (e.g., when the regular procedures allow insufficient time to meet customer service commitments or resolve non-routine construction or network contingencies), shall not be used on a routine basis, and shall be consistent with subsections (a)-(f) below.
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				creates a safety hazard (e.g. by placing attachments too close to electrical facilities on a pole), the employee of another party may be electrocuted. If one party violates spacing requirements, or makes other substandard installations, other parties' access to the facilities may be obstructed. SWBT's inspection provisions are reasonable and they conform to Pole Attachment Act requirements as interpreted by the FCC. Section 16.03 provides that Article 16 does not deal with post-installation inspection following AT&T's use of the "immediate occupancy" option.	(a) Upon giving SWBT the notice required by this subsection, AT&T may immediately occupy space assigned or provisionally assigned to AT&T pursuant to Section 8.02 of this Appendix. The notice shall be contained in either a notice of intent to occupy as provided in Section 8.02(b) or a license application under Section 9.02. AT&T shall not give such notice or occupy such space without first reviewing SWBT's records and determining that the records reflect that the space sought is available. (b) AT&T shall not occupy space which has not been assigned or provisionally assigned to AT&T. The assignment must be recorded on the appropriate SWBT records, as provided in Section 8.02, prior to AT&T's occupancy. If AT&T subsequently determines that the records are inaccurate and that the space assigned to AT&T is not available, or that the space assigned is not suitable for AT&T's intended use, AT&T shall, within one business day, notify SWBT in writing that it no longer intends to occupy the space earlier assigned and is releasing the assignment. Except as otherwise provided in this subsection, AT&T shall not occupy other space on the pole or in the duct or conduit without first obtaining an assignment or provisional assignment of the space which AT&T will occupy. To avoid high or unusual expenditures resulting from unanticipated conditions at the site, AT&T may
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Disputed Issue	AT&T Position	SWBT Position	Resolution
			occupy space not assigned to AT&T subject to the following terms and conditions. (1) AT&T may occupy the next available space shown on SWBT's records as available at the time of AT&T's last review of the records. AT&T shall not knowingly occupy space occupied by or assigned to SWBT or any third party without consent of the party to whom the space has been assigned. (2) Within one business day after occupying such space, AT&T shall submit to SWBT a written notice of intent to occupy or an application for the space occupied showing the reason for AT&T's use of the space occupied. (3) AT&T shall bear the risk that space occupied by AT&T pursuant to this section was assigned to SWBT or a third party during the period between AT&T's last review of the records and AT&T's occupancy of such space. After occupying space not previously assigned to AT&T, AT&T shall review the records and promptly notify the affected party if AT&T determines that it has occupied space assigned to such party. At the request of the party to whom such space has been assigned, AT&T shall, within 24 hours, or within such other period of time mutually agreed to by the parties affected, remove its facilities from the space in question if the parties affected cannot reach an acceptable alternative solution.

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					SWBT and AT&T anticipate that all parties affected will act in good faith to work out acceptable solutions and that the parties affected will not insist on strict adherence to the 24-hour removal requirement unless there is a legitimate business need for compelling removal within such time period. (4) SWBT shall be entitled to recover from AT&T actual costs, if any, directly incurred by SWBT as a result of AT&T's decision under this subsection to occupy space subject to a valid prior assignment to SWBT. AT&T shall indemnify, on request defend, and save SWBT harmless from any injury, loss, damage, liability, or claim asserted against SWBT by any third party resulting from AT&T's decision under this subsection to occupy space assigned to such third party. (c) Nothing in this section authorizes AT&T to place its facilities on or in any pole, duct, or conduit space already occupied by the facilities of SWBT or a third party, even if the presence of such facilities is not reflected on SWBT's records. (d) Nothing in this section authorizes AT&T, without first obtaining SWBT's written authorization, to (1) place its facilities on any pole or in any duct or conduit that requires make-ready work (other than third-party make-ready work arranged directly by AT&T) or (2) utilize any infrequent construction technique or connectivity solution described in
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	Section 6.03. (e) If AT&T has not done so already, within 24 hours after occupying space pursuant to this section, AT&T will submit to SWBT an application for the space occupied as provided in Section 9.02 of this Appendix. The application may be submitted by fax. (f) AT&T will bear all risks resulting from the possibility that assigned space which appears from the records to be available is not available or in suitable condition to be used by AT&T and shall indemnify, on request defend, and hold SWBT harmless from any injury, loss, damage, claim, or liability (including but not limited to third-party claims) resulting from AT&T's occupancy of space in violation of this section. 9.02 <u>Application Form.</u> ... (c) Each application for a license under this Appendix shall include the following information, at a minimum: (1) ... (6) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital letters) or indication that AT&T intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix. 9.05 Pre-license Survey. A pre-
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					license survey (including a review of records and field inspection, if necessary) will be completed by SWBT after AT&T has submitted its written license application as specified in Section 9.02 of this Appendix. SWBT will not, without due cause and justification, repeat pre-occupancy survey work performed by AT&T. (a) The field inspection portion of the pre-license survey, which includes the visual inspection of existing pole and conduit facilities, shall be performed by SWBT or its authorized representative. Primary purposes of the field inspection will be to enable SWBT to (1) confirm or determine the facilities modification, capacity expansion, and make-ready work, if any, necessary to accommodate AT&T's facilities; (2) plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare SWBT's poles, ducts, conduits, rights-of-way, and associated facilities for AT&T's proposed attachments or occupancy; and (3) estimate the costs associated with such facilities modification, capacity expansion, or make-ready work. SWBT may dispense with the field inspection if it appears that the information necessary to process AT&T's license application is already available from existing sources, including the application forms and such other information as may be available to SWBT. If AT&T has occupied the space requested before the issuance of a license, a
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	post-installation inspection of AT&T's facilities may be performed, in place of the field inspection portion of the pre-license survey, to determine whether such facilities are in compliance with the specifications of Article 6 and other provisions of this Appendix. In performing such inspection, SWBT will not, without due cause and justification, repeat pre-occupancy survey work performed by AT&T. (b) ... (c) Before performing any portion of the pre-license survey, SWBT shall obtain AT&T's written authorization to perform such work. Authorization may be given, when possible, when the application is submitted. No authorization shall be required for post-installation inspections of AT&T's facilities when installation has occurred, pursuant to Section 8.03, before the issuance of a license. 10.01 <u>Response Within 45 Days.</u> Within 45 days of AT&T's submission of a license application pursuant to Section 9.02 of this Appendix, or within such other period of time as may be mutually agreed upon in writing by the parties, SWBT shall respond to the application.... (d) Notwithstanding the 45-day deadline, SWBT will, pursuant to Section 8.03 of this Appendix, make available to AT&T for immediate occupancy any duct, conduit, or pole
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				space not currently assigned, not designated as the maintenance duct, and not subject to applicable make-ready requirements. Availability shall be based on the appropriate SWBT records to be maintained by SWBT but which will be made available for viewing by AT&T on two business days notice as provided in Section 7.03 of this Appendix. AT&T will bear all risks resulting from the possibility that space which appears from the records to be available is not in suitable condition to be used by AT&T. 10.03 <u>Issuance of Licenses and Immediate Access When No Make-ready Work is Required.</u> If the parties agree no make-ready work is necessary to accommodate AT&T's facilities, SWBT will issue a license without performing make-ready work and pole attachment or conduit occupancy space will be made available to AT&T for immediate occupancy. Immediate occupancy prior to the issuance of a license shall be governed by Section 8.03. 10.09 <u>License and Attachment.</u> After all required make-ready work is completed, SWBT will issue a license confirming that AT&T may attach specified facilities to SWBT's poles or place specified facilities in SWBT's conduit system. AT&T shall have access to attach or place only those facilities specifically described in licenses subject to this Appendix, and no others, except as otherwise specifically provided in (a) Sections 8.03 and 12.03 or other provisions of
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				this Appendix, (b) any other written agreement between the parties providing for such access, or (c) the provisions of any applicable tariffs or commission orders. 16.01 SWBT's Right to Make Periodic or Spot Inspections. SWBT shall have the right, but not the duty, to make periodic or spot inspections at any time of any and all facilities attached to SWBT's poles or placed within SWBT's ducts, conduits, or rights-of-way. Such inspections may be conducted for the purpose of determining whether facilities attached to SWBT's poles or placed in SWBT's conduit system are in compliance with the terms of this Appendix and conform to licenses subject to this Appendix. Charges for inspections shall be allocated among all parties benefiting from the inspection in accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders. When an inspection is conducted for the specific purpose of auditing or investigating AT&T's compliance with this Appendix, SWBT may charge AT&T for inspection expenses only if the inspection reflects that AT&T is in substantial noncompliance with the terms of this Appendix. If the inspection reflects that AT&T's facilities are not in compliance with the terms of this Appendix, AT&T shall bring its facilities into compliance promptly after being notified of
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14. Should SWBT be permitted to add new terms and conditions on access to its poles, ducts, conduits, and rights-of-way through the use of application and license forms that it prepares and controls?	If SWBT requires use of forms it drafts, it should not be permitted to amend those forms to impose additional terms and conditions on AT&T that are not included in the Appendix or the Interconnection Agreement as a whole. The forms should merely convey information about AT&T's planned use of the space, as well as record the date and time that AT&T requested the space.	<u>9.X. The purpose of the forms is to provide a worksheet to convey information and to record the date and time of a request for access, not to create contractual terms and conditions in addition to those included in this Appendix and in the Interconnection Agreement.</u> [remainder of language in section not disputed]	This issue has been resolved. The parties' agreed text is shown in the SWBT Language column.	such noncompliance and shall notify SWBT in writing when the facilities have been brought into compliance. <u>16.03 Post-Installation Inspections.</u> This article does not apply to post-installation inspections performed as part of a pre-license survey in those cases when AT&T has occupied space on or in SWBT's poles, ducts, conduits, or rights-of-way prior to the issuance of a license pursuant to Section 8.03 of this Appendix. <u>9.02 Application Form.</u> To apply for a pole attachment or conduit occupancy license under this Appendix, AT&T shall submit to SWBT two signed copies of the appropriate application forms. SWBT represents that the forms specified in subsections (a) and (b) are forms in use prior to the effective date of this Appendix and that SWBT plans to revise such forms to conform to the provisions of this Appendix and to streamline the application process. The parties therefore agree that the forms specified in subsections (a) and (b) will be interim forms only. SWBT reserves the right to change the format and content of these forms upon 60 days written notice to AT&T; provided, however, that changes to the forms shall not be made to amend the terms of this Appendix.
15.a.	The Arbitrator ruled that AT&T should be allowed to pay SWBT half	[10.X] SWBT agrees to modify its outside plant facilities to the extent	SWBT may, as a result of AT&T's request that SWBT expand a	<u>10.02 Obligation to Construct or Modify Facilities; Capacity</u>

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<u>SWBT's Statement of Issue</u>	<u>AT&T's Statement of Issue</u>	<u>Expansions</u>
When SWBT incurs substantial out-of-pocket costs in connection with facilities modification, capacity expansion, or make-ready work authorized by AT&T, is it appropriate that SWBT have the option of billing AT&T's for such costs as they are incurred instead of waiting until 50% completion and 100% completion? <u>AT&T's Statement of Issue</u> May SWBT be reimbursed for make-ready work as ordered by the Arbitrator, with half of its make-ready charges at 50 percent job completion, and the remainder at 100 percent completion, or may SWBT recover other costs on a schedule not consistent with the Arbitrator's order? 15.b <u>SWBT's Statement of Issue</u> Should SWBT's proposed provisions relating to reimbursement for modification expenses be approved? <u>AT&T's Statement of Issue</u> May AT&T be reimbursed on a pro rata basis by parties benefiting from a modification for which AT&T has paid, and must SWBT establish a methodology for reimbursement?	of its make-ready charges for make-ready work at 50 percent job completion, and the remainder at 100 percent completion. SWBT, however, attempts to impose additional conditions regarding payment of invoices by requiring, at SWBT's option, payment of out-of-pocket costs and outside contractor costs on a schedule not consistent with the Arbitrator's ruling of 50 percent payment at 50 percent job completion and the remainder at 100 percent job completion. Further, SWBT leaves to AT&T the determination regarding reimbursement for modifications made by AT&T that later benefit others, including SWBT. If AT&T has borne the entire cost of a modification that benefits others, pro rata reimbursement is fair and appropriate. See FCC First Report and Order, ¶1214. The requirement that SWBT establish a methodology for the reimbursement is also appropriate, because SWBT will be the only party in possession of applications and records relating to the use of the space affected by the modification. SWBT is the only entity that knows the identities of other attachées to capacity provided by AT&T, and thus it should provide the methodology.	conduct or perform other substantial make-ready work, incur substantial materials and labor costs. It is not appropriate for SWBT to bear the costs of financing expansions requested by AT&T and other telecommunications carriers and cable system operators. Therefore, SWBT believes that it is appropriate, in special cases, for SWBT to have the option to bill AT&T, on a pay-as-you-go basis, for materials and outside contractors' expenses already incurred by SWBT. These provisions would not apply to labor charges for work performed by SWBT's own employees. SWBT does not view this "pay-as-you-go" concept as inconsistent with the spirit or rationale of the earlier arbitration ruling. SWBT's proposed Section 10.08 deals with reimbursement for the creation or use of additional capacity. SWBT's proposed language provides additional details as to the role to be played by SWBT in connection with reimbursement rights between AT&T and third parties. It should be noted that only AT&T knows what costs AT&T has incurred because AT&T will in most cases pay those costs directly without SWBT's participation or perform the work itself without paying outside contractors. SWBT, on the other hand, knows what space has been occupied by parties other than AT&T. SWBT, therefore,
	that AT&T agrees to pay for the modification at cost, such as but not limited to cable consolidations, as long as such modifications are consistent with capacity, safety, reliability, and engineering considerations which SWBT would apply to itself if the work were performed for SWBT's own benefit. SWBT may recover from AT&T the costs of modifying its outside plant facilities for AT&T's space. SWBT may not require payment of the full amount in advance. AT&T will pay half of the contractors' costs after 50% completion of work, and the remainder at completion. To facilitate the sharing of costs by all parties benefiting from the modification, SWBT will establish a methodology whereby AT&T will be reimbursed on a pro rata basis for any portion of the facility later used by SWBT and other telecommunications providers, including, but not limited to, telecommunications carriers and cable television systems. 10.X Reimbursement for the Creation or Use of Additional Capacity. AT&T acknowledges that as a result of make-ready work performed to accommodate AT&T's facilities, additional capacity may become available on SWBT's poles or in its conduit system. In such event, AT&T shall not have any preferential right to utilize such additional capacity in the future and shall not be entitled to any monies which may subsequently be paid to SWBT for the use of such additional capacity by any joint user;	(a) At AT&T's request, SWBT will replace, expand, or modify its poles and conduit system, or otherwise expand the capacity of such facilities to accommodate the placement of AT&T's facilities; provided, however, that such modifications shall be consistent with the capacity, safety, reliability, and engineering considerations which SWBT would apply to itself if the work were performed for SWBT's own benefit. Outside plant facilities expansions contemplated by this subsection include, but are not limited to, installation of inner duct, cable consolidations and the removal of cables that are retired or inactive (dead). Except as otherwise specifically provided in this subsection, AT&T will pay half of SWBT's charges for the modification of outside plant facilities at 50 percent job completion and the remainder at 100 percent completion. SWBT may, at its election, request that AT&T pay SWBT's out-of-pocket costs for materials as those costs are incurred and may request that AT&T pay outside contractor costs on the same schedule SWBT pays such outside contractors. In the event of such request, AT&T shall not refuse the request without due cause and justification. AT&T shall be entitled to partial reimbursement for its capacity expansion costs in

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	provided, however, SWBT must establish a methodology whereby AT&T is reimbursed on a pro-rata basis for any portion of the capacity later used by SWBT or another telecommunications provider, including, but not limited to, telecommunications carriers and cable television systems. 19.X Make-Ready Charges. SWBT may not require payment of the full amount of make-ready charges in advance. AT&T will pay half of SWBT's make-ready charges after 50% completion of work, and the remainder at completion. Bills and invoices submitted by SWBT to AT&T for make ready charges shall be due and payable 30 days after the date of the bill or invoice.	proposed to give AT&T notice when space created at AT&T's expense has been occupied and to provide all parties affected with the information required to work out their reimbursement rights. SWBT is not a bill collector and should not be the arbiter of disputes between AT&T and third parties concerning reimbursement rights. SWBT's provisions are reasonable and should be approved.	accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders as provided in Section 10.08 of this Appendix. 10.08 Reimbursement for the Creation or Use of Additional Capacity. AT&T acknowledges that as a result of make-ready work performed to accommodate AT&T's facilities, additional capacity may become available on SWBT's poles or in its conduit system. In such event, AT&T shall not have any preferential right to utilize such additional capacity in the future and shall not be entitled to any pole attachment or conduit occupancy fees which may subsequently be paid to SWBT for the use of such additional capacity. SWBT shall, however, establish procedures for giving AT&T notice of the subsequent use by SWBT or third parties of additional space or capacity created at AT&T's expense. If SWBT utilizes additional space or capacity created at AT&T's expense, SWBT will reimburse AT&T on a pro-rata basis for SWBT's share, if any, of AT&T's capacity expansion costs, to the extent reimbursement is required by the Pole Attachment Act and applicable rules, regulations, and commission orders. If any third party later utilizes any such additional space or capacity, SWBT shall, at the request of AT&T or such third party, provide such information as may be
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					available to SWBT to assist AT&T and such third party in determining the amount, if any, which such third party may owe AT&T as its pro-rata share of AT&T's capacity expansion costs. Nothing contained in this section shall be construed as conferring or imposing on SWBT any right or duty to determine the amounts owing by a third party to AT&T, to collect or remit any such amounts to AT&T, to resolve or adjudicate disputes over reimbursement between AT&T and third parties, to deny a third party access to SWBT's poles, ducts, conduits, or rights-of-way due to such third party's failure to satisfy AT&T's reimbursement demands, or to take any other action to enforce AT&T's reimbursement rights against any third party. In like manner, for additional capacity created by SWBT from and after the date of enactment of the Telecommunications Act of 1996, SWBT shall be entitled to recover from AT&T and third parties, to the full extent permitted by law, their pro-rata shares of such capacity expansion costs incurred by SWBT. To the extent that either party seeks to avail itself of this cost-saving mechanism, such party shall be responsible for maintaining adequate records documenting the costs subject to reimbursement, including but not limited to costs incurred for facilities modification and capacity expansion work performed directly by such party or
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					contractors performing work on such party's behalf.
16. <u>SWBT's Statement of Issue</u> In light of the FCC's mandate that rates, terms, and conditions of access be uniformly applied to all telecommunications carriers and cable systems operators who have or seek access to poles, ducts, conduits, and rights-of-way, is it appropriate that the Poles Appendix include reasonable provisions relating to indemnification, limitation of liability, consequential damages, notice, dispute resolution, assignment, and general legal provisions which can satisfy the FCC requirement of universal applicability? <u>AT&T's Statement of Issue</u> Should the Poles, Conduits, and Rights-of-Way Appendix, which is part of the Interconnection Agreement between SWBT and AT&T, contain provisions regarding indemnification, limitation of liability, consequential damages, notice, dispute resolution, assignment, and general legal provisions that are different from the Terms and Conditions of the Interconnection Agreement addressing the same subjects?	SWBT proposes that the Poles, Conduits, and Rights-of-Way Appendix contain its own provisions regarding indemnity, limitations of liability, consequential damages, notice, dispute resolution, assignment, and general legal provisions. Especially where potential legal liability is involved, it is important that the Interconnection Agreement as a whole clearly set out the rights and obligations of the parties. SWBT's proposal on the topics listed above is different from the language used in the Terms and Conditions section of the Interconnection Agreement. If AT&T and SWBT are attempting in good faith to resolve a dispute or answer a question that has arisen under the Interconnection Agreement, two sets of provisions on the same subject are, at best, confusing. At worst, differing or conflicting provisions create complicated, lengthy, and expensive legal or administrative disputes. While AT&T has negotiated in good faith as an accommodation to SWBT to include separate provisions on subjects such as performance and payment bonds, and confidentiality, AT&T's strong preference is to have only one set of provisions covering each subject. AT&T originally agreed to portions of SWBT's proposed articles on dispute resolution and assignment as an accommodation to SWBT; however, there are now so many disputes in	10.X AT&T shall indemnify SWBT under Section 7.X of the Terms and Conditions of the Agreement for injuries or damages that are the result of the performance of excavation work under this subsection by AT&T or any authorized contractor selected by AT&T. [remainder of language in subsection not disputed] [AT&T objects to Articles 24 and 29 in their entirety.]	The FCC, in Paragraph 1156 of the First Interconnection Order in CC Docket No. 96-98, has unambiguously stated: "[W]here access is mandated, the rates, terms, and conditions of access must be uniformly applied to all telecommunications carriers and cable operators that have or seek access." Provisions regarding indemnity, limitations of liability, consequential damages, notice, dispute resolution, assignment, and general legal provisions fall within the FCC's mandate that rates, terms, and conditions of access must be uniformly applied. This, of course, presents a challenge for SWBT. SWBT must negotiate in good faith with interconnectors who seek access rights and cannot expect interconnectors to agree to rates, terms, and conditions which they deem inappropriate. On the other hand, SWBT cannot, in the face of the FCC mandate, allow the interconnection negotiation and arbitration process to serve as the basis for entering into discriminatory arrangements with AT&T and other interconnectors which favor their interests over those of other telecommunications carriers and cable system operators, including carriers and	SWBT's main indemnity provisions are discussed under Issue 24. For these provisions, see the SWBT Language column under that issue. Additional indemnity language relating to environmental matters is included shown in the SWBT Language column under Issue 12, which deals with environmental issues. Indemnity language also appears in the following sections: <u>6.08 Specifications Applicable to Connections: Conduit.</u> (c) Where AT&T's duct or facility physically connects with SWBT's conduit system manhole, the section of AT&T's facility which connects to SWBT's manhole shall be installed by SWBT or its contractor at AT&T's expense (which shall be SWBT's actual costs or the price charged SWBT by the contractor). SWBT will perform this work in an interval consistent with the intervals SWBT performs the same or similar types of work for itself. If SWBT's interval for beginning or completing this work does not meet AT&T's needs, AT&T as an authorized contractor may perform the work itself or arrange for the work to be performed by an authorized contractor selected by AT&T from a list, jointly developed by	

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relation to these articles that AT&T recommends that the parties agree to abide by the assignment and dispute resolution procedures in the Terms and Conditions Section of the Interconnection Agreement.	cable operators who are not LSP's and are not seeking interconnection agreements with SWBT. SWBT's position is that the Commission should consider, on their merits, the specific provisions proposed by SWBT and either approve those provisions as proposed or direct the parties to make such adjustments to those provisions as may be necessary to conform those provisions to substantive arbitration decisions made by the Commission. SWBT does not believe that it would be appropriate for the Commission to ignore SWBT's proposals on these issues on the dubious ground that what SWBT is proposing really belongs somewhere else in the Agreement. SWBT respectfully submits that the various provisions objected to by AT&T are reasonable and should be approved as proposed by SWBT.	AT&T and SWBT, of mutually agreed contractors qualified to perform such work. Work performed by an authorized contractor selected by AT&T to perform work under this subsection shall be performed in accordance with both parties' specifications and in accordance with both parties' standards and practices. Each party shall indemnify, on request defend, and hold the other party harmless from any injuries, losses, damages, claims, or liabilities resulting from the performance of work by the indemnifying party or by persons acting on the indemnifying party's behalf under this subsection. 10.02 Obligation to Construct or Modify Facilities; Capacity Expansions. (b) [inner duct]. ... Inner duct installed by AT&T or an authorized contractor shall be installed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if the inner duct were being installed by SWBT or SWBT's contractors. AT&T will indemnify, on request defend, and hold SWBT harmless from injuries, losses, damages, claims, or liabilities directly resulting from the installation of inner duct by AT&T or any authorized contractor selected by AT&T under this subsection. AT&T shall not, without SWBT's prior written approval, arrange for inner duct installation to be
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					performed by subcontractors who are not authorized contractors. (c) [Excavation work]. ... Excavation work performed by AT&T or an authorized contractor selected by AT&T shall be performed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if such excavation work were being performed by SWBT or SWBT's contractors. Neither AT&T nor any authorized contractor selected by AT&T to perform excavation work under this subsection shall conduct facility excavation activities in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of the facilities. AT&T shall indemnify, on request defend, and hold SWBT harmless from any injuries, losses, damages, claims, or liabilities directly resulting from the performance of excavation work by AT&T or any authorized contractor selected by AT&T under this subsection. AT&T shall not, without SWBT's prior written approval, arrange for excavation work to be performed under this subsection by subcontractors who are not qualified contractors. 10.05 Performance of Make-ready Work. (d) Make-ready work performed
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17 <u>SWBT Statement of Issue</u> Is there any need in the Poles Appendix for a provision which would allow AT&T (and presumably all other telecommunications carriers and cable system operators) entitled to access terms equivalent to those granted to AT&T) to have a contractual right to inspect SWBT's facilities "after its	Throughout the Appendix, there are numerous safeguards to protect the integrity of SWBT's structures and facilities. As AT&T begins to install facilities in SWBT's conduit system, a risk is created that others working in that segment of the conduit system may damage AT&T's facilities placed there. AT&T therefore requests the right to review SWBT's facilities work where AT&T has facilities in the same segment of	12.X Review of Work of Other Party to Ensure Facility Integrity. Where AT&T and SWBT both have facilities present in a particular segment of SWBT's conduit system, either party may review the facilities work of the other party after its completion to ensure the integrity of its own facilities. The reviewing party shall conduct its review at its own option and expense. Each party shall limit its	This proposed AT&T language appears to be a response to SWBT's post-installation inspection provisions. SWBT, as the party owning the poles, ducts, conduits, and rights-of-way in question, has significant potential premises liability exposure with respect to events occurring and conditions existing on its premises. AT&T does not share that exposure.	See the proposed text in the SWBT Language column for Issue 13.

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completion?" <u>AT&T Statement of issue</u> May the parties review each other's work in the conduit system to protect the integrity of their own facilities after work has been done by the other party that presented a significant risk to the reviewing party's facilities?	the conduit system and where the size or scope of work would lead to the expectation that damage has occurred or may be imminent. AT&T's proposed language requires the reviewing party to bear its own expense in conducting such review.	<u>exercise of such review to those work operations whose size or scope of work would lead to reasonable expectation that damage to its facilities has occurred or may be imminent.</u>	When SWBT modifies its poles, ducts, conduits, and rights-of-way, SWBT will, under other provisions of the Appendix, give AT&T notice of its intention to do so. AT&T has the right to have access to SWBT's facilities to serve its customers. The main purpose of this section, therefore, appears to be an attempt to establish by fallacious logic that when SWBT inspects AT&T's facilities on a post-installation basis, SWBT should not be entitled to compensation from AT&T. The argument is that since it is inappropriate for AT&T to inspect at SWBT's expense, it therefore follows that it is inappropriate for SWBT to inspect at AT&T's expense. This argument ignores the simple fact that it is AT&T which using SWBT's facilities, and not SWBT which is using AT&T's facilities. The argument further ignores the fact that SWBT, as owner of the premises, is expected to maintain at least a minimum degree of order on the premises. SWBT has no objection to AT&T's inspecting SWBT's premises, at AT&T's expense, as needed to assure itself that its facilities are not adversely affected by SWBT's activities. SWBT's objection is that AT&T attempts to inject language which would prevent SWBT from recovering reasonable post-installation inspection expenses in those situations when it is appropriate that inspections occur. This subject is addressed under Issue 13, which deals with the
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			SWBT Facilities Included or Excluded	
18. May the determination whether a new or amended license is required be made from AT&T's present documentation?	AT&T is willing to resolve this issue by adoption of the language agreed to by the parties in Texas.	The language agreed to in Texas by the parties is as follows: 13.X (c) results in the facilities attached being different from those described as authorized attachments in AT&T's present application, current license, notice of intent to occupy, or license application and supplemental documentation (e.g., different duct or size increase causing a need to re-calculate storm loadings, guying, or pole class);	subject of immediate occupancy, post-installation inspections relating to immediate occupancy, and inspections in general. This issue has been resolved. The text agreed to by the parties is shown in the SWBT Language column.	13.02 New or Amended License Required. A new or amended license will be required if the proposed addition, relocation, replacement, or modification: (a) ...; (c) results in the facilities attached being different from those described as authorized attachments in AT&T's current license, notice of intent to occupy, or license application and supplemental documentation submitted to SWBT (e.g., different duct or size increase causing a need to re-calculate storm loadings, guying, or pole class); ...
19. Should the Appendix contain provisions regarding fees for attachments made in the past by AT&T or its predecessors, as part of a complicated and expensive procedure to identify possible "unauthorized attachments"?	No. AT&T presents this issue because SWBT proposed for inclusion in the April Missouri contract, and in the contract in numerous other states, language requiring that AT&T undertake a complex investigation to identify possible "unauthorized attachments." AT&T expects that SWBT will also request that this language be included in the Missouri contract. Section 17.X is part of a series of SWBT provisions long rejected by AT&T regarding attachments made prior to the date of the Appendix (i.e., prior to the date of the Telecommunications Act of 1996 and thus under a different statutory framework). These provisions, not presented by SWBT for the	[AT&T objects to the inclusion of SWBT's proposal on this issue.]	SWBT urges the Commission to read the provisions of SWBT's proposed Article 17 in their entirety rather than relying on AT&T's description of the provisions of that article. It is a fact that from time to time, cable companies and telecommunications carriers install facilities on SWBT's poles or in their ducts and conduits without SWBT's advance knowledge or consent and without authorization of any kind. In some cases, these attachments result by accident. In others, the conduct results because a contractor isn't aware of who owns which poles. In other cases, however, the unauthorized	ARTICLE 17: TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS 17.01 Facilities to Be Marked. [Agreed.] 17.02 Removal of Untagged or Unauthorized Facilities. Subject to the provisions of subsections (a)-(d) of this section, SWBT may, without notice to any person or entity, remove from SWBT's poles or any part of SWBT's conduit system any untagged or unmarked facilities, including any such facilities owned or used by AT&T, if SWBT determines that such facilities are not the subject of any current license authorizing their continued attachment to

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	Commission's consideration here, are premised upon AT&T identifying all attachments made by it or any of its predecessors on any SWBT structure at any time in the past and verifying that the attachment is subject to a license issued by SWBT. This procedure alone places significant burdens on AT&T, and it is accompanied by notice, dispute resolution, and other complex procedures that consume a great deal of time and expense. Section 17.X, which imposes fees at the end of this complicated process, is not properly included in the Poles, Conduits, and Rights-of-Way Appendix.	attachments may be deliberate attempts to have free access while others pay for their use of the facilities. SWBT is not requesting that AT&T conduct a comprehensive audit of its facilities. SWBT simply wants AT&T's good faith representation that it is not aware of unauthorized AT&T facilities on SWBT's poles or in its ducts and conduits. If AT&T becomes aware, SWBT expects AT&T to report the unauthorized use and pay what should have been paid. If SWBT becomes aware of unauthorized AT&T attachments, SWBT will notify AT&T and will expect AT&T to either disclaim responsibility or do what's right. If AT&T acquires a company which has violated the rules, SWBT will expect AT&T to remedy the violations of its predecessors. These provisions are entirely reasonable and should be approved. AT&T's refusal to agree to these reasonable provisions sends all the wrong signals. SWBT notes that under other proposed provisions of the Poles Appendix opposed by AT&T, licenses issued under prior agreements between AT&T and SWBT would be made subject to the rates, terms, and conditions of the Poles Appendix. Any suggestion by AT&T that this would require AT&T to reapply for licenses previously granted is a misinterpretation by AT&T of the language and intent of these
		SWBT's poles or occupancy of SWBT's conduit system and are not otherwise lawfully present on SWBT's poles or in SWBT's conduit system. (a) [Agreed] (b) [Agreed] (c) [Agreed] (d) If the facilities appear to be facilities used by AT&T but not authorized under a current license subject to this Appendix (or any other current agreement between the parties), the provisions of Sections 17.05-17.12 shall apply. 17.03 Verification That Presently Attached Facilities Are Subject to Existing Licenses. AT&T warrants and represents that, to the best of its information and belief, all facilities presently owned or used by AT&T and attached to SWBT's poles or occupying space within any part of SWBT's conduit system in this State have been disclosed to SWBT and are subject to current licenses or are otherwise lawfully present on or in SWBT's poles, ducts, and conduits. If AT&T determines that any such facilities are not the subject of current licenses, AT&T shall so advise SWBT and promptly apply for licenses for such facilities or remove the facilities from SWBT's poles or conduits. Nothing contained in this section shall be construed as

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				provisions. If AT&T is willing to explain where it finds language in the Appendix which supports its interpretation, SWBT and AT&T should be able to fix the problem. AT&T apparently has two different divisions or groups within the same corporation (not separate subsidiaries) which provide local and long distance services. SWBT wants a single, statewide contract which will apply to the entire company. Rates, terms, and conditions of access are to be uniformly applied, and SWBT's reasonable expectation is that rates, terms, and conditions of access will be uniformly to different divisions in the same company.	requiring AT&T to make a field audit of its existing facilities to confirm the licensing status of its facilities as a prerequisite to entering into this Appendix. 17.04 Updating of Plant Location Records. [Agreed except numbering of the Section.] 17.05 Notice to AT&T. If any of AT&T's facilities for which no license is presently in effect are found attached to SWBT's poles or anchors or within any part of SWBT's conduit system, SWBT, without prejudice to other rights or remedies available to SWBT under this Appendix, and without prejudice to any rights or remedies which may exist independent of this Appendix, shall send a written notice to AT&T advising AT&T that no license is presently in effect with respect to the facilities and that AT&T must, within 60 days, respond to the notice as provided in Section 17.06 of this Appendix. 17.06 AT&T's Response. Within 60 days after receiving a notice under Section 17.05 of this Appendix, AT&T shall acknowledge receipt of the notice and submit to SWBT, in writing, either: (a) a denial or disclaimer of ownership or other interest in the facilities, together with an explanation of the factual and claimed legal basis for such denial
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					or disclaimer; (b) a statement that the facilities are the subject of a current license, together with an explanation of the factual and claimed legal basis for AT&T's assertion that the facilities are currently licensed, or a statement that no license is required, and an explanation of the factual and claimed legal basis for that assertion; or (c) an application for a new or amended license with respect to such facilities, together with a full and complete explanation of the circumstances under which such facilities were attached to, placed within, or allowed to remain on or in SWBT's poles or any part of SWBT's conduit system. Such explanation shall include, at a minimum, the following: (1) the date (or estimated date) when such facilities were attached to SWBT's poles or placed in SWBT's conduit system, and the factual basis supporting AT&T's selection of such date (or estimated date); and (2) the factual basis for AT&T's assertion, if any, that decisions to attach, place or allow the facilities to remain on or in SWBT's poles or conduit system were made in good faith and without intent to circumvent SWBT's pole attachment or conduit occupancy licensing requirements.
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				17.07 Denial or Disclaimer of Ownership or Other Interest. AT&T's submission to SWBT of a denial or disclaimer of ownership or other interest in the facilities shall constitute AT&T's waiver of any objection AT&T may have to SWBT's removal of the facilities. Submission of such a denial or disclaimer shall not be construed as an agreement by AT&T to pay any charges associated with removal of the facilities and shall be deemed to be a denial of any such responsibility; provided, however, that nothing contained in this section shall prohibit SWBT from invoking the dispute resolution process or filing suit, in a court of competent jurisdiction, to establish that AT&T is liable to SWBT for the costs of removal if it is determined that AT&T is responsible for the facilities notwithstanding AT&T's denial or disclaimer. 17.08 Review by SWBT of Licensing Status. Within 15 business days after receiving AT&T's statement that the facilities are the subject of a current license or that no license is required, SWBT shall review AT&T's explanation of the factual and claimed legal basis for AT&T's assertions and shall advise AT&T, in writing, whether it agrees or disagrees with AT&T's assertions. If SWBT agrees with AT&T's assertions, the parties may amend the applicable license
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					and no further action shall be required of AT&T. If SWBT does not accept AT&T's position, AT&T shall, within 15 business days, apply for a new or amended license as provided by Section 17.06(c) of this Appendix. <u>17.09 Approval of License and Retroactive Charges.</u> If SWBT approves AT&T's application for a new or amended license, AT&T shall be liable to SWBT for all fees and charges associated with the unauthorized attachments as specified in Section 17.10 of this Appendix. The issuance of a new or amended license as provided by this article shall not operate retroactively or constitute a waiver by SWBT of any of its rights or privileges under this Appendix or otherwise. <u>17.10 Fees and Charges.</u> This section applies to fees and charges with respect to AT&T's facilities placed on or in SWBT pole, duct, or conduit space which has not been assigned to AT&T. AT&T shall be liable to SWBT for all fees and charges associated with any such unauthorized pole attachments or conduit occupancy for which it is responsible. Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from SWBT's poles or conduit system and shall include, but not be limited to, all fees and charges which would have been due and
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					payable if AT&T and its predecessors had continuously complied with all applicable SWBT licensing requirements. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. The parties shall engage in good faith discussions to reach a mutually agreed determination as to the amount due and owing. In some cases, it may be impractical, unduly difficult, or uneconomical to determine the actual amount of fees which would have been due and payable if all licensing requirements had been met. Therefore, if the parties, through good faith discussions fail to reach agreement on the amount due and owing, and if the amount due and owing cannot be determined due to AT&T's inability to provide the information required to determine the correct amount, the amount owing with respect to each unauthorized attachment or occupancy shall be equal to three times the annual attachment and occupancy fees in effect on the date AT&T is notified by SWBT of the unauthorized attachment or occupancy. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, AT&T shall rearrange or remove its unauthorized facilities at SWBT's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to
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					SWBT or another joint user, and shall pay SWBT for all costs incurred by SWBT in connection with any facilities rearrangements, modifications, or replacements necessitated as a result of the presence of AT&T's unauthorized facilities. 17.11 <u>Removal of Unauthorized Attachments.</u> If AT&T does not apply for a new or amended license with respect to unauthorized facilities within the specified period of time, or if such application is received and specifically disapproved, SWBT shall by written notice request AT&T to remove its unauthorized facilities not less than 60 days from the date of notice and AT&T shall remove the facilities within the time specified in the notice; provided, however, that SWBT may request AT&T to remove such facilities at an earlier date if such earlier removal is necessary for reasons beyond SWBT's control. If the facilities have not been removed within the time specified in the notice, SWBT may, at SWBT's option, remove AT&T's facilities at AT&T's expense. 17.12 <u>No Ratification of Unlicensed Attachments or Unauthorized Use of SWBT's Facilities.</u> No act or failure to act by SWBT with regard to any unlicensed attachment or occupancy or unauthorized use of SWBT's facilities shall be deemed to constitute a ratification by
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20 SWBT Statement of Issue Should SWBT be called on to remove facilities no longer in service prior to a request for access by AT&T or another party entitled to access? AT&T Statement of Issue Should the same rule apply to both AT&T and SWBT for removal of facilities no longer in use?	The rationale for a provision on removal of facilities no longer in service is to make as much space available as possible for all users. This rationale applies equally to all: regardless of ownership, facilities that are no longer used should be moved out of the way to make space available for new facilities that will be used. If SWBT requires that AT&T remove facilities no longer in service within a specific period of time, SWBT should be willing to remove its own unused facilities within that same period of time, in accordance with the principle of non-discriminatory access.	18.X Removal Following Replacement of Facilities. Except as provided in Section 18.X, SWBT and AT&T shall <u>each</u> remove facilities no longer in service from SWBT's poles or conduit system within 60 days, or within such other period of time as shall be mutually agreeable to the parties, after the date AT&T or SWBT replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit; provided, however, that removal of facilities from the maintenance duct shall be governed by Sections 12.X, 13.X, and 15.X of this Appendix and not by this subsection.	SWBT believes that the parties have reached agreement on the text of Section 18.02, which is the text agreed to by the parties in Texas. The text which SWBT believes is now agreed is set forth in the SWBT language column and is proposed by SWBT. An explanation of SWBT's position follows. The Pole Attachment Act, as interpreted by the FCC, requires SWBT to provide access to its poles, ducts, conduits, and rights-of-way. SWBT has obligated itself, in Section 10.02, not to deny access on lack of capacity grounds when capacity can be expanded as provided in that section. Further, the parties have agreed in Section 10.02(c) that SWBT shall, at its expense, remove cables that are retired or inactive to free up requested duct and pole space. What SWBT has not agreed to do, and should not be required to do, is examine its entire inventory of cables, determine which are ones are in use and which ones are not,	SWBT of the unlicensed attachment or occupancy or unauthorized use, nor shall the payment by AT&T of fees and charges for unauthorized pole attachments or conduit occupancy exonerate AT&T from civil or criminal liability for any deliberate trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities. 18.02 Removal of Facilities Not in Active Use. At SWBT's request, AT&T shall remove from SWBT's poles, ducts, conduits, and rights-of-way any of AT&T's facilities which are no longer in active use; provided, however, that AT&T shall not be required to remove such facilities when due cause and justification exists for allowing them to remain in place. AT&T shall not be required to remove retired or inactive (dead) cables that have been overlashed by other facilities which remain in active use unless removal expenses are paid by the person or entity requesting removal of such facilities. AT&T shall not be required to remove cables that would require excavation to remove unless the person or entity requesting removal of such cables bears the expenses of such excavation in a manner analogous to the provisions of Section 10.02(c) of this Appendix. AT&T shall not abandon any of its facilities by leaving them on SWBT's poles, in SWBT's ducts, conduits, or rights-of-way, at any location where they may block or obstruct access to
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21 <u>SWBT's Statement of Issue</u> Should SWBT's rates be subject to annual cost-based adjustments in accordance with the Pole Attachment Act and rules, regulations, and orders thereunder, or should they be fixed for the term of the parties' agreement, a term which remains unspecified? Should a half-duct rate apply to inner ducts, as stipulated by the parties in Texas, where AT&T specifically stipulated to a half-duct rate for inner duct? Were either of these issue specifically addressed by the Arbitrator, whose decision was based on the erroneous assumption that the	The Arbitrator clearly ruled that rates of \$2.35/pole/year and \$0.40/conduit foot/year were adopted, and that SWBT could recover administrative fees identical to those applied to CATV providers. Arbitrator's Order, pages 28-29. The Arbitrator also appeared to rule that when the FCC completes its determination of charges for pole attachments, those rates and charges should apply for both rates and administrative fees. The Arbitrator said nothing about allowing SWBT to adjust either the rates or the fees in the interim; she referred to SWBT's "current rates in effect for cable television systems" in her discussion of the parties' positions. Further, the ruling is silent	<u>19.X Rates and Administrative Fees.</u> <u>(a) Rates for Pole Attachment and Conduit Occupancy. In accordance with the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, AT&T shall pay to SWBT rates of \$2.35 per pole per year and \$0.40 per conduit foot per year for conduit, until such time as the Federal Communications Commission promulgates rules governing pole attachment and conduit occupancy rates. Pole attachment and conduit occupancy rates charged by SWBT to AT&T under this</u>	and remove all of those which, for one reason or another, are no longer in service. Although SWBT has a legal obligation to provide access, an obligation that requires it to remove cables not in service in those cases where such action is needed to provide access, there is nothing in the Pole Attachment Act or in the FCC orders interpreting that Act which places similar responsibilities on telecommunications carriers and cable system operators exercising access rights. To remedy this imbalance, SWBT has proposed that AT&T (and other parties exercising access rights) remove their cables when they are no longer in service. AT&T's proposal goes far beyond what is reasonable or necessary in this context. SWBT's interpretation of the Arbitrator's order, which is disputed by AT&T, is that the Arbitrator believed that the parties had reached agreement on annual rates even though it has always been SWBT's position that such rates would be subject to modification on an annual basis and it has consistently been AT&T's position that rates should be fixed for the duration of the agreement. In short, there has never been agreement on this issue, only an agreement that the 1997 rates would be the rates specified in the Arbitrator's order. The Arbitrator also did not address issues relating to inner duct, if the	SWBT's poles or any part of SWBT's conduit system, or on any public or private property (other than property owned or controlled by AT&T) in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way. 19.01 Rates and Administrative Fees. In its December 11, 1996 Arbitration Order in Cases No.s TO-97-40 and TO-97-67, the Missouri Public Service Commission stated, with respect to pole and conduit rates, that "The parties have resolved the dispute, and proposed rates of \$2.35/pole/year and \$0.40 per duct foot/year for conduit shall be adopted." In addition, the PSC has stated that "With regard to SWBT's recovery of costs associated with administrative fees, SWBT shall be allowed to charge administrative fees and shall determine rates for access to poles, ducts, conduits, and rights-
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parties had reached agreed on these issues? <u>AT&T's Statement of Issue</u> May SWBT adjust the rates and fees established by the Arbitrator's Order? May SWBT charge AT&T a fee for inner duct that is not assigned to or occupied by AT&T by charging a half-duct rate regardless of the portion actually assigned to or occupied by AT&T?	as to fees for inner ducts. SWBT proposes to charge a half-duct rate regardless of whether AT&T is actually using or has even been assigned one-third of a duct or some other fractional portion. AT&T's proposal of charging a rate proportional to the number of inner ducts contained in the conduit is more reasonable and fair. In fact, Section 6.X of the Appendix (originally proposed by SWBT in the Master Agreement attached to the testimony of Mr. Hearst) provides: "To ensure efficient use of conduits SWBT will, when cable diameters permit, install inner ducts in multiples that fully utilize duct space (typically 3 or 4 inner ducts in a full four-inch duct)." This statement recognizes that it will be more common for duct to be divided into 3 or 4 inner ducts so that the half-duct rate proposed by SWBT will result in overcollection by SWBT.	<u>Appendix will then be determined in accordance with the FCC's rules on a going-forward basis.</u> <u>(b) Administrative Fees. As provided by the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, SWBT shall be allowed to charge administrative fees to AT&T. The amount charged by SWBT to AT&T for administrative fees shall be identical to the amount charged by SWBT to CATV providers for administrative fees as of the date of the arbitration order, December 11, 1996. Further in accordance with the Missouri Public Service Commission's order in Case No. TO-97-40, if the FCC promulgates rules governing the assessment of administrative fees, those rules shall apply to administrative fees charged by SWBT to AT&T on a going-forward basis.</u> <u>(c) Rates for Occupancy of Inner Duct and Partitioned Conduit. As provided by 47 U.S.C. § 224(g), SWBT shall impute to itself conduit and inner-duct rates equal to that which it would charge a non-affiliated entity. To avoid the collection of compensation in excess of the just and reasonable rates prescribed under the Telecommunications Act of 1996, occupancy of inner ducts or partitioned conduit will be no</u>	order were to be read literally. AT&T would pay the same rate for inner duct as it pays for any other ducts. That, however, is not the position of either party. SWBT advocates what is sometimes referred to as the "half-duct convention" - that is, that AT&T pay a half-duct fee for facilities placed in inner ducts. It simply is not feasible, appropriate, or economically reasonable for SWBT to inventory its entire stock of conduit, section-by-section, to determine how many usable inner ducts are located within each duct and then charge AT&T a proportional rate depending on how many ducts are located in a particular section. Such a process would be cumbersome and would not be worth the administrative expense. In pending FCC rulemaking proceedings, numerous commenters (including but not limited to AT&T and SWBT) have proposed alternative methodologies for inner duct charges under the Pole Attachment Act. Until such time as the FCC rules, SWBT believes that the half-duct rate, agreed to by AT&T in Texas, is the appropriate rate.	of-way identical to those provided to CATV providers." The PSC further stated: "When the FCC completes its determination of access to poles and conduits those rates shall apply." The provisions of this section are intended to implement the PSC's directives, in accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders thereunder. <u>(a) Rates for Pole Attachment and Conduit Occupancy. Until such time as the FCC authorizes the charging of different rates to telecommunications carriers and CATV providers, SWBT shall determine annual rates for access to poles, ducts, conduits, and rights-of-way so that those rates shall be identical to those applied to CATV providers. For the calendar years 1996 and 1997, the applicable rates for pole attachments were \$2.35/pole/year (if no more than one attachment space is occupied) and \$0.40 per duct foot/year for a full-sized duct located in SWBT's conduit system. Such rates shall continue in effect, subject to SWBT's right to adjust rates on an annual basis and conform its rates to changes in applicable law. Pole attachment and conduit occupancy rates shall not exceed the rates permitted under the Pole Attachment Act and shall be adjusted on a going-forward basis in accordance with methodologies established by or acceptable to the FCC. Nothing</u>
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			greater than a fractional rate proportional to the number of inner ducts or subducts contained in the full-sized conduit of an AT&T-occupied conduit. Conduit occupancy rates apply to manhole and CEV occupancy, calculated to the center point of the manhole or CEV being occupied.	contained in this Appendix shall preclude SWBT from adjusting rates in accordance with FCC-approved methodologies as those methodologies may change from time to time. (b) Administrative Fees. As provided by the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, SWBT shall be allowed to charge administrative fees to AT&T identical to those applied to CATV providers. Further, in accordance with the Missouri Public Service Commission's order in Case No. TO-97-40, if the FCC promulgates rules governing the assessment of administrative fees, those rules shall apply to administrative fees charged by SWBT to AT&T on a going-forward basis. (c) Rates for Occupancy of Inner Duct and Partitioned Conduit. SWBT's rates for partial duct and inner duct occupancy shall be determined in accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders thereunder. Partial duct and inner duct rates shall be standardized rather than determined on a case-by-case basis which requires individual analysis of conduit sections occupied. If two or more cable facilities occupy a duct that has not been subdivided by inner duct, a half-duct occupancy rate will apply for each cable facility placed in the duct. A half-duct
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				conduct occupancy rate will apply to the first facility placed by AT&T in a previously unoccupied duct that has not been subdivided by inner duct if the presence of AT&T's cable facility does not render the other half of the duct unusable by others. A half-duct rate shall apply to each inner duct occupied. 19.04 Due Date for Payment. Interest on Past Due Invoices, Remedies for Non-payment, and Procedures for Disputing Charges. For fees and charges other than charges for facilities modification, capacity expansion, and make-ready work, each bill or invoice submitted by SWBT to AT&T for any fees or charges under this Appendix shall state the date that payment is due, which date shall be not less than 60 days after the date of the bill or invoice. AT&T agrees to pay each such bill or invoice on or before the stated due date. For facilities modification, capacity expansion, and make-ready work, the payment due date shall be not less than 30 days after the date of the bill or invoice. (a) Interest on past due bills and invoices shall accrue at the rate of 12% per annum, or the maximum rate allowed by law, whichever is less. (b) AT&T's failure to pay SWBT's fees and charges shall be grounds for terminating this Appendix and licenses subject to this Appendix.
		The Appendix should include terms regarding payment of invoices. More specifically, the Appendix should include appropriate provisions dealing with bills which are not paid on time. These provisions are particularly important because of the FCC's rule requiring that rates, terms, and conditions of access be uniformly applied. If these provisions are not included in the AT&T agreement, other parties entitled to access will take the position that it is discriminatory for SWBT to insist on such terms in their agreements. This exposes SWBT to problems associated late payment and nonpayment of bills. SWBT believes that the provisions it proposes are reasonable and should be approved.	19.X Due Date for Payment. For all fees and charges other than make-ready charges, each bill or invoice submitted by SWBT to AT&T for any fees or charges under this Appendix shall state the date that payment is due, which date shall be not less than 60 days after the date of the bill or invoice. AT&T agrees to pay each such bill or invoice on or before the stated due date.	
22. Should the Appendix include additional terms regarding payment of invoices?		The parties have agreed to payment terms like those in Sec. 19.X in other states. SWBT now objects to the section because it does not include provisions regarding interest on past due amounts, dispute resolution, termination and other remedies benefiting SWBT. SWBT has not presented this language for the Commission's consideration; moreover, dispute resolution and termination are already covered in the Appendix.		

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					(c) If AT&T fails to pay, when due, any fees or charges billed to AT&T under this Appendix, and any portion of such fees or charges remains unpaid more than 15 calendar days after the due date, SWBT may send AT&T a written notice advising AT&T that this Appendix, or specified licenses subject to this Appendix, may be terminated if such fees or charges are not paid within 15 calendar days after the date of the notice. AT&T must remit to SWBT all such unpaid fees or charges, whether disputed or undisputed, within 15 days after the date of the notice. If AT&T pays disputed fees under protest, and it is later determined that such fees or any portion thereof should be refunded, the portion of fees to be refunded shall be refunded with interest at the rate of 12% per annum or the maximum rate allowed by law, whichever is less. (d) AT&T may dispute any fees or charges billed by SWBT to AT&T under this Appendix by invoking the dispute resolution procedures applicable to this Appendix. (e) If AT&T does not dispute such fees or charges and any portion of such undisputed fees or charges remains unpaid 30 calendar days after the date of the notice, SWBT may, to the extent permitted by the Pole Attachment Act and applicable rules, regulations, and commission orders, terminate this
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				Appendix and licenses subject to this Appendix, suspend the processing of pending applications for access to SWBT's poles, ducts, conduits, and rights-of-way located in this State, and refuse to accept further applications for access until such undisputed fees or charges, together with accrued interest thereon, have been paid in full.
23 <u>SWBT Statement if Issue</u> Should SWBT be permitted to modify the rates, fees, and charges? <u>AT&T Statement if Issue</u> Should SWBT be permitted to modify the rates, fees, and charges agreed to by the parties or ordered by the Commission?	See the discussion of Section 19.X above. Because the Arbitrator ruled that the rates and fees to be charged by SWBT would be effective only until a ruling by the FCC on the subject, it is unreasonable to assume that she intended that SWBT would be able to increase the temporary rates and fees at will.	[AT&T objects to language proposed by SWBT in negotiations in Article 19 allowing SWBT to modify rates and fees at its discretion.]	See the discussion under Issue 21 above. SWBT will not speculate on the Arbitrator's intention. The Arbitrator stated that the parties had agreed on the rates. There was an agreement: on 1997 rates. SWBT does not believe that the record will reflect that either party arbitrated the adjustment-of-rates issue or retreated from the positions earlier taken that subject. SWBT has consistently advocated for rate adjustments identical to those applicable to CATV providers; AT&T has consistently sought to fix rates for the term of the agreement, even when there has been no agreement by the parties on the length of the term. SWBT's rates are historical and they are currently averaged on a statewide basis. The result is that SWBT's rates change very little over time. Sometimes they go up slightly, and sometimes they go down slightly. SWBT's provisions	19.12 <u>Modification of Rates, Fees and Charges.</u> Subject to applicable federal and state laws, rules, regulations, and commission orders, SWBT shall have the right to modify all rates, charges and fees set forth in this Appendix. (a) Upon written notice to AT&T, SWBT may change, on a going-forward basis, the amounts of any rates, fees or charges assessed under this Appendix. Pole attachment and conduit occupancy rates shall not be increased more than once annually. (1) The notice shall state the effective date of the changes, which, in the event of a rate increase, shall be no earlier than the 60th day after the notice is given. (2) The changes shall be effective on the effective date stated in the notice unless stayed or prohibited

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				are reasonable and should be approved.	by a court or agency of competent jurisdiction. (3) The changes shall be reflected on the first semiannual bill issued on or after the effective date specified in the notice. (b) If the rates, fees and charges set forth in the notice are not acceptable to AT&T, AT&T may, notwithstanding any other provisions of this Appendix, at AT&T's option (1) seek the renegotiation of this Appendix, (2) terminate this Appendix, or (3) seek relief through the dispute resolution process or before a court or agency of competent jurisdiction. Also see proposed text at Issue 21.
24. [The issue is stated in Issue No. 16 in reference to Section 10.X above.]	[The reasons for AT&T's position are set forth in reference to Section 10.X above, Issue No. 16]		ARTICLE 21: INDEMNIFICATION <u>21.X Indemnification. Except as otherwise specifically provided in Sections 10.X(b) and 10.X(c) of this Appendix, the parties agree that their respective rights and obligations as to indemnification are set forth in Sections 7.X (Obligation to Indemnify), 38.X (Governmental Compliance), 39.X (Responsibility for Environmental Contamination), 7.X (Obligations to Defend; Notice; Cooperation), and 7.X (OSHA Statement) of the Terms and Conditions of the Agreement.</u> <u>21.X No Indemnification for Negligence or Intentional Acts. Notwithstanding any other</u>	SWBT's proposed Articles 21 and 22 deal with indemnification, liabilities, and limitations of liability. These provisions have been carefully tailored to reflect the appropriate allocation of known risks associated with outside plant operations and are, for the most part, reciprocal provisions. SWBT's proposed Article 21 deals with indemnification for risks associated with outside plant operations. These risks are entirely different from the risks involved with respect to other portions of the parties' interconnection agreement. Activities relating to resale, interconnection, collocation, and the	ARTICLE 21: INDEMNIFICATION 21.01 Risks Associated with Outside Plant Operations. The parties acknowledge that SWBT's outside plant facilities include thousands of miles of pole lines, conduits, and rights-of-way located on public and private property throughout SWBT's service area, that SWBT cannot control or continuously monitor activities that occur at these sites, and that the risks associated with outside plant operations and facilities are not similar to the risks associated with operations occurring inside SWBT's central offices and other secure SWBT buildings and structures. The

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	<u>provisions of this Appendix, the parties agree that in no event is either party obligated to indemnify and hold the other party harmless from the other party's negligent acts or omissions, or intentional or willful misconduct, including gross negligence.</u>	provision of unbundled network elements occur almost exclusively in tightly controlled, secure environments. As discussed below, such environments are the antithesis of the environment in which outside plant activities occur. Attempting to craft one set of rules which adequately address these totally different environments is an exercise in futility. Section 21.01 is an aid to interpretation which clearly and accurately reflects outside plant realities in the contemplation of the parties at the time of execution of the agreement. The simple truth is that when it comes to control over premises, SWBT's has far greater control over secured premises inside its buildings than it has at outside plant sites on public and private rights-of-way. Any suggestion by AT&T that SWBT has the same extent of control over such outside plant facilities as it has over secured facilities such as central offices is factually insupportable. The statements in Section 21.01 are true and they are appropriate for inclusion in the parties' agreement. Section 21.02 also reflects accurately the realities of control at outside plant sites. AT&T has negotiated and arbitrated successfully to obtain an unparalleled degree of freedom when performing work operations at SWBT sites. When AT&T personnel go to the sites of SWBT's	parties further acknowledge that the presence of multiple firms on or in poles, ducts, conduits, and rights-of-way owned or controlled by SWBT requires that liability risks be fairly allocated between the parties and that it is the parties' intent to allocate such risks in a just, reasonable, and nondiscriminatory manner which addresses known risks associated with the outside plant environment and activities and conditions at outside plant locations. 21.02 Control of Premises. AT&T acknowledges that its employees and other persons acting on AT&T's behalf, and employees of joint users and other persons acting on behalf of joint users, will be present, without supervision or control by SWBT, and in many cases without SWBT's knowledge, on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. During those times when AT&T's employees and personnel are present at such sites, AT&T shall be deemed, for the purpose of allocating liabilities between the parties, to be an independent contractor in control of the premises except as otherwise provided in this section. Although SWBT inspectors may be present at the site of work being performed by AT&T or persons acting on AT&T's behalf, such inspectors shall have no authority to direct AT&T or personnel acting on AT&T's behalf concerning the method or manner
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	poles, no notice to SWBT is required and SWBT has not reserved the right to have construction inspectors present. AT&T has fought vigorously to keep SWBT construction inspectors away from its work operations. When it comes to control of construction site, AT&T should be deemed in control if its construction jobs are underway at the site. If AT&T digs a splice pit, the splice pit fills with water, and a child falls into the splice pit and drowns due to AT&T's failure to barricade the site properly, SWBT does not feel that it should be necessary for SWBT to defend a wrongful death suit based on SWBT's allegedly negligent failure to supervise AT&T's activities at the site or conditions on the site. If AT&T goes to a site, and there are dangerous conditions on the site, SWBT expects AT&T to suspend operations at the site and notify SWBT so that the conditions can be alleviated. If AT&T is in control of the site and fails to give SWBT notice, SWBT does not feel that SWBT should be called upon to defend lawsuits resulting from subsequent AT&T activities at the site. It is SWBT's objective by the language of proposed Section 21.02 to make it clear to all concerned that parties who go to SWBT's sites must be fully responsible for their activities. SWBT, as the premises owner, should not bear partial liabilities for injuries which would not have occurred but for AT&T's actions at the site. SWBT's proposed Section	by which the work is to be performed, and the presence of a SWBT inspector shall not result in SWBT's being deemed to be in control of the premises. When both parties are present and performing work operations at a site subject to this section, SWBT and AT&T shall be deemed to be jointly in control of the premises. When poles, ducts, conduits, or rights-of-way occupy property owned by third parties, neither party shall be deemed to be in control of the premises, except as otherwise provided by law, at times when such party's work operations are not in progress. Work operations shall be considered to be in progress from the time work commences until such work is completed whether or not employees of a party or persons acting on such party's behalf are actually present at the site.
		21.03 INDEMNITY AGAINST AND LIMITATIONS OF LIABILITY WITH RESPECT TO CERTAIN NEGLIGENT ACTS AND OMISSIONS. THIS ARTICLE INCLUDES PROVISIONS INDEMNIFYING EACH PARTY FROM LIABILITIES ARISING OUT OF OR IN CONNECTION WITH CERTAIN NEGLIGENT ACTS AND OMISSIONS OF SUCH PARTY. THIS ARTICLE ALSO INCLUDES PROVISIONS LIMITING THE LIABILITIES OF EACH PARTY ARISING OUT OF OR IN CONNECTION WITH CERTAIN

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	21.02 is reasonable and should be approved as written. Section 21.03 has no operative effect. It simply serves as a conspicuous disclosure that some of the provisions provide for indemnification of negligence and for limitations of liability with respect to negligent conduct. It should be noted, however, that these provisions generally apply equally to AT&T and SWBT. That is, if SWBT is entitled to indemnification for its negligence, AT&T is also entitled to the same degree of indemnification for AT&T's negligence. Section 21.04 deals with excluded indemnities. This section, as is true of almost all of SWBT's proposed indemnity provisions (Section 21.11 is an exception), apply equally to SWBT and AT&T. It would be a half-truth to state as AT&T stated in Kansas that these provisions provide SWBT with ways to deny indemnification responsibilities. The whole truth would include at least recognition that these provisions provide AT&T and other interconnectors with the very same ways to deny indemnification responsibilities. Each of the indemnity exclusions are reasonable. Why should either party indemnify the other party for the other party's breaches of contract, for the other party's violations of the law, for the other party's intentional misconduct, for the other party's gross negligence,	NEGLIGENT ACTS AND OMISSIONS OF SUCH PARTY. 21.04 Indemnities Excluded. Except as otherwise specifically provided in this article, neither party (as an "Indemnifying party") shall be required to indemnify or defend the other party (as an "Indemnified party") against, or hold the indemnified party harmless from, any suit, claim, demand, loss, damage, liability, fine, penalty, or expense arising out of: (a) any breach by the indemnified party of any provision of this Appendix or any breach by the indemnified party of the parties' interconnection agreement, if any; (b) the violation of any law by any employee of the indemnified party or other person acting on the indemnified party's behalf; (c) willful or intentional misconduct or gross negligence committed by any employee of the indemnified party or by any other person acting on the indemnified party's behalf; or (d) any negligent act or acts committed by any employee of the indemnified party or other person acting on the indemnified party's behalf, if such negligent act or acts are the sole producing cause of the injury, loss, or damage giving rise to the suit, claim, demand, loss, damage, liability,

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		or for the other party's negligent acts or omissions which are the sole producing cause of injury? SWBT notes that these provisions cannot be properly understood as abstract propositions. The critical question is how do they apply in the specific fact situations provided for in the Poles Appendix. Section 21.05 deals with workplace injuries. This section includes examples of the types of injuries in the parties' contemplation at the time of entering into the contract. The basic approach of these provisions are simple. The party that brings personnel to a SWBT site should be generally responsible for whatever injuries occur to the worker at that site. The rules are reciprocal and apply equally to both parties. If a SWBT employee is injured on a SWBT site and sues AT&T on the ground that something AT&T did or failed to do caused his injury, SWBT is responsible for indemnifying AT&T unless one of the indemnification exemptions (such as gross negligence or sole producing cause of injury) applies. In like manner, if an AT&T employee is injured on the job and alleges that SWBT is partially responsible, AT&T will indemnify SWBT. If, however, AT&T's employee is injured and sues SWBT, SWBT will not be entitled to indemnity from AT&T if the injury resulted from any of the indemnity exclusions set forth in Section 21.04. If, for example, the injury resulted from SWBT's intentional	fine, penalty, or expense for which indemnity is requested. <u>21.05 Workplace Injuries.</u> The parties acknowledge that injuries may occur at sites where work is being performed by or for either party and that primary responsibility for preventing workplace injuries shall be placed on the party controlling work operations at the site. Workplace injuries may result from any of variety of causes, including but not limited to electrocution associated with contact with electric power lines on poles or use of defective equipment, falls from poles resulting from the negligence of the injured person or co-workers or due to the existence of unsafe conditions on or in the vicinity of the pole, cave-ins and other accidents at excavation sites, explosion of combustible gases within or in the vicinity of a conduit system, exposure to hazardous substances or noxious gases at the site, acts of God, and acts and omissions of third parties over whom neither party has control. Except as expressly provided in this Appendix to the contrary, each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses of every kind and character, on account of or in connection with any injury, loss, or damage suffered by any
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			misconduct, SWBT's gross negligence, or acts or omissions by SWBT which are the sole cause of the injured employee's injuries. SWBT will not be entitled to indemnity from AT&T even though the injured worker was brought to the site by AT&T. In this context, AT&T cannot accurately portray the purpose and effect of the indemnity exclusions of Section 21.04 as a means of protecting only SWBT. These provisions are not intended, as AT&T suggested in Kansas, to "provide SWBT with still more ways to deny that it has indemnification responsibilities to AT&T." The indemnity exclusions work both ways and also provide AT&T with significant and equal ways of avoiding indemnity obligations to SWBT when it is appropriate to do so. It should be noted that nothing contained in Section 21.05 precludes the injured employee from suing either party. Further, if a SWBT employee sues AT&T, AT&T's potential liability to SWBT's employee is not limited by the Worker's Compensation law. (The same is true the other way around.) The presence of large numbers of additional personnel at SWBT's outside plant sites exposes SWBT to tremendous potential liabilities. A single death case could more than wipe out all revenues received by SWBT from all parties with access to its poles, ducts, conduits, and rights-of-way in all five of SWBT's states. It is, therefore, of critical importance to SWBT that the liability rules encourage parties at	person, which arises out of or in connection with the personal injury or death of any employee of the indemnifying party (or other person acting on the indemnifying party's behalf) if such injury or death results, in whole or in part, from any occurrence or condition on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way; provided, however, that AT&T's indemnification duties under this section shall arise only if the person injured is present at such site in connection with the performance or anticipated performance of any act required or permitted to be performed by AT&T or by persons acting on AT&T's behalf pursuant to this Appendix. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not limited to indemnities arising out of or in connection with claims arising from or in any way connected with any injury, sickness, disease, or death of any employee of the indemnifying party or any person acting on the indemnifying party's behalf attributable or allegedly attributable to occurrences or conditions on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. EXCEPT AS PROVIDED ABOVE IN SUBSECTIONS 21.04(c)-(d), THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL
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Reason why/when included in the matrix	the site to do everything they can reasonably do to promote workplace safety and to be responsible to their employees for failing to do so.	ARISE EVEN IF THE INJURY, SICKNESS, DISEASE, OR DEATH WAS ATTRIBUTABLE IN PART TO NEGLIGENCE ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY. 21.06 Other Claims Brought Against Either Party by Employees and Other Persons Acting on the Other Party's Behalf. Nothing contained in this Appendix shall create any contractual liability or other liability on the part of either party to any employee, contractor, or subcontractor of the other party or any other person acting on the other party's behalf. Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, or expenses of every kind and character (other than workplace injury claims subject to Section 21.05 above) made, brought, or sought against the indemnified party by any employee, contractor, or subcontractor of the indemnifying party or by any other person acting on the indemnifying party's behalf; provided, however, that this section shall apply only to suits, claims, demands, losses, damages, liabilities, or expenses related to the subject matter of this Appendix. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not limited to indemnities arising out of or in connection
	Section 21.06 deals with other claims by employees and contractors acting on either party's behalf. Essentially, if AT&T fails to pay a contractor performing work at a SWBT site, such as facilities modification, capacity expansion, or make-ready work performed by AT&T at AT&T's option, SWBT does not want the contractor suing SWBT. Further, SWBT does not want to get caught up in any disputes between AT&T and its employees and contractor's over their status as AT&T employees. Again, these provisions are reciprocal. They are also subject to Section 21.04 indemnification exclusions. Therefore, if an AT&T contractor sues SWBT and the contractor's injuries resulted from SWBT's intentional misconduct, gross negligence, or acts or omissions which are the sole producing cause of the contractor's injury, SWBT would not be entitled to indemnification from AT&T.	
	Section 21.07 deals with indemnities for claims brought against either party by vendors, suppliers, customers, and other persons in privity of contract with the other party. This provision applies equally to both parties. In general, parties contracting with one another may, by contract,	

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		establish limitations of liability. Historically, telephone company service tariffs have included limitations of liability limiting the telephone company's liabilities from damages resulting from service outages. If AT&T's acts result in a service outage impacting SWBT's customers, AT&T -- not being in privity of contract with SWBT's customer -- has no contractual limitation of liability to SWBT's customer. Under this provision, however, SWBT would indemnify AT&T for such damages unless an indemnity exclusion (e.g., AT&T's willful misconduct, gross negligence, or acts or omissions constituting the sole producing cause of damage) applied. The basic rule is simple: each party will take care of its own customers unless special circumstances exist which make it fair for the other party to be responsible. Assume that SWBT negligently knocks AT&T's cable off a pole and disrupts service to AT&T's customer. In that event, if SWBT's conduct was the sole producing cause of injury, SWBT would not be entitled to indemnification from AT&T if AT&T's customer sued SWBT. SWBT notes that there is another important reason why the party in privity with the customer should be responsible in the absence of special circumstances. If a service outage occurs, it is the customer's own provider who must restore service. SWBT believes that service restoration should be prompt and that SWBT's liability	with claims arising from or in any way connected with the employment relationship or other claimed relationship between the indemnifying party and the employee, contractor, subcontractor, or other person acting on the indemnifying party's behalf; claims arising out of disputes over payments due or allegedly due to any employee, contractor, subcontractor, or other person acting on the indemnifying party's behalf; and claims arising out of other contract disputes between the indemnifying party and the employee, contractor, subcontractor, or other person acting on the indemnifying party's behalf. EXCEPT AS PROVIDED ABOVE IN SUBSECTIONS 21.04(c)-(d), THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL ARISE EVEN IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY. 21.07 <u>Claims Brought Against Either Party by Vendors, Suppliers, Customers, and other Persons in Privity of Contract with the Other Party.</u> The parties acknowledge that neither party controls the contractual relationships between the other party and vendors, suppliers, customers, and other persons in
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and indemnity provisions will encourage providers to restore service promptly rather than permitting to damages to accumulate. Section 21.08 parallels Section 21.07. Section 21.07 provides that each party is entitled to indemnity from the other with respect to certain claims brought against that party by persons in privity of contract with the other party. This section provides that neither party shall be entitled to indemnity from the other with respect to claims brought against that party by persons in privity of contract with the party which might otherwise seek indemnity. Section 21.09 appropriately and even-handedly deals with injuries to third parties and third-party property owners resulting from each party's conduct. Section 21.10 appropriately and even-handedly deals with environmental claims. Some interconnectors (such as AT&T) would like SWBT to indemnify them if they discharge hazardous substances from SWBT manholes or other SWBT sites. The basic approach proposed by these interconnectors is contrary to key principles of environmental law. The notion that if an interconnector did not place a hazardous substance on SWBT's property, that interconnector may discharge that substance and then pass the	privity of contract with the other party and that nothing contained in this Appendix shall create any contractual or other liability of either party to any vendor, supplier, customer, or other person or entity in privity of contract with the other party. Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, or expenses of every kind and character, made, brought, or sought against the indemnified party by any vendor, supplier, or customer of the indemnifying party or by any other person or entity in privity with the indemnifying party; provided, however, that this section shall apply only to suits, claims, demands, losses, damages, liabilities, or expenses related to the subject matter of this Appendix or AT&T's use of SWBT's poles, ducts, conduits, or rights-of-way. The indemnifying party may not, as a defense to any obligations of the indemnifying party under this section, assert that the indemnified party's claims against the indemnifying party are barred by any tariff or contract limitation of liability applicable to the indemnifying party's vendor, supplier, or customer or to such other person in privity of contract with the indemnifying party. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not
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			limited to indemnities for claims against either party arising out of or in connection with the failure by the other party to meet its obligations (including but not limited to contract and tariff obligations) to such other party's customers and suppliers. EXCEPT AS PROVIDED ABOVE IN SUBSECTIONS 21.04(c)-(d), THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL ARISE EVEN IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY. 21.08 <u>Claims Brought Against Either Party by Such Party's Own Employees, Contractors, Subcontractors, or Other Persons Acting on Such Party's Behalf, and Claims Brought Against Either Party by Such Party's Own Vendors, Suppliers, Customers, or Other Persons in Privity of Contract with Such Party.</u> Neither party shall be entitled to indemnity, contribution, or subrogation from or by the other party with respect to any suits, claims, demands, losses, damages, liabilities, or expenses, of any kind or character, made, brought, or sought against such party by any employee, contractor, or subcontractor of such party, by any other person acting on behalf of such party, by any vendor,
			liability on by requiring an indemnity from SWBT is just plain wrong. This provision has been stated in the abstract in general terms and conditions proposed by some interconnectors (e.g., AT&T). When placed in general terms and conditions, which deal primarily with issues related to interconnection, collocation, resale, and unbundled network elements, this kind of language does not draw as much attention as it would if viewed in an outside plant context. Section 21.10(a) makes each party responsible for its own violations of environmental laws. Section 21.10(b) deals with the release or discharge of hazardous substances. The releasing party is responsible. If an interconnector does not want to be liable for releasing or discharging hazardous substances, it simply should not engage in such activities. Section 21.10(c) deals with the removal or disposal of hazardous substances. Again, the party removing or disposing of the substance is responsible. If an interconnector does not want to be liable for removing or disposing of hazardous substances, it simply should not engage in such activities. Section 21.10(d) provides that except as otherwise specifically provided to the contrary, neither party shall be required to indemnify the other party for the other party's violation of environmental laws. Why should they? Under this provision, SWBT remains responsible for the presence at SWBT's sites of

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		hazardous materials but an interconnector will be responsible if releases those materials. Section 21.11 deals with claims for taxes and certain intellectual property claims. If an interconnector facilities on SWBT's poles, SWBT does not want to be taxed for them. If an interconnector, by virtue of its use of public rights-of-way, is required by a municipality to pay municipal fees, SWBT does not want to be liable to the municipality for the interconnector's fees simply because SWBT complied with federal law by providing access to poles, ducts, conduits, and rights-of-way. Interconnectors must be responsible for paying their own municipal fees, if any. If an interconnector violates the intellectual property rights of third parties through its use of facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, or rights-of-way, SWBT does not want to be liable for any such claims. These provisions are quite reasonable. They are not parallel because SWBT's potential exposure is based on its status as the owner of poles, ducts, conduits, and rights-of-way rather than its acts. In the present agreement, interconnectors have no similar ownership status. Sections 21.12 (dealing with AT&T's general indemnity obligations to SWBT) and 21.13 (dealing with SWBT's general	supplier, or customer of such party, or by any other person or entity in privity of contract with such party, if such suit, claim, demand, loss, damage, liability, or expense arises directly out of or in connection with the subject matter of this Appendix or the use by AT&T of SWBT's poles, ducts, conduits, or rights-of-way. Indemnities excluded by this section include, but are not limited to, indemnities for claims against either party arising out of or in connection with employment-related disputes between either party and its employees; claims against either party by contractors, subcontractors, and suppliers performing work or supplying materials to SWBT sites at the request of such party; and other failures by either party to meet its obligations (including but not limited to contract and tariff obligations) to such party's own customers and suppliers. THE INDEMNIFICATION EXCLUSIONS OF THIS SECTION SHALL APPLY EVEN IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM WAS ATTRIBUTABLE IN PART TO THE NEGLIGENCE OF THE INDEMNIFYING PARTY BUT SHALL NOT APPLY IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM AROSE FROM WILLFUL OR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE COMMITTED BY
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			indemnity obligations to AT&T) are reciprocal provisions. Separate sections are required, however, because Section 21.11, which is referred to in Section 21.12, is not reciprocal and therefore is not referred to in Section 21.13. Section 21.14 (no rights, claims, causes of action, or remedies for the benefit of third parties) is unambiguous and speaks for itself. Section 21.15 deals with the assertion of limitation-of-liability defenses. This language had its origins in proposals by firms (not AT&T) negotiating pole attachment contracts with SWBT. The concept is quite simple. If SWBT were to be held liable to a SWBT customer for damages resulting from an interconnector's actions, and if SWBT could have asserted limitation-of-liability defenses against its own customer but failed to do so, then there is no reason for SWBT to be indemnified by the interconnector for the damages which SWBT would not have suffered if it had asserted its limitation-of-liability defense. This provision, of course, deals only with indemnification rights between an interconnector (e.g., AT&T) and SWBT and does not affect the right of any customer to sue either the interconnector or SWBT. Section 21.16 (Indemnity Liabilities Not Subject to Article 22 Limitations of Liability) is self-explanatory and applies equally to the parties.	ANY EMPLOYEE OF THE INDEMNIFYING PARTY OR ANY OTHER PERSON ACTING ON THE INDEMNIFYING PARTY'S BEHALF OR AROSE FROM ANY NEGLIGENT ACT OR ACTS COMMITTED BY ANY EMPLOYEE OF THE INDEMNIFYING PARTY OR OTHER PERSON ACTING ON THE INDEMNIFYING PARTY'S BEHALF, IF SUCH NEGLIGENT ACT OR ACTS ARE THE SOLE PRODUCING CAUSE OF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE SUIT, CLAIM, DEMAND, LOSS, DAMAGE, LIABILITY, FINE, PENALTY, OR EXPENSE FOR WHICH INDEMNITY IS REQUESTED. 21.09 Injuries to Third Parties and Third-party Property Owners Resulting from the Parties' Conduct. Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with the personal injury or death of any third party or physical damage to real or personal property owned by a third party, arising in whole or in part, out of or in connection with the conduct of employees of the indemnifying party or other persons acting on the indemnifying party's behalf while such employees or other persons
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Section 21.17 (Defense of Suits) sets forth reasonable provisions relating to the defense of suits by parties required to provide indemnity under the poles agreement.	are present on, within, or in the vicinity of any SWBT pole, duct, conduit, or right-of-way in connection with the performance or anticipated performance of any act required or authorized to be performed pursuant to this Appendix. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not limited to indemnities arising out of or in connection with personal injury, death, and property damage claims by third parties based on willful or intentional misconduct and negligent acts and omissions of the indemnifying party.
	21.10 Indemnification for <u>Environmental Claims</u>. The parties acknowledge that hazardous substances may be present on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way; that employees and other persons acting on the parties' behalf working on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way should be familiar with environmental laws and environmental concerns which arise in outside plant contexts; that all such employees and other persons should be prepared to recognize and deal with environmental contingencies existing at specific sites; and that liabilities associated with environmental claims arising out of or in connection with the

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					subject matter of this Appendix shall be allocated between the parties as set forth in this section. (a) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the violation or breach, by any employee of the indemnifying party or other person acting on the indemnifying party's behalf, of (1) any federal, state, or local environmental statute, rule, regulation, ordinance, or other law or (2) any provision or requirement of this Appendix dealing with hazardous substances or protection of the environment. (b) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such
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				hazardous substances, by any employee of the indemnifying party, or by any person acting on the indemnifying party's behalf, while present on, within, or in the vicinity of any SWBT pole, duct, conduit, or right-of-way. Indemnities provided by this subsection include but are not limited to indemnities arising out of or in connection with the release or discharge of water and other substances from SWBT's manholes or other conduit facilities. (c) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the removal or disposal of any hazardous substances by the indemnifying party or by any person acting on the indemnifying party's behalf, or arising out of or in connection with the subsequent storage, processing or other handling of such hazardous substances by any person or entity after they have been removed by the indemnifying party or persons acting on the indemnifying party's behalf from the site of any SWBT pole, duct, conduit, or right-of-way. For the purposes of this subsection, any
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				person or entity removing or disposing of hazardous substances at the request of the indemnifying party or at the request of any person acting on the indemnifying party's behalf, and any person or entity subsequently receiving, storing, processing, or otherwise handling such hazardous substances shall be considered to be a person acting on the indemnifying party's behalf. (d) Except as otherwise specifically provided in this section, neither party shall be required to indemnify or defend the other party against, or hold the other party harmless from any loss, damage, claim, demand, suit, liability, fine, penalty or expense for which the other party may be liable under any federal, state, or local environmental statute, rule, regulation, ordinance, or other law. 21.11 Miscellaneous Claims. AT&T shall indemnify, on request defend, and hold SWBT harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, and expenses, of every kind and character, made, brought, or sought against SWBT by any person or entity, arising out of or in connection with the subject matter of this Appendix and based on either: (a) claims for taxes, municipal
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(b) claims based on the violation by AT&T of any third party's intellectual property rights, including but not limited to claims for copyright infringement, patent infringement, or unauthorized use or transmission of television or radio broadcast programs or other program material.

21.12 AT&T's General Indemnity Obligations to SWBT. This section applies only in those situations not expressly covered by Sections 21.05-21.11 and does not apply to any suit, claim, demand, loss, damage, or expense resulting from AT&T's enforcement of its rights against SWBT pursuant to this Appendix or other provisions in the parties' interconnection agreement, if any. Except as otherwise expressly provided in this Appendix to the contrary, and subject to the exclusions set forth in Section 21.04, AT&T shall indemnify, on request defend, and hold SWBT harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, and expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or

				property, or to the environment, arising out of or in connection with AT&T's access to or use of SWBT's poles, ducts, conduits, or rights-of-way, AT&T's performance of any acts authorized under this Appendix, or the presence or activities of AT&T's employees or other personnel acting on AT&T's behalf on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way. 21.13 SWBT's General Indemnity Obligations to AT&T. This section applies only in those situations not expressly covered by Sections 21.05-21.10 and does not apply to any suit, claim, demand, loss, damage, or expense resulting from SWBT's enforcement of its rights against AT&T pursuant to this Appendix or other provisions in the parties' interconnection agreement, if any. Except as otherwise expressly provided in this Appendix to the contrary, SWBT shall indemnify, on request defend, and hold AT&T harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, and expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with SWBT's access to or use of SWBT's poles, ducts, conduits, or rights-of-way, SWBT's performance of any acts
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authorized under this Appendix,
or the presence or activities of
SWBT's employees or other
personnel acting on SWBT's
behalf on, within, or in the vicinity
of SWBT's poles, ducts, conduits,
or rights-of-way.

21.14 No Rights, Claims, Causes of Action, or Remedies for the Benefit of Third Parties. Nothing contained in this article is intended to create any rights, claims, causes of action, or remedies for the benefit of any third party.

21.15 Assertion of Limitation of Liability Defenses. Each party shall diligently assert the limitation of liability provisions of any applicable tariff or contract in any case involving injury, loss, or damage to any customer of such party for which the other party is not exempt from indemnification liabilities to the indemnified party under this Appendix.

21.16 Indemnity Liabilities Not Subject to Article 22 Limitations of Liability. Indemnity liabilities under this article shall not be subject to Article 22 limitations of liability.

21.17 Defense of Suits. Upon request by the indemnified party, the indemnifying party shall defend any suit brought against the indemnified party for any injury, loss, or damage subject to indemnification under this

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25. [The issue is stated in Issue No. 16 in reference to Section 10.X above.]	[The reasons for AT&T's position are set forth in reference to Section 10.X(c) above, Issue No. 16]	ARTICLE 22: LIMITATION OF LIABILITIES; CONSEQUENTIAL DAMAGES <u>22.X Limitation of Liabilities. The parties agree that their liability to each other is limited according to the terms of Section 7.X (Limitation of Liabilities) of the Terms and Conditions of the Agreement.</u>	SWBT's proposed Articles 22 dealing with indemnification, liabilities, and limitations of liability. These provisions have been carefully tailored to reflect the appropriate allocation of known risks associated with outside plant operations and are, for the most part, reciprocal provisions. SWBT is proposing the addition of a separate article dealing with limitations of liability in the outside plant context. This article is appropriate for inclusion in the poles agreement for the same reasons that special indemnity provisions are required. The provisions of the general terms and	Appendix. The indemnified party shall notify the indemnifying party promptly in writing of any written claims, lawsuits, or demands for which the indemnifying party may be responsible under this Appendix. The indemnified party shall cooperate in every reasonable way to facilitate defense or settlement. The indemnifying party shall have the right to control and conduct the defense and settlement of any action or claim subject to consultation of the indemnified party. The indemnifying party shall not be responsible for any settlement unless the indemnifying party approved such settlement in advance and agrees to be bound by the settlement agreement.
		ARTICLE 22: LIABILITIES AND LIMITATIONS OF LIABILITY <u>22.01 LIMITATIONS OF LIABILITY WITH RESPECT TO NEGLIGENT ACTS AND OMISSIONS. THIS ARTICLE INCLUDES PROVISIONS LIMITING THE LIABILITIES OF EACH PARTY ARISING OUT OF OR IN CONNECTION WITH CERTAIN NEGLIGENT ACTS AND OMISSIONS OF SUCH PARTY.</u> <u>22.02 LIMITATIONS OF LIABILITY IN GENERAL- EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTIONS 21.16 AND 22.05, NEITHER PARTY'S LIABILITY TO THE OTHER PARTY</u>		

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			conditions simply do not cover the subject appropriately. They do not specifically address the known problems associated with outside plant operations or the indemnity situations which arise in outside plant litigation. Section 22.01 contains no operative provisions and simply provides a conspicuous notice that Article 22 includes provisions limiting each party's liabilities for certain negligent acts and omissions. Section 22.02 limits each party's liabilities to the other party to the greater of \$250,000 or the total amount charged by SWBT to AT&T under the poles agreement for the calendar years when the acts or omissions giving rise to liability occurred. By tying the limitation of liability to the amount of business performed under the poles agreement, rather than the total volume of business between the parties in all transactions, the poles agreement provides nondiscriminatory treatment to all parties seeking access to SWBT's poles, ducts, conduits, and rights-of-way. SWBT thereby avoids giving discriminatorily favorable terms to parties such as AT&T who choose to purchase other services from SWBT. The limitations of liability do not apply to indemnification claims and do not apply in other situations in which it is appropriate that limitations of liability not be applied.	FOR DAMAGES ATTRIBUTABLE, IN WHOLE OR IN PART, TO ANY NEGLIGENCE, NEGLIGENCE IN THE PERFORMANCE OF THIS AGREEMENT, WHETHER ARISING IN CONTRACT OR TORT, SHALL EXCEED IN THE AGGREGATE FOR ANY CALENDAR YEAR THE GREATER OF \$250,000, OR THE TOTAL AMOUNT CHARGED BY SWBT TO AT&T UNDER THIS AGREEMENT FOR THE CALENDAR YEARS WHEN THE ACTS OR OMISSIONS GIVING RISE TO LIABILITY OCCURRED. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED AS LIMITING EITHER PARTY'S LIABILITY FOR ACTS OR OMISSIONS CONSTITUTING WILLFUL OR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE BY SUCH PARTY. 22.03 <u>EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.</u> NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH
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			Section 22.03 is a standard provision limiting each party from claims by the other based on indirect, special, consequential, incidental, or punitive damages. Section 22.04 is a non-reciprocal provision reflecting that it is SWBT which provides access to interconnectors and not the other way around. Although SWBT provides access, SWBT cannot police its outside plant properties and should not be held accountable on premises liability theories for everything that goes wrong on SWBT's outside plant premises. Having deep pockets, of course, SWBT is a regular target in premises liability suits. Section 22.04 deals with liabilities for the acts of third parties and "Acts of God." SWBT's outside plant is, for the most part, exposed to the elements and unsupervised. There are no "pole police" watching every SWBT pole, duct, conduit, manhole, or right-of-way. SWBT has not installed security cameras at these sites. SWBT cannot stop hurricanes, tornadoes, floods, and earthquakes. Just as SWBT's outside plant facilities are exposed to various risks beyond SWBT's control, so also will interconnector's facilities piggyback along SWBT's distribution network. SWBT does not, therefore, guarantee that nothing will happen to an interconnector's facilities. If an interconnector were to build its own facilities, the result would be	DAMAGES. THIS SECTION LIMITS EACH PARTY'S LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH NEGLIGENCE (INCLUDING GROSSLY NEGLIGENT) ACTS OR OMISSIONS OF SUCH PARTY BUT DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR INTENTIONAL MISCONDUCT. 22.04 SWBT Not Liable to AT&T for Acts of Third Parties or Acts of God. By affording AT&T access to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT, SWBT does not warrant, guarantee, or insure the uninterrupted use of such facilities by AT&T. Except as specifically provided in Section 22.05 of this Appendix, AT&T assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to AT&T's facilities attached to SWBT's poles or rights-of-way, and SWBT shall not be liable to AT&T for any damages to AT&T's facilities other than as provided in Section 22.05. In no event shall SWBT be liable to AT&T under this Appendix for any injury, loss, or damage resulting from the acts or omissions of (1) any joint user or any person acting on a joint user's behalf, (2) any governmental body or governmental employee, (3) any third-party property owner or
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			the same. By providing access, SWBT does not become the insurer of AT&T or other interconnectors. SWBT's responsibilities to interconnectors are set forth in Section 22.05. Section 22.05 deals with damage to facilities. Once again, the provisions are reciprocal. The same rules apply equally to interconnectors such as AT&T and to SWBT. The rules are straightforward. Each party is to exercise due care to protect the facilities of the other. If either party injures the other party's facilities, notice is to be given. Each party shall reimburse the other for actual costs of repairing facilities damages by willful misconduct, grossly negligent acts, grossly negligent omissions, and negligent acts (but not negligent omissions). Each party is subject to similar liabilities with respect to injuries caused by independent contractors, but reimbursement is to be obtained only after efforts to collect from the contractor have failed. Each party is responsible for grossly negligent acts and omissions. Each party is responsible for negligent acts. Neither party is responsible for negligent omissions. The provisions are fair and they are entirely reasonable. Section 22.06 provides that no limitations of liability may be asserted in violation of federal or state laws. This provision should have no effect because the	persons acting on behalf of such property owner, or (4) any licensee, invitee, trespasser, or other person present at the site or in the vicinity of any SWBT pole, duct, conduit, or right-of-way in any capacity other than as a SWBT employee or person acting on SWBT's behalf. In no event shall SWBT be liable to AT&T under this Appendix for injuries, losses, or damages resulting from acts of God (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on SWBT's behalf, cable cuts by persons other than SWBT's employees or persons acting on SWBT's behalf, or other causes beyond SWBT's control which occur at sites subject to this Appendix. <u>22.05 Damage to Facilities.</u> Except as otherwise specifically provided in this section, neither party shall be liable to the other party for any injury, loss, or damage (or for the direct or indirect consequences of any such injury, loss, or damage) to such other party's facilities attached to SWBT's poles or placed within or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way. (a) Each party (the "responsible party"), and persons acting on behalf of the responsible party,
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				shall exercise due care to avoid damaging the facilities of the other party (the "injured party"). In the event such damage occurs, the responsible party or persons acting on behalf of the responsible party shall immediately report such damages to the injured party, and the injured party shall promptly make such arrangements as may be necessary to restore service to its customers using the facilities affected. (b) The responsible party shall reimburse the injured party for the actual costs incurred by the injured party for repair of facilities damaged by the willful misconduct, grossly negligent acts, grossly negligent omissions, and negligent acts (but not negligent omissions other than grossly negligent omissions) of employees of the responsible party. (c) The responsible party shall reimburse the injured party for the actual costs incurred by the injured party for repair of facilities damaged by the willful misconduct, grossly negligent acts or omissions, and negligent acts (but not negligent omissions other than grossly negligent omissions) of independent contractors acting on the responsible party's behalf; provided, however, that the injured party shall be limited to recovery of those costs which
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					cannot be recovered from the independent contractor causing the damage. The responsible party shall not be liable to the injured party under this section until the injured party's claims against the independent contractor causing the damage have been adjudicated or settled and the amount of the injured party's claim against the responsible party is determinable. (d) NEITHER PARTY SHALL BE REQUIRED BY THIS SECTION TO REIMBURSE THE OTHER PARTY FOR COSTS INCURRED AS A RESULT OF NEGLIGENCE, GROSSLY NEGLIGENT OMISSIONS COVERED BY SUBSECTIONS (c)-(d) OF THIS SECTION. (e) THIS SECTION LIMITS, BUT DOES NOT EXCLUDE, THE RESPONSIBLE PARTY'S LIABILITY TO THE INJURED PARTY FOR DAMAGES CAUSED BY NEGLIGENCE (INCLUDING GROSSLY NEGLIGENT) ACTS OF THE RESPONSIBLE PARTY AND PERSONS ACTING ON THE RESPONSIBLE PARTY'S BEHALF. 22.06 <u>No Limitations of Liability in Contravention of Federal or State Law.</u> Nothing contained in this article shall be construed as exempting either party from any liability, or limiting such party's liability, in contravention of federal law or in contravention of
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			the laws of this State. 22.07 <u>Claims Against Third Parties</u>. Nothing contained in this article shall be construed as requiring either party to forego any claims that such party may have against third parties, including but not limited to contractors, subcontractors, or persons (other than the other party's employees) acting on the other party's behalf.
		23.01 Insurance Required. AT&T shall comply, and cause its contractors and subcontractors acting on its behalf to comply, with the insurance requirements specified in this section: (a) Unless AT&T has provided proof of self-insurance as permitted in Section 23.02 below, AT&T shall obtain and maintain in full force and effect, for so long as this Appendix remains in effect, insurance policies specified in Exhibit IV of this Appendix. Each policy shall name SWBT as an additional insured and shall include provisions requiring the insurer to give SWBT notice of any lapse, cancellation, or termination of the policy or any modification to the policy affecting SWBT's rights under the policy, including but not limited to any decrease in coverage or increase in deductibles. (b) Exclusions from coverage or deductibles, other than those expressly permitted in Exhibit IV,	The parties have resolved this issue. The agreed text of Section 23.01 is shown in the SWBT Language column.
		23.X Insurance Required. AT&T shall comply with the insurance requirements specified in this section <u>unless AT&T has provided proof of self-insurance as permitted in Section 23.X below</u>. [the remaining language in this section is not disputed]	
		SWBT has agreed in other states to allow an exception to its insurance requirements upon proper proof of self-insurance. SWBT now desires to limit this exception in a manner that is not altogether clear. AT&T will not agree to a provision that limits its ability to rely on its own self-insurance. Self-insurance is a legitimate business practice in this and other industries and should be allowed. It may be possible to resolve this issue by adoption of the parties' agreed-to language in Arkansas.	
26 <u>SWBT Statement of Issue</u> Should SWBT's proposed Sections 23.01 and 23.02 dealing with insurance and self-insurance be approved? <u>AT&T Statement of Issue</u> May SWBT impose new restrictions on the use of self-insurance by AT&T to comply with the insurance requirements of the Poles, Conduits, and Rights-of-Way Appendix?			

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27 <u>SWBT Statement of Issue</u> Should the Poles Appendix remain in full force and effect on a year-to-year annual renewal basis until the agreement is terminated by one party or the other? Should each party have elective termination rights, and, if so, when should SWBT first have the right to terminate the agreement other than for cause? How much notice should be given for elective termination? If SWBT exercises elective termination rights and AT&T refuses to seek renegotiation of the agreement, at what point should AT&T remove its facilities? <u>AT&T Statement of Issue</u> If SWBT elects to terminate the Poles,	In the event SWBT chooses to terminate the Poles, Ducts, Conduits, and Rights-of-Way Appendix, it should not be able to demand that all of AT&T's facilities in place under the Appendix be removed. SWBT's obligation to provide non-discriminatory access to its poles, ducts, conduits, and rights-of-way is not dependent on the existence of a written agreement; in fact, the FCC 1st Report and Order, ¶1160 has stated that a written agreement is not required. Removal of all facilities could cause great disruption of customer service as well as considerable expense. Because of these concerns, at least twelve months' advance notice is necessary prior to termination, and SWBT should be able to terminate the Appendix only for cause for at least some significant period of time after	27 X <u>Elective Termination</u>. Either party may terminate this Appendix by giving the other party at least <u>twelve</u> months prior written notice as provided in this section. AT&T may terminate this Appendix with or without cause. <u>During the first five years following the effective date</u>, SWBT may only terminate this Appendix for cause. Thereafter, SWBT may terminate this Appendix with or without cause. <u>Any</u> termination of this Appendix by SWBT <u>will not require removal of AT&T facilities from SWBT-owned or -controlled poles, ducts, conduits, and rights-of-way</u>, and shall be subject to the provisions of 27 X below. [remainder of language in this section is not disputed]	The parties anticipate that once facilities are attached to SWBT's poles and placed in SWBT's ducts, conduits, and rights-of-way, those facilities will remain in place long after the parties' Interconnection Agreement has been replaced with a new agreement. It does not follow, however, that the parties will need to renegotiate a new pole attachment agreement just because the main agreement has expired by its terms. <u>On the contrary</u>, SWBT anticipates that the agreement should remain in full force and effect indefinitely - until one party or the other sees a need to renegotiate it. SWBT also notes, however, that unless SWBT is free to adjust its rates from time to time, a subject rates discussed in Issues 21 and 23, it	must be approved in writing by SWBT. (c) Authorized contractors and other contractors performing work on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way on AT&T's behalf shall be required to meet the same insurance (or self-insurance) requirements applicable to contractors performing similar work on SWBT's behalf. (d) Self-insurance shall be permitted for persons and entities (including but not limited to AT&T and authorized contractors) meeting the self-insurance requirements set forth in Section 23.02 of this Appendix. 27.02 Initial Term. Unless sooner terminated as herein provided, the initial term of this Appendix shall run from the effective date until the end of the calendar year which includes the effective date. 27.03 Automatic Renewal. Unless sooner terminated as herein provided, this Appendix shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year after the effective date. 27.04 Elective Termination. Either party may terminate this Appendix by giving the other party at least six months prior written notice as provided in this section. (a) AT&T may terminate this
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Conduits, and Rights-of-Way Appendix, is AT&T required to remove all of its facilities from SWBT-owned or controlled poles, ducts, conduits, and rights-of-way?	the Appendix becomes effective.	will be necessary for the parties to renegotiate rates. On February 8, 2001, the fifth anniversary of the enactment of the Telecommunications Act of 1996, new FCC regulations governing the charges which utilities may charge telecommunications carriers will take effect. SWBT, therefore, believes that it would be appropriate for SWBT to exercise elective termination rights on and after that date. This will allow SWBT, if necessary, to renegotiate new agreements with all telecommunications carriers to reflect the regulations. The February 8, 2001 date is not arbitrary. It is a significant date due to the statutory language of the Pole Attachment Act.	Appendix with or without cause. (b) The parties acknowledge that the Pole Attachment Act, 47 U.S.C. §224(e), as added by the Telecommunications Act of 1996, expressly directs the FCC to promulgate new regulations governing charges to telecommunications carriers for access to poles, ducts, conduits, and rights-of-way and that such new regulations are to take effect five years after the date of enactment of the Telecommunications Act of 1996 (that is, February 8, 2001). The parties agree that SWBT may terminate this Appendix only for cause during the period beginning with the effective date of this Appendix through February 8, 2001. Thereafter, SWBT may terminate this Appendix with or without cause, subject to the provisions of subsection (d) and Section 27.05 below. (c) The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current term of this Appendix or six months after the date the notice is given. (d) The elective termination of this Appendix by SWBT under this section shall not require immediate removal of AT&T's facilities from poles, ducts, conduits, and rights-of-way owned
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		would be essential that the Poles Appendix terminate when the main interconnection agreement itself terminates. SWBT's proposed Section 27.04 allows each party to terminate the Poles Appendix on six months notice to the other party. AT&T has the option of terminating with or without cause at any time. SWBT may not terminate other than for cause before February 8, 2001, when the new regulations relating to rates utilities may charge telecommunications carriers are scheduled to take effect. SWBT's propose Section 27.04(d) specifically provides that elective termination by SWBT does not require immediate removal of AT&T's facilities but does require that AT&T either initiate (not complete) negotiations for continued access within 60 days from the effective date of termination (no earlier than eight months after notice of termination is given) or remove its facilities. These provisions are entirely reasonable. It should not take AT&T more than eight months to commence negotiations. SWBT's proposed Section 27.05, which has been agreed to by the parties, makes it clear that elective termination of the appendix by SWBT shall not affect SWBT's obligations to afford access as required by law. There simply is no basis for any	or controlled by SWBT and shall be subject to the provisions of Section 27.05 below; provided, however, that AT&T shall, within 60 days after the effective date of the termination, either initiate negotiations for continued access to SWBT's poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Article 18 of this Appendix. <u>27.05 Elective Termination.</u> Elective termination of this Appendix by AT&T, as permitted under Section 27.04 of this Appendix, shall not affect AT&T's liabilities and obligations incurred under this Appendix prior to the effective date of termination and shall not entitle AT&T to the refund of any advance payment made to SWBT under this Appendix. Elective termination of this Appendix by SWBT shall not affect SWBT's obligations to afford access to SWBT's poles, ducts, conduits, and rights-of-way owned or controlled by SWBT as required by the Pole Attachment Act, the Telecommunications Act of 1996, and other applicable laws, regulations, and commission orders.
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28	<u>SWBT's Statement of Issue</u> Should SWBT's notice provisions, which are already in place with respect to other parties having access to SWBT's poles, ducts, conduits, and rights-of-way, and which AT&T full power to specify the manner in which AT&T wishes to receive both legal and operational notices, be approved. <u>AT&T's Statement of Issue</u> [The issue is stated in Issue No. 16 in reference to Section 10.X above.]	[The reasons for AT&T's position are set forth in reference to Section 10.X above, Issue No. 16.] In addition, it is especially crucial that notices of a lawsuit are served upon the proper person to avoid delay and a possible default. If the notice provisions in this Appendix are different from those in the Terms and Conditions of the Interconnection Agreement, service of a lawsuit involving breach of the entire Interconnection Agreement might sit on the desk of a person in charge of outside plant for a local area, depriving the party served of adequate time to prepare its answer to the lawsuit, as well as creating a great risk that a default may occur.	ARTICLE 28: NOTICES <u>28.X Methods for Service of Notice.</u> The parties intend that the notice provisions of this Appendix be identical to Section 11.X (Notices) of the Terms and Conditions of the Agreement. In the event any notices are required to be sent under the terms of this Appendix, 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 Appendix, notice will be directed as provided below. 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	assertion by AT&T that SWBT's proposed elective termination provisions are not fair to AT&T. The provisions are all reasonable and they should all be approved. AT&T's notice provisions are entirely inappropriate in the context of the Poles Appendix. The Poles Appendix is filled with notice requirements, and it is absurd to have all these notices being sent to SWBT executives rather than being directed to the people who handle the daily task of responding to AT&T's request for access. SWBT's notice provisions are workable; AT&T's are not. SWBT's proposed Section 29.01 specifies the manner in which notices will be sent to AT&T. SWBT's proposed EXHIBIT VI will let AT&T give special notice instructions. SWBT's proposed Section 29.02 specifies the manner in which notices are to be sent to SWBT. SWBT's proposed EXHIBIT VII provides specific instructions relating to certain notices which will result in AT&T in working more effectively with SWBT. SWBT's proposed Section 29.03 allows the parties to modify notice instructions. In short, SWBT's proposed notice provisions are geared toward making things work. AT&T's notice provisions, on the other hand, are	ARTICLE 29: NOTICES <u>29.01 Notices to AT&T.</u> Except as otherwise provided in EXHIBIT VI ("Notices to AT&T"), all written notices required to be given to AT&T shall be delivered or mailed to AT&T's duly authorized agent or attorney, as designated in this section. (a) Such notice may be delivered to AT&T's duly authorized agent or attorney in person or by agent or courier receipted delivery. (b) Such notice may be mailed to AT&T's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit. (c) AT&T may authorize delivery of the notice by telephonic document transfer to the AT&T's duly authorized agent or attorney. Notice by telephonic document transfer after 5:00 p.m. local time
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	party in compliance with this section. Any notice or other communication will be deemed given when received. <u>Notices to AT&T:</u> <u>Vice President - Southwest Local Services Organization</u> <u>AT&T</u> <u>5501 LBJ Freeway, Suite 800</u> <u>Dallas, Texas 75240</u> <u>972-778-2215 (fax); 972-778-2595</u> <u>(voice contact)</u> <u>Notices to SWBT:</u> <u>(Special Markets)</u> <u>Southwestern Bell Telephone Company</u> <u>Room 4110</u> <u>One Bell Center</u> <u>St. Louis, Missouri 63101</u> <u>314-235-2609 (fax); 314-235-7483</u> <u>(voice contact)</u>	geared toward slowing things down. (d) Notices to AT&T shall be sent to the authorized agent or attorney designated below: Name: _____ Title: _____ Firm: _____ Address: _____ City/State/Zip: _____ 29.02 Notices to SWBT. Except as otherwise provided in EXHIBIT VII ("Notices to SWBT"), all written notices required to be given to SWBT shall be delivered or mailed to SWBT's duly authorized agent or attorney, as designated in this section. (a) Such notice may be delivered to SWBT's duly authorized agent or attorney in person or by agent or courier receipted delivery. (b) Such notice may be mailed to SWBT's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post
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				office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit. (c) SWBT may authorize delivery of the notice by telephonic document transfer to SWBT's duly authorized agent or attorney. Notice by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed given on the following day. (d) On the effective date of this Appendix, and until further notice to AT&T, SWBT's duly authorized agent shall be the Utility Liaison Supervisor ("ULS") designated in EXHIBIT VIII. 29.03 Changes in Notice Requirements. Either party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other party. Such notice shall state, at a minimum, the name, title, firm, and full address of the new addressee. EXHIBIT VI: See attachment. EXHIBIT VII: [Agreed] EXHIBIT VIII: [Agreed]
29 SWBT Statement of Issue Should the Poles Appendix include	[The reasons for AT&T's position are set forth in reference to Section 10.X above, Issue No. 16.]	ARTICLE 31: GENERAL PROVISIONS 31.X General Provisions. The parties agree that their respective	Rates, terms, and conditions of access should be uniformly applicable. These general provisions are no exception, and they should approved as written	

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general legal provisions which are uniformly applicable to AT&T and other parties who have or seek access to SWBT's poles, ducts, conduits, and rights-of-way? Should the Poles Appendix replace earlier agreements between SWBT and AT&T concerning access to poles, ducts, conduits, and rights-of-way, or should AT&T's multiple, inconsistent agreements with SWBT dealing with the same subject matter? Should licenses issued to AT&T under prior agreements be made subject to the rates, terms, conditions, and procedures set forth in the Poles Appendix and, if so, should references in the Poles Appendix to "licenses hereunder" be changed to "licenses subject to this Appendix"? Should SWBT's proposed "Changes in the Law" section be approved?	rights and obligations as to completeness of agreement, force majeure, severability, and choice of law are set forth in Sections 32.X (Complete Terms), 13.X (Force Majeure), 42.X (Severability), 26.X (Multiple Counterparts), 43.X (Survival of Obligations), 3.X (Intervening Law) and 44.X (Governing Law) of the Terms and Conditions of the Agreement.	Section 32.01 is a standard "entire agreement" clause which recognizes that the Poles Appendix is part of a broader interconnection agreement. Section 32.02 provides a straightforward, and entirely reasonable, means for the parties to deal with one another on a going forward basis. There is no need for more than one statewide master agreement providing AT&T access to poles, duct, conduits, and rights-of-way in the State of Missouri. Sections 32.03, 32.04, and 32.05 are straightforward, standard legal boilerplate. These provisions are self-explanatory. Section 32.06 simply makes all licenses issued under prior agreements subject to the rates, terms, and conditions of the present Poles Appendix. This provision will result in more efficient operations between the two companies and avoid unnecessary conflicts. In several places in the Poles Appendix (including but not limited to Sections 4.02, 6.06, and 6.08), the parties have disagreed on language relating to this issue. AT&T proposes referring to "licenses issue hereunder" so that each license will be construed in accordance with the actual license agreement under which it was originally issued. SWBT proposes "licenses subject to this Appendix" in order that the same rates, terms,	AT&T Statement of Issue [The issue is stated in Issue No. 16 in reference to Section 10.X above.]
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29. Should the provisions of Section 14.02(b) proposed by SWBT, and dealing with emergency rearrangements of facilities at SWBT's request, be approved?	SWBT is proposing that AT&T have no less than 60 days to make facilities rearrangements under ordinary circumstances. SWBT further proposes that AT&T have the right to request that rearrangements be delayed, that SWBT have the right to request faster rearrangements when necessary, and that each party accommodate the other when such requests are made.	14.02 Required Rearrangement of AT&T's Facilities: AT&T acknowledges that, from time to time, it may be necessary or desirable for SWBT to rearrange facilities on or within its poles or conduit systems, change out poles, add poles to a pole line, relocate or reconstruct poles, pole lines, conduit segments, or conduit runs, enlarge manholes, reinforce conduit, or otherwise modify poles, pole lines, or portions of its conduit system and that such changes may be necessitated by SWBT's own business needs or by factors outside of SWBT's control, such as the decision by a municipality to widen streets or the decision by a third party to seek access to SWBT's	
	and conditions will now apply uniformly to all licenses issued to AT&T, without reference to the original license agreement. SWBT believes that, to the extent possible, all pole attachment licenses from SWBT to AT&T should be governed by the same rules. Sections 32.07, 32.08, and 32.09 are self-explanatory, standard legal boilerplate. Section 32.10 allows either party to seek renegotiation of the Poles Appendix in the event of a material change in the laws, rules, regulations, and commission orders on which this Appendix is based. All of these provisions are reasonable and should be approved.		

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poles, ducts, conduits, or rights-of-way.	(a) ... (b) Whenever feasible, SWBT shall give AT&T not less than 60 days prior written notice of the need for AT&T to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. AT&T shall complete such rearrangements within the time prescribed in the notice; provided, however, that the date of removal may be extended upon request by AT&T, which request will not be unreasonably refused by SWBT, if AT&T advises SWBT of the reason for the need for the extension and proposes a <i>reasonable</i> completion date. SWBT may request that such modification be made within a shorter period of time, in which event AT&T shall not refuse to comply such request without due cause and justification. In determining due cause and justification, the following factors, among others, may be considered: (1) the circumstances under which the rearrangements are sought (e.g., street-widening project, request by a competing provider for access); (2) the timeliness of SWBT's request to AT&T; (3) the nature and number of rearrangements sought;

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31. Should the following sections, proposed by SWBT, and opposed by AT&T, be added to the Poles Appendix: 2.06 (additional negotiations), 2.07, 4.06, 5.06, 6.16, 18.05, and 20.02. ?				(4) the impact on the ability of the parties and joint users to meet customer service needs; and (5) risks of service interruption to customers of the parties and joint users.
			Section 2.06 contemplates that it may be necessary for the parties to supplement, amend, or replace the Poles Appendix and calls on the parties to negotiate in good faith. Section 2.07 states that the specific terms of the Poles Appendix shall apply in the event of any conflict between the specific terms of the Poles Appendix and other provisions of the parties' interconnection agreement. Section 4.06 simply states the execution of the Poles Appendix does not relieve either party from its obligation to obtain required permits, if any. Section 4.07 is a disclaimer of warranties provision reflecting that AT&T must decide for itself whether SWBT's facilities are suitable for AT&T's purposes and disclaiming implied warranties. Section 5.06 is SWBT's proposed solution to the complex problems dealing with control of building entry, building distribution, and other space within third party property. This is an extremely important provision due to the	2.06 Additional Negotiations. This Appendix is one of many agreements between SWBT and parties seeking access to SWBT's poles, ducts, conduits, and rights-of-way in this State. Nothing contained in this Appendix shall preclude SWBT from negotiating additional or different terms of access with third parties. AT&T may, at any time, seek amendments to this Appendix to conform to the terms of agreements between SWBT and third parties. In addition, the parties acknowledge that it may be necessary to amend or supersede this Appendix to conform to changes in the law, streamline procedures for granting access, address issues not addressed in this Appendix, and resolve operational concerns arising by virtue of the presence of competing providers of telecommunications and cable television services on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. Each party shall, therefore, at the request of the other party, engage in good faith negotiations to supplement, amend or replace this Appendix. 2.07 Relationship to Interconnection Appendix. This Master Agreement has been entered into, at AT&T's

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			growing tendency of building owners and managers to charge telecommunications carriers for access to their facilities. Further, there is less available space in these facilities. Section 6.16 ("differences in specifications") simply requires that when two or more specifications apply, the most stringent should be applied. When AT&T is in doubt as to which specification is applicable, this section calls on AT&T to discuss the matter with SWBT. Section 18.05 deals with removals to avoid forfeitures. This language has been included in SWBT agreements for many years. If, for any reason, AT&T's use of SWBT's facilities would result in a forfeiture of SWBT's right to use the facilities, AT&T should remove its facilities rather than creating a situation where both parties must remove their facilities due to a forfeiture of SWBT's rights. Section 20.02 simply calls on AT&T to be responsible for paying its contractors and subcontractors and to provide bonds or other acceptable security in the event a claim is made against SWBT by such a contractor or subcontractor. This is one of many reasonable provisions which other parties seeking access to SWBT's facilities will attack if it is not included in the AT&T agreement. If this provision is not included in the AT&T agreement, other parties to whom it	request, as an Appendix to a comprehensive Interconnection Agreement between the parties ("Interconnection Agreement") and is referred to in the Interconnection Agreement as APPENDIX POLES, CONDUITS, AND RIGHTS-OF-WAY. AT&T shall have the option of replacing this Appendix at any time with SWBT's then-current Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way. Except as otherwise specifically stated in this Appendix, the terms of this Appendix, which are specific to poles, ducts, conduits, and rights-of-way, shall apply in the event of conflict between the terms of this Appendix and the general terms and conditions set forth in the Interconnection Agreement. 4.06 Required Franchises, Permits, Certificates, and Licenses. This Appendix shall not be construed as relieving either party from any obligations it may have to obtain legal authority to construct, operate, maintain, repair, and remove its facilities on public or private property (including but not limited to any required franchises, permits, certificates, licenses, easements, or the like) from all appropriate public authorities and private persons or entities. 4.07 DISCLAIMER OF WARRANTIES: SWBT MAKES NO REPRESENTATIONS THAT SWBT'S POLES, DUCTS, CONDUITS, OR RIGHTS-OF-WAY ARE SUITABLE FOR AT&T'S
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				is more likely to be needed will assert that it is discriminatory to include this provision in their agreement and not in AT&T's. All of the above provisions are reasonable and should be approved as proposed.	INTENDED USES. SWBT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN THIS AGREEMENT, SWBT MAKES NO IMPLIED WARRANTIES OF ANY KIND. <u>5.06 Access to Building Entrance Facilities, Building Distribution Facilities, and Equipment Rooms.</u> The parties acknowledge that ownership and control of building entrance and distribution ducts, building entrance and distribution conduits, building entrance and building distribution space, equipment rooms, equipment closets, mechanical rooms, telephone communications rooms, and similar spaces will vary from location to location and that the respective rights of third-party property owners, tenants in buildings owned by third-party property owners, telecommunications carriers, cable television systems, and other providers of telecommunications services with respect to such ducts, conduits, and spaces must be determined on a case-by-case basis. Each party shall, when feasible, directly obtain from third-party property owners such access to building entrance and building distribution ducts, building entrance and building distribution conduits, building entrance and distribution space, equipment rooms, equipment closets, mechanical rooms, telephone communications rooms, and other similar areas as may be needed by such party to serve the
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	building owner and tenants located within buildings owned by third parties or to access other space in the building occupied or to be occupied by such party. In those situations in which AT&T cannot obtain from the building owner access on terms satisfactory to AT&T, AT&T may request access from SWBT as provided in Sections 5.03-5.04 of this Appendix; provided, however, that a separate, building-specific notice of intent to occupy under Section 8.02(b) or license application under Section 9.02, including such additional information as may be necessary to identify the space to be occupied and the facilities to be placed in such space, shall be required for access to the facilities and space subject to this section. Any such notice or application shall conspicuously note on its face that access to building entrance or building distribution facilities or space is being sought. AT&T acknowledges that SWBT must, before providing access to building space and facilities located on or within third-party property, review applicable legal documents and physical arrangements relating to the property, including physical arrangements within the building. Upon completion of that review, SWBT will notify AT&T whether AT&T's request can be granted under this Appendix, will require access arrangements under a tariff or other applicable agreement, or will require other special handling (e.g., direct negotiations with the third-party property owner). Pending such
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SWBT Reason why SWBT is included or excluded				
notice, AT&T may not occupy any duct, conduit, or space subject to this section pursuant to Section 8.03 without SWBT's express written consent but may exercise occupancy rights obtained directly from the building owner. If SWBT has lawful authority to provide such access and is required by the Pole Attachment Act to do so, SWBT shall provide AT&T access under this Appendix. Such access shall be negotiated on a case-by-case basis taking into account any special legal, technical, security, or construction considerations applicable to the ducts, conduits, or space which AT&T seeks to access. Such access, when provided, shall only include access to ducts, conduits, and available space (as distinguished from access to cables and other equipment not subject to the Pole Attachment Act). Such access shall be subject to such reasonable terms and conditions as may be appropriate to protect the equipment and other property of the parties and third parties, the reliability of the parties' networks and the networks of third parties, and the privacy of communications carried over the parties' networks and networks of third parties. (a) AT&T's access, if any, to building entrance ducts and building entrance conduits entering SWBT-owned buildings (including but not limited to central offices) and access, if any, to other building entrance and building distribution facilities and space located within such buildings				

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SWBT Reason why SWBT is Included on list (100%)	SWBT Reason why SWBT is Included on list (100%)	SWBT Reason why SWBT is Included on list (100%)	SWBT Reason why SWBT is Included on list (100%)	SWBT Reason why SWBT is Included on list (100%)
shall be arranged under and shall be subject to tariffs, agreements, and, if applicable, commission or court orders establishing such access rights rather than this Appendix. (b) AT&T's access to and use of building entrance ducts, building entrance conduits, building entrance space, and other building entrance facilities owned and controlled by third-parties shall be obtained by AT&T through direct negotiations between AT&T and the third-party property owners who own and control access to such facilities. If SWBT owns a building entrance duct, building entrance conduit, or other building entrance space, or if SWBT has sufficient control over a building entrance duct, building entrance conduit, or other building entrance space to permit other telecommunications carriers or cable television systems to have access to such ducts, conduits, or space without approval or consent from the third-party property owner, SWBT shall, if adequate capacity is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to AT&T and other telecommunications carriers and cable television systems on a nondiscriminatory, first-come, first-served basis; provided, however, that AT&T agrees to indemnify, on request defend, and hold SWBT harmless from any injury, loss, damage, claim or liability arising out of or in connection with AT&T's access to or use of such building entrance ducts, building entrance				

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	Reason why language should be included or excluded	SWBT		
conduits, or other building entrance space. Such access shall be granted, on a case-by-case basis, in the form of a license, sublicense, easement, sub-easement, or other mutually acceptable writing and shall not include access to or the right to use SWBT's cables or other SWBT telecommunications equipment occupying such ducts, conduits, or space. Except as otherwise agreed to by the parties, SWBT's charge for such access (obtained from SWBT rather than from the third-party property owner) shall include (1) a pro rata portion of all charges (including but not limited to one-time charges and recurring charges), if any, paid by SWBT to obtain the building entrance duct, building entrance conduit, or building entrance space and (2) any other documented legal, administrative, engineering and construction costs incurred by SWBT to obtain such duct, conduit, or space, process AT&T's request for access, or prepare the facilities for AT&T's occupancy or use. SWBT's charges to AT&T under this subsection shall be calculated and negotiated on a case-by-case basis. (c) AT&T's access to and use of building distribution ducts, building distribution conduits, building distribution space, and other building distribution facilities owned and controlled by third-parties shall be obtained by AT&T through direct negotiations between AT&T and the third-party property owners who own and control access to such facilities.				

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AT&T	AT&T Grounds	SWBT	Reason why language should be included or excluded	SWBT language
				If SWBT owns a building distribution duct, building distribution conduit, or other building distribution space, or if SWBT has sufficient control over a building distribution duct, building distribution conduit, or other building distribution space to permit other telecommunications carriers or cable television systems to have access to such duct, conduit, or space without approval or consent from the third-party property owner, SWBT shall, if adequate capacity is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to AT&T and other telecommunications carriers and cable television systems on a nondiscriminatory, first-come, first-served basis; provided, however, that AT&T agrees to indemnify, on request defend, and hold SWBT harmless from any injury, loss, damage, claim or liability arising out of or in connection with AT&T's access to or use of such building distribution ducts, building distribution conduits, or other building distribution space. Such access shall be granted, on a case-by-case basis, in the form of a license, sublicense, easement, sub-easement, or other mutually acceptable writing and shall not include access to or the right to use SWBT's cables or other SWBT telecommunications equipment occupying such ducts, conduits, or space. Except as otherwise agreed to by the parties, SWBT's charges for such access (obtained from SWBT rather than from the third-party property owner) shall include

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AT&T	SWBT	Reason why language is included or excluded	(1) a pro rata portion of all charges (including but not limited to one-time charges and recurring charges) paid by SWBT to obtain the building distribution duct, building distribution conduit, or building distribution space and (2) any other documented legal, administrative, engineering costs and construction costs incurred by SWBT to obtain such duct, conduit, or space, process AT&T's request for access, or prepare the facilities for AT&T's occupancy or use. SWBT's charges to AT&T under this subsection shall be calculated and negotiated on a case-by-case basis.
			(d) Access to equipment rooms, equipment closets, mechanical rooms, telephone communications rooms, and similar areas located in buildings owned and controlled by third-parties shall be subject to access as provided in subsection (c); provided, however, that when any such room or space is leased to SWBT on an exclusive basis (as may be the case if the room or space will be used to house remote switching equipment, pair gain equipment, or other network equipment used to provide or support telecommunications services to customers at locations outside the building in which such room is located), access, if any, shall be also subject to facilities collocation tariffs, agreements, or arrangements. (e) Nothing contained in this section shall be construed as authorizing AT&T to occupy space owned or controlled by third parties or to utilize

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SWBT	AT&T Language	Reason why language included or excluded	SWBT language
			third-party facilities or property without permission or authority from the owner of such property, where such permission or authority is required. Neither this section nor any license or permission granted under or subject to this section shall be construed as a representation by SWBT to AT&T that AT&T has the right to have access to or occupy any duct, conduit, or space owned and controlled by a third-party property owner or to utilize any telecommunications equipment owned or controlled by SWBT or any third party (including but not limited to owner- or tenant-owned cables, wires, and equipment located on the customer side of any network interface device). (f) If AT&T has been granted access to a building entrance or building distribution duct, conduit, or space pursuant to this section, AT&T shall, at SWBT's request, relinquish such access to SWBT if it is subsequently determined that AT&T's use of such space will preclude SWBT from meeting carrier- or provider-of-last-resort obligations to customers on the premises affected. 6.16 Differences in Specifications. To the extent that there may be differences in the specifications, the most stringent specification will apply except as otherwise specifically provided by SWBT in writing. AT&T will consult with SWBT when AT&T is uncertain as to which specification is to be followed.

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AT&T Facilities	AT&T Facilities	Reason why language should be included or excluded	SWBT Facilities	SWBT Facilities
				18.05 Removal to Avoid Forfeiture. If the presence of AT&T's facilities on SWBT's poles or in SWBT's ducts, conduits, or rights-of-way would cause a forfeiture of the rights of SWBT to occupy the property where such pole, duct, conduit, or right-of-way is located, SWBT will promptly notify AT&T in writing and AT&T shall not, without due cause and justification, refuse to remove its facilities within such time as may be required to prevent such forfeiture. SWBT will give AT&T not less than 60 days from the date of notice to remove AT&T's facilities unless prior removal is required to prevent the forfeiture of SWBT's rights. At AT&T's request, the parties will engage in good faith negotiations with each other, with joint users, and with third-party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of AT&T's facilities in the face of a threatened forfeiture. 20.02 Payment and Performance <u>Bonds in Favor of Contractors and Subcontractors.</u> AT&T shall be responsible for paying all employees, contractors, subcontractors, mechanics, materialmen and other persons or entities performing work or providing materials in connection with (a) the performance of facilities modification, capacity expansion, or make-ready work by AT&T, authorized contractors, or other persons acting on AT&T's behalf under Sections 6.08(c) and 10.02-10.05 of this Appendix or (b) the

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Should the AT&T be responsible for the SWBT's construction, attachment, use, inspection, maintenance, repair, rearrangement, modification, and removal of any of AT&T's facilities attached or to be attached to SWBT's poles or placed or to be placed within SWBT's ducts, conduits, or rights-of-way. In the event any claim or demand is made on SWBT by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, SWBT may require, in addition to any security provided under Section 20.01 of this Appendix, that AT&T execute payment or performance bonds, or provide such other security, as SWBT may deem reasonable or necessary to protect SWBT from any such claim or demand.	Should the AT&T be responsible for the SWBT's construction, attachment, use, inspection, maintenance, repair, rearrangement, modification, and removal of any of AT&T's facilities attached or to be attached to SWBT's poles or placed or to be placed within SWBT's ducts, conduits, or rights-of-way. In the event any claim or demand is made on SWBT by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, SWBT may require, in addition to any security provided under Section 20.01 of this Appendix, that AT&T execute payment or performance bonds, or provide such other security, as SWBT may deem reasonable or necessary to protect SWBT from any such claim or demand.	Should the AT&T be responsible for the SWBT's construction, attachment, use, inspection, maintenance, repair, rearrangement, modification, and removal of any of AT&T's facilities attached or to be attached to SWBT's poles or placed or to be placed within SWBT's ducts, conduits, or rights-of-way. In the event any claim or demand is made on SWBT by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, SWBT may require, in addition to any security provided under Section 20.01 of this Appendix, that AT&T execute payment or performance bonds, or provide such other security, as SWBT may deem reasonable or necessary to protect SWBT from any such claim or demand.	Should the AT&T be responsible for the SWBT's construction, attachment, use, inspection, maintenance, repair, rearrangement, modification, and removal of any of AT&T's facilities attached or to be attached to SWBT's poles or placed or to be placed within SWBT's ducts, conduits, or rights-of-way. In the event any claim or demand is made on SWBT by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, SWBT may require, in addition to any security provided under Section 20.01 of this Appendix, that AT&T execute payment or performance bonds, or provide such other security, as SWBT may deem reasonable or necessary to protect SWBT from any such claim or demand.	Should the AT&T be responsible for the SWBT's construction, attachment, use, inspection, maintenance, repair, rearrangement, modification, and removal of any of AT&T's facilities attached or to be attached to SWBT's poles or placed or to be placed within SWBT's ducts, conduits, or rights-of-way. In the event any claim or demand is made on SWBT by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, SWBT may require, in addition to any security provided under Section 20.01 of this Appendix, that AT&T execute payment or performance bonds, or provide such other security, as SWBT may deem reasonable or necessary to protect SWBT from any such claim or demand.
31. Should section 5.03 be amended to include language stating how compensation for the use of rights-of-way will be handled?	Increasingly, property owners are insisting that SWBT pay them for the use of their property. It is SWBT's position that when SWBT pays for an exclusive easement, and AT&T or another interconnector wishes to use the space paid for by SWBT, the party seeking access such pay a pro-rata share of the acquisition costs. SWBT expects issues relating to compensation for the use of rights-of-way to be addressed by the FCC. This provision would apply until the FCC rules, at which time the parties would renegotiate compensation terms to comply with FCC rules, regulations, and orders.			At locations where SWBT has obtained exclusive rights-of-way from third-party property owners or otherwise controls the right-of-way, SWBT shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Applicant and third parties on a nondiscriminatory, first-come, first-served basis, provided that the underlying agreement with the property owner permits SWBT to provide such access, and provided further that Applicant agrees to indemnify, on request defend, and hold SWBT harmless from any injury, loss, damage, claim, or

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AT&T - SWBT Interconnection Agreement	AT&T Language	SWBT Language	Reason why language should be included or excluded	Liability arising out of or in connection with such access or use. Such access shall be granted, on a case-by-case basis, in the form of a license, sublicense, sub-easement, or other mutually acceptable writing. Except as otherwise agreed to by the parties, SWBT's charges for such access (obtained from SWBT rather than from the third-party property owner) shall include (a) a pro rata portion of the charges (including but not limited to one-time charges and recurring charges), if any, paid by SWBT to obtain the right-of-way plus (b) a pro rata portion of any other documented legal, administrative, and engineering costs incurred by SWBT in obtaining the right-of-way and processing Applicant's request for access. Applicant's pro rata portion of the charge paid by SWBT shall be negotiated on a nondiscriminatory, case-by-case basis and shall take into account the size of the area used by Applicant and the number of users occupying the right-of-way.
				6.08 Specifications Applicable to Connections: Conduit. Except as otherwise specifically agreed in this Appendix or licenses subject to this Appendix, or as mutually agreed upon by the parties in writing, the following specifications apply to connections of AT&T's conduit to SWBT's conduit system: (a) ...
Issue 32. Should Section 6.08(c) apply to connections with SWBT's conduit system ducts or only to connections with manholes?			When the original versions of the Poles Appendix were drafted, it was contemplated that manholes would be the only places where AT&T's ducts would connect with SWBT's conduit system. Through negotiations, exceptions to that rule have been added. It is therefore appropriate that Section 6.08(c) be amended to conform to that subsection to the rest of the Appendix.	

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Should SWBT's proposed Articles 24 (assignment), 25 (termination and	Should SWBT's proposed Articles 24 (assignment), 25 (termination and	Reason why language should be included or excluded	SWBT	Where AT&T's duct or facility physically connects with SWBT's conduit system manhole, the section of AT&T's facility which connects to SWBT's manhole shall be installed by SWBT or its contractor at AT&T's expense (which shall be SWBT's actual costs or the price charged SWBT by the contractor performing such work)....
Should the Poles Appendix include language allowing SWBT to charge AT&T FCC-permitted rates if AT&T occupies space both as a telecommunications carrier and as a cable operator?		SWBT contemplates that at some future date, AT&T may use space in two capacities: as a telecommunications carrier and as a cable operator. In that event, if the FCC mandates differential rates, SWBT should have authority to charge AT&T the applicable rate.		(h) AT&T may include multiple cables in a single license application and may provide multiple services (e.g., CATV and non-CATV services) under the same cable sheath or jacket. When both CATV and non-CATV services are provided under the same cable sheath or jacket, or CATV and non-CATV services are provided using different cables attached or lashed to the same strand or otherwise occupying the same space on a pole or the same duct or inner duct within a conduit, AT&T will so advise SWBT and SWBT shall, if permitted by law, adjust its charges to enable SWBT to charge AT&T the rate applicable to telecommunications carriers rather than the rate applicable to cable television systems solely to provide cable service.
Should SWBT's proposed Articles 24 (assignment), 25 (termination and		Except to the extent previously agreed on by the parties, these articles should be approved as proposed by SWBT.		ARTICLE 24: ASSIGNMENT OF RIGHTS 24.01 Assignment Permitted.

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Dispute Description	SWBT Position	Reason why language included by AT&T	SWBT Position
remedies for breach), 30 (dispute resolution), and 31 (no reciprocal use if AT&T's facilities) be approved as proposed?	SWBT notes that in some states, AT&T agrees to all or part of these provisions and in others, it chooses to follow a different path. SWBT believes that these provisions should be approved and integrated into the Poles Appendix at the appropriate places.		Neither party may assign or otherwise transfer its rights or obligations under this Appendix except as provided in this section. (a) SWBT may assign its rights, delegate its benefits, and delegate its duties and obligations under this Appendix, without AT&T's consent, to any entity controlling, controlled by, or under common control with SWBT or which acquires or succeeds to ownership of substantially all of SWBT's assets. (b) AT&T may assign its rights, delegate its benefits, and delegate its duties and obligations under this Appendix, without SWBT's consent, to: any telecommunications carrier or cable system operator which (1) is entitled to access to SWBT's poles, ducts, conduits, and rights-of-way under the Pole Attachment Act and (2) controls, is controlled by or is under common control with AT&T or acquires and succeeds to ownership of substantially all of AT&T's assets; provided, however, that such assignment shall not be effective until AT&T has given SWBT written notice of the assignment pursuant to Section 24.03 and guarantee the performance of AT&T's assignee or successor. AT&T's assignee or successor shall assume all outstanding obligations of AT&T under this Appendix, including but not limited to all liabilities and

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AT&T	SWBT	Reason why language included or excluded	contingent liabilities of AT&T arising out of or in connection with this Appendix.
			(c) AT&T may, ancillary to a bona fide loan transaction between AT&T and any lender, and without SWBT's consent, grant security interests or make collateral assignments in substantially all of AT&T's assets, including AT&T's rights under this Appendix, subject to the express terms of this Appendix. In the event AT&T's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire AT&T's assets through public or private sale or through an Agreement with AT&T, AT&T's lender or the third party acquiring AT&T's rights under this Appendix shall assume all outstanding obligations of AT&T under the agreement and provide proof satisfactory to SWBT that such lender or third party has complied or will comply with all requirements established under this Appendix. Notwithstanding any provisions of this Appendix to the contrary, such foreclosure by AT&T's lender or acquisition of assets by such third party shall not constitute a breach of this Appendix and, upon such foreclosure or acquisition, AT&T's lender or such third party shall succeed to all rights and remedies of AT&T under this Appendix (other than those rights and remedies, if any, which have not

IX. POLES, CONDUITS, RIGHTS-OF-WAY
CONTRACTUAL DISPUTES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT - MISSOURI

AT&T Language	AT&T Language	SWBT Language	Reason why language should be included or excluded	been transferred and, if AT&T is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of AT&T under the Agreement, including liability to SWBT for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third party succeeds to the rights of AT&T under the Agreement, as applicable.
				(1) In the event AT&T or AT&T's lender requests that SWBT, in connection with a bona fide loan transaction between AT&T and AT&T's lender, sign any additional consents, or make other accommodations to protect such lender's interest, AT&T or AT&T's lender shall reimburse SWBT for all expenses incurred by SWBT in connection with such requests and accommodations, including but not limited to in-house or outside legal expenses incurred by SWBT in processing the request. (2) In the event AT&T or AT&T's lender or any third party assignee desires that SWBT provide notices to AT&T's lender or assignee or permit AT&T's lender or assignee, in the event of a breach, to cure any default or termination event if AT&T fails to do so, AT&T shall notify SWBT's authorized agent,

IX. POLES, CONDUITS, RIGHTS-OF-WAY
CONTRACTUAL DISPUTES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT - MISSOURI

AT&T	SWBT	Reason why language should be included or excluded	SWBT
			as designated in Article 29 of this Appendix, that such notices may be sent to AT&T's lender or assignee as well to AT&T. Nothing contained in this subsection shall be construed as imposing any duty on SWBT in favor of AT&T's lender or assignee, and this section shall not be construed to provide AT&T's lender, AT&T's assignee, or any other third parties with any rights, claims, causes of action of any kind. AT&T waives any and all claims or causes of action, of every kind and character, past, present, or future, arising out of or in connection with the giving of any notice to AT&T's lender or assignee pursuant to this section or any failure to give such notice. (d) Either party may assign or transfer rights or obligations under this Appendix on such terms and conditions as are mutually acceptable to the other party and with such other party's prior written consent, which consent may be withheld only for due cause and justification. (e) No assignment or transfer by AT&T of rights under this Appendix, licenses subject to this Appendix, or authorizations granted under this Appendix shall be effective until AT&T, its successors, and assigns have complied with the provisions of this article, secured SWBT's prior written consent to the assignment or transfer, if necessary, and given

IX. POLES, CONDUITS, RIGHTS-OF-WAY
CONTRACTUAL DISPUTES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT - MISSOURI

AT&T	AT&T Language	SWBT Reason why language included or excluded	SWBT Language
			SWBT notice of the assignment or transfer pursuant to Section 24.03. (f) Except as otherwise expressly provided in this article, neither this Appendix, nor any licenses or authorizations subject to this Appendix, shall inure to the benefit of AT&T's successors or assigns without SWBT's prior written consent. 24.02 <u>Incorporations, Mergers, Acquisitions, and Other Changes in AT&T's Legal Identity.</u> When the legal identity or status of AT&T changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article. 24.03 <u>Notice of Assignment.</u> AT&T shall, <i>when practicable</i>, provide SWBT with 60 days advance notice in writing of any assignment and shall, in all cases, use its best efforts to provide SWBT with reasonable advance notice in writing of any assignment. 24.04 <u>Assignment Shall Not Relieve AT&T of Prior Obligations.</u> Except as otherwise expressly agreed by SWBT in writing, no assignment permitted by SWBT under this Appendix shall relieve AT&T of any obligations arising under or in connection with this Appendix, including but not limited to indemnity obligations

IX. POLES, CONDUITS, RIGHTS-OF-WAY
 CONTRACTUAL DISPLACEMENT ISSUES MATRIX
 AT&T - SWBT INTERCONNECTION AGREEMENT - MISSOURI

SWBT Reason why language should be included or excluded				
under Article 21 of this Appendix or the interconnection agreement, if any. 24.05 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. SWBT may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of AT&T under this Appendix and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of AT&T arising out of or in connection with this Appendix. 24.06 Satisfaction of All Other Licensing Requirements. AT&T's assignee or successor must, within 60 days following the assignment, provide proof satisfactory to SWBT that such assignee or successor has complied or will comply with all licensing requirements established under this Appendix, including but not limited to requirements that such assignee or successor verify, to the best of its information and belief, as provided in Section 17.03, that all facilities owned or used by such assignee or successor and presently attached to SWBT's poles or placed within any portion of SWBT's conduit system within this State have been disclosed to SWBT and are subject to existing licenses and that such assignee or successor has complied with the				

IX. POLES, CONDUITS, RIGHTS-OF-WAY
CONTRACTUAL DISPUTES ISSUES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT - MISSOURI

SWBT	Reason why language was included or excluded	SWBT	SWBT	SWBT
Insurance requirements set forth in Article 23 of this Appendix. 24.07 Additional Post-Assignment Requirements. AT&T's assignee or successor shall, within 60 days following the assignment: (a) sign this Appendix as an assignee or successor expressly agreeing to be bound by all provisions of this Appendix and licenses subject to this Appendix; (b) provide proof, satisfactory to SWBT, of such assignee's assumption of the obligations of this Appendix; and (c) pay a one-time contract administration fee, as provided in EXHIBIT I of this Appendix, if no Master Agreement for Access to SWBT's Poles, Ducts, Conduits, or Rights-of-Way between SWBT and such assignee is in effect for this State, or an administrative record-keeping fee as provided in EXHIBIT I of this Appendix, if there is a Master Agreement in effect for this State. 24.08 Sublicenses Prohibited. Nothing contained in this Appendix shall be construed as granting AT&T the right to sublicense any rights under this Appendix or licenses subject to this Appendix to any third party. Except as otherwise expressly permitted in this Appendix, AT&T shall not allow third party to attach or place facilities to or in pole or				

IX. POLES, CONDUITS, RIGHTS-OF-WAY
 CONTRACTUAL DISPUTES MATRIX
 AT&T - SWBT INTERCONNECTION AGREEMENT - MISSOURI

AT&T	SWBT	Reason why language included or excluded	conduit space occupied by or assigned to AT&T or to utilize such space.
			ARTICLE 25: TERMINATION OF AGREEMENT OR LICENSES; REMEDIES FOR BREACHES 25.01 Termination Due to Non-Use of Facilities or Loss of Required Authority. AT&T shall, by written notice to SWBT, terminate this Appendix and all licenses subject to this Appendix if AT&T ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if AT&T is cable television system having access to SWBT's poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in this State (if AT&T is a telecommunications carrier which does not also have authority to provide cable television service in this State), or ceases to make active use of SWBT's poles, ducts, conduits, and rights-of-way in this State. AT&T shall, by written notice to SWBT, terminate individual licenses subject to this Appendix if (a) AT&T ceases to utilize the pole attachment or conduit occupancy space subject to such licenses or (b) AT&T's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has

IX. POLES, CONDUITS, RIGHTS-OF-WAY
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 AT&T - SWBT INTERCONNECTION AGREEMENT - MISSOURI

AT&T - SWBT Interconnection Agreement	AT&T - SWBT Interconnection Agreement	AT&T - SWBT Interconnection Agreement	AT&T - SWBT Interconnection Agreement	SWBT Language Included or Excluded	SWBT Language Included or Excluded
					been revoked, denied, or terminated for reasons of safety or any other lawful reason by any federal, state, or local governmental authority or third-party property owner having authority to revoke, deny, or terminate such use or access. Responsibility for terminating this Appendix or individual licenses under the circumstances set forth in this section shall be a contractual obligation imposed on AT&T, and the failure by AT&T to terminate this Appendix or individual licenses pursuant to this section shall be a material breach of this Appendix. In the event of a claimed breach of this section, SWBT shall provide written notice to AT&T as provided in Section 25.03(a) of this Appendix and AT&T shall have 30 days to cure the breach as provided in Section 25.03(b) of this Appendix. 25.02 <u>Limitation, Termination, or Refusal of Access for Certain Material Breaches.</u> AT&T's access to SWBT's poles, ducts, conduits, and rights-of-way shall not materially interfere with or impair service over any facilities of SWBT or any joint user, cause material damage to SWBT's plant or the plant of any joint user, impair the privacy of communications carried over the facilities of SWBT or any joint user, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of SWBT's poles.

IX. POLES, CONDUITS, RIGHTS-OF-WAY
CONTRACTUAL DISPUTES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT - MISSOURI

SWBT Landmark	Reason why language in dispute is included or excluded	SWBT	AT&T	Dispute
ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, SWBT may limit, terminate or refuse access if AT&T violates this provision; provided, however, that such limitation, termination or refusal will be limited to AT&T's access to poles, ducts, conduits, and rights-of-way located in the SWBT construction district in which the violation occurs, shall be as narrowly limited in time and geographic scope as may be necessary to enable AT&T to adopt suitable controls to prevent further violations, and shall be subject to review, at AT&T's request, pursuant to the dispute resolution procedures set forth in this Appendix (or, if applicable, the parties' interconnection agreement) or, as permitted by law, before any court, agency, or other tribunal having jurisdiction over the subject matter. In the event AT&T invokes dispute resolution procedures or seeks review before a court, agency, or other tribunal having jurisdiction of the subject matter, the limitation, termination, or refusal of access may be stayed or suspended by agreement of the parties or by order of the tribunal having jurisdiction over the parties' dispute. 25.03 <u>Notice and Opportunity to Cure Breach.</u> In the event of any claimed breach of this Appendix by either party, the aggrieved party may give written notice of				

IX. POLES, CONDUITS, RIGHTS-OF-WAY
 CONTRACTUAL DISPUTE ISSUES MATRIX
 AT&T - SWBT INTERCONNECTION AGREEMENT - MISSOURI

AT&T - SWBT Interconnection Agreement	Reason why dispute should be included or excluded	Reason why dispute should be included or excluded	Reason why dispute should be included or excluded
			such claimed breach as provided in this section. (a) The notice shall set forth in reasonable detail: (1) the conduct or circumstances complained of, together with the complaining party's legal basis for asserting that a breach has occurred; (2) the action believed necessary to cure the alleged breach; and (3) any other matter the complaining party desires to include in the notice. (b) Except as provided in Section 25.02 and subsection (c) of this section, the complaining party shall not be entitled to pursue any remedies available under this Appendix or relevant law unless such notice is given and (1) the breaching party fails to cure the breach within 30 days of such notice, if the breach is one which can be cured within 30 days, or (2) the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure; provided, however, that nothing contained in this section shall preclude either party from invoking the dispute resolution procedures set forth in Article 30 of this Appendix, or any complaint or dispute resolution procedures offered by the FCC or