

POST-TRIENNIAL REVIEW ORDER
M2A APPENDIX HFPL
High Frequency Portion of the Loop

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APPENDIX HFPL High Frequency Portion of the Loop

1. INTRODUCTION

1.1 This Appendix sets forth terms and conditions for providing the High Frequency Portion of the Loop (HFPL) by Southwestern Bell Telephone, L.P., d/b/a SBC ~~Company~~—Missouri (“SWBT”) ~~to and~~ Competitive Local Exchange Carrier (CLEC) operating in Missouri, for purposes of line sharing in accordance with the FCC’s Triennial Review Order,¹ in those instances where SWBT is providing and continues to provide retail voice band circuit switched (“POTS”) service on the same local loop facility to the same End-User. SWBT is not obligated to make available the HFPL as a UNE; provided, however, the provisions of this Appendix shall apply in those instances where SWBT is obligated to continue to make available the HFPL to Grandfathered End-Users and to New End-Users during the Transition Period, as more specifically addressed below.

~~1.1.~~

~~1.2~~ 1.2 The prices at which SWBT agrees to provide CLEC with DSL and HFPL are contained in the applicable Appendix and/or Pricing Schedule.

~~1.3~~ 1.3 SWBT agrees to provide CLEC with access to the UNEs (including HFPL offerings)—in accordance with the rates, terms and conditions set forth in this Appendix HFPL ~~and the general terms and conditions applicable to UNEs under this Agreement~~—for CLEC to use in conjunction with its desired xDSL technologies and equipment to provide xDSL services to its End-User(s). ~~end-user customers.~~

¹In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36), rel. August 21, 2003.

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SBC Missouri’s Submission Of Its Post-Triennial Review Order M2A Line Sharing Appendix
November 3, 2003, Attachment 2

2. DEFINITIONS

~~2.1~~

~~2.5~~

~~For purposes of this Appendix, a “loop” is defined as a transmission facility between a distribution frame (or its equivalent) in a central office and the loop demarcation point at an end-user customer premises.~~

~~2.2 For purposes of this Appendix, a “subloop” is defined as any portion of the loop from SWBT’s F1/F2 interface to the demarcation point at the customer premise that can be accessed at a terminal in SWBT’s outside plant. An accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable without removing a splice closure to reach the wire within. The Parties recognize that this is only one form of subloop (defined as the F1/F2 interface to the customer premise) as set forth in the FCC’s Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (FCC 99-238), including the FCC’s Supplemental Order issued In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999) (“the UNE Remand Order”). Additional subloop types may be negotiated and agreed to by the Parties consistent with the UNE Remand Order. Subloops discussed in this Appendix will be effective in accordance with the dates set out in the UNE Remand Order.~~

2.32.1 The term “Digital Subscriber Line” (“DSL”) describes various technologies and services. The “x” in “xDSL” is a place holder for the various types of DSL services, including, but not limited to ADSL (Asymmetric Digital Subscriber Line), HDSL (High-Speed Digital Subscriber Line), IDSL (ISDN Digital Subscriber Line), SDSL (Symmetrical Digital Subscriber Line), UDSL (Universal Digital Subscriber Line), VDSL (Very High-Speed Digital Subscriber Line), and RADSL (Rate-Adaptive Digital Subscriber Line).

2.2 “End-User(s)” as used herein shall mean a third-party residence or business that subscribes to telecommunications services provided by any of the Parties at retail. As used herein, the term “End-User(s)” does not include any of the Parties to this Agreement with respect to any item or service obtained under this Agreement.

2.3 “Grandfathered End-User(s)” as used herein shall mean any End-User(s) that CLEC began providing xDSL-based service over the HFPL at a particular location prior to October 2, 2003 and for which CLEC (or

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CLEC's successor or assign) has not ceased providing xDSL-based service at that particular location.

2.4 "High Frequency Portion of the Loop" ("HFPL") is defined as the frequency above the voice band on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voice band transmissions. ~~The FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999) (the "Line Sharing Order") references the voice band frequency of the spectrum of a loop facility is generally as 300 to 3000 Hertz (and possibly up to 3400 Hertz). and provides that xDSL technologies which operate at frequencies generally above 20,000 Hertz will not interfere with voice band transmission. SWBT shall only make the HFPL available to CLEC in those instances where SWBT also is providing retail POTS (voice band circuit switched) service on the same local loop facility to the same End User at the same location and subject to the terms and conditions set forth in this Appendix.~~

2.5 "Loop" or "xDSL Loop" for purposes of this Appendix only shall refer to a 2-wire copper local loop transmission facility between a distribution frame (or its equivalent) in an SWBT central office and the loop demarcation point at an End-User premises, that may be conditioned at CLEC's request, in order for CLEC to provide xDSL-based services over the HFPL.

2.6 "New End-User(s)" as used herein shall mean any End-User(s) for which CLEC begins to provide xDSL-based service over the HFPL on or after October 2, 2003 and before October 3, 2004 at a particular location.

2.7 "Transition Period" as used herein shall mean the three (3) year transition period established by the FCC in its Triennial Review Order to phase-out the HFPL as to New End-User(s).

2.52.8 A loop technology that is "presumed acceptable for deployment" is one that either complies with existing industry standards, has been successfully deployed by another carrier in any state without significantly degrading the performance of other services, or has been approved by the FCC, any state commission, or an industry standards body.

2.62.9 A "non-standard xDSL-based technology" is a loop technology that is not presumed acceptable for deployment under Section 2.85 of this Appendix.

2.72.10 “Line Share Turn-Up Test” shall be defined as the testing for HFPL by SWBT as more specifically described in Section 8.

2.82.11 Plan of Record for Pre-Ordering and Ordering of xDSL and other Advanced Services (“Plan of Record” or “POR”) refers to SWBT’s December 7, 1999 filing with the FCC, including any subsequent modifications or additions relating to loop makeup information since this ~~to such~~ filing.

2.92.12 A “Splitter” is a CLEC-owned device that divides the data and voice signals concurrently moving across the loop, ~~directing the voice traffic through copper tie cables to the switch and the data traffic through another pair of copper tie cables to multiplexing equipment for delivery to the packet-switched network.~~ The Splitter may be directly integrated into the Digital Subscriber Line Access Multiplexer (DSLAM) equipment or may be externally mounted in CLEC’s collocation arrangement.

2.102.13 “Digital Subscriber Line Access Multiplexer” (“DSLAM”) is a piece of equipment that links end-user DSL connections to a single high-speed packet switch, typically ATM or IP.

3. AVAILABILITY OF HFPL FOR PURPOSES OF LINE SHARING

3.1 Grandfathered End-User(s): To the extent that CLEC began providing xDSL-based service over the HFPL to an End-User at a particular location prior to October 2, 2003 and for which CLEC (or CLEC’s successor or assign) has not ceased providing xDSL-based service to that End-User at that particular location, SWBT will continue to make available the HFPL to CLEC (or CLEC’s successor or assign) at the same monthly recurring rate that was in effect between CLEC and SWBT for the HFPL prior to October 2, 2003, as set forth in the Appendix Pricing, subject to Section 11 below (including, without limitation, the FCC’s Biennial Review Proceeding scheduled to commence in 2004), and the other terms and conditions set forth herein.

3.1.1 CLEC (or CLEC’s successor or assign) may continue to serve a Grandfathered End-User via the HFPL for any line sharing arrangement that CLEC had in place prior to October 2, 2003 at a particular location, until the earlier of: (i) the date that the Grandfathered End-User cancels or discontinues the CLEC’s (or CLEC’s successor’s or assign’s) xDSL-based service at the location at which that Grandfathered End-User was being served by CLEC prior to October 2, 2003; or (ii) SWBT’s retail POTS service to the

Grandfathered End-User is disconnected for whatever reason at the location at which that Grandfathered End-User was being served by SWBT prior to October 2, 2003, in which case CLEC will determine whether its xDSL-based service to that End-User will be converted from the HFPL to a full stand alone xDSL Loop or disconnected, as more specifically addressed in Subsection 4.11 below; or (iii) CLEC (or CLEC's successor or assign), for whatever reason, elects to discontinue providing xDSL-based service to the End-User at the location at which the End-User was being served by CLEC prior to October 2, 2003; or (iv) the FCC issues its Order in its Biennial Review Proceeding or any other relevant Government Action which modifies the requirements established by the FCC in its Triennial Review Order as to Grandfathered End-User(s), End-User as more specifically addressed in Section 11 below. Any conforming modifications which need to be made to this Appendix as a result of any Government Action addressed in Section 11 shall be negotiated by the Parties in accordance with that Section.

3.1.2 Upon the earlier of any of the events set forth above in Subsection 3.1.1, the previously Grandfathered End-User(s) will lose its grandfathered status and thereafter, to the extent that CLEC (or CLEC's successor or assign, if any) or any other CLEC may wish to serve that End-User(s) via the HFPL, it may only do so if such End-User is eligible to be served as a "New End-User" in accordance with the Transition Period provisions set forth below.

3.2 Transition Period for "New" Line Sharing Arrangements: CLEC may provide xDSL-based service over the HFPL to New End-User(s) that the CLEC begins to serve on or after October 2, 2003 and before October 3, 2004 ("Year 1"). On or after October 3, 2004, SWBT shall have no obligation to provide the HFPL to CLEC to serve any new end-user customers and CLEC shall not submit any orders for the HFPL on or after October 3, 2004. With respect to any New End-User(s) that CLEC begins to provide xDSL-based service over the HFPL in Year 1 of the Transition Period, the following terms and conditions shall apply:

3.2.1 Year 1: During Year 1 of the Transition Period, CLEC may continue to obtain New End-Users through the use of the HFPL at 25 percent (25%) of the 2-wire xDSL Loop monthly recurring rate that was in effect between CLEC and SWBT on October 2, 2003 for that particular location, as set forth in the Pricing Schedule.

3.2.2 Year 2: During the second year of the Transition Period, which shall begin on October 3, 2004, the monthly recurring charge for the HFPL for those New End-Users which CLEC began providing xDSL-based service to over the HFPL at a certain location in Year 1, and for which CLEC continues to provide xDSL-based service at that same location in Year 2, shall increase to 50 percent (50%) of the 2-wire xDSL Loop monthly recurring rate that was in effect between CLEC and SWBT on October 2, 2003 for that particular location, as set forth in the Pricing Schedule.

3.2.3 Year 3: During the third year of the Transition Period, which shall begin on October 3, 2005, the monthly recurring charge for the HFPL for those New End-Users which CLEC began providing xDSL-based service to over the HFPL at a certain location in Year 1, and for which CLEC continues to provide xDSL-based service at that same location in Years 2 and 3, shall increase to 75 percent (75%) of the 2-wire xDSL Loop monthly recurring rate that was in effect between CLEC and SWBT on October 2, 2003 for that particular location, as set forth in the Pricing Schedule.

3.2.4 Beginning October 2, 2006, SWBT shall have no obligation to continue to provide the HFPL for CLEC to provide xDSL-based service to any New End-user(s) that CLEC began providing xDSL-based service to over the HFPL during Year 1 of the Transition Period. Rather, effective October 2, 2006, CLEC must provide xDSL-based service to any such New End-User(s) via a line splitting arrangement over a stand-alone xDSL Loop purchased from SWBT, or through an alternate arrangement, if any, that the Parties may negotiate.

3.4. **GENERAL TERMS AND CONDITIONS RELATING TO THE HIGH FREQUENCY PORTION OF THE LOOP**

3.14.1 SWBT will provide a HFPL for CLEC to deploy xDSL technologies presumed acceptable for deployment or non-standard xDSL technologies as defined in this Appendix. SWBT will not impose limitations on the transmission speeds of xDSL services; provided, however, SWBT does not guarantee transmission speeds, available bandwidth nor imply any service level. ~~Consistent with the Line Sharing Order,~~ CLEC may only deploy xDSL technologies on the HFPL that do not cause significant degradation with analog voice band transmission.

3.24.2 SWBT shall not deny CLEC's request to deploy any xDSL technology over the HFPL that is presumed acceptable for deployment pursuant to state or federal rules unless SWBT has demonstrated to the state commission in accordance with FCC orders that CLEC's deployment of the specific technology will significantly degrade the performance of other advanced services or traditional voice band services.

3.34.3 In the event the CLEC wishes to introduce a technology on the HFPL that has been approved by another state commission or the FCC, or successfully deployed elsewhere, the CLEC will provide documentation describing that action to SWBT and the state commission before or at the time of its request to deploy such technology within SWBT. The documentation should include the date of approval or deployment, any limitations included in its deployment, and a sworn attestation that the deployment did not and will not significantly degrade the performance of other services.

3.44.4 In the event the CLEC wishes to introduce a technology on the HFPL that does not conform to existing industry standards and has not been approved by an industry standards body, the FCC, or a state commission, the burden is on the CLEC to demonstrate that its proposed deployment meets the threshold for a presumption of acceptability and will not, in fact, significantly degrade the performance of other advanced services or traditional voice band services.

4.5 Liability

4.5.1 Notwithstanding any other provision of this Appendix, each Party, whether ~~a~~-CLEC or SWBT, agrees that should it cause any non-standard xDSL technologies to be deployed or used in connection with or on SWBT facilities, the Party ("Indemnifying Party") will pay all costs associated with any damage, service interruption or other telecommunications service degradation, or damage to the other Party's ("Indemnitee") facilities. ~~4~~ Notwithstanding any other provision of this Appendix, each Party ("Indemnifying Party") shall release, defend and indemnify the other Party ("Indemnitee") and hold Indemnitee harmless against any loss or claim made by the Indemnifying Party's end-user, arising out of the negligence or willful misconduct of the Indemnitee, its agents, its end users, contractors, or others retained by such Party, in connection with Indemnitee's provision of splitter functionality under this Appendix.

~~3.5.24.5.2~~ For any technology, CLEC's use of any SWBT network element, or its own equipment or facilities in conjunction with any SWBT network element, will not materially interfere with or impair service over any facilities of SWBT, its affiliated companies or connecting and concurring carriers involved in SWBT services, cause damage to SWBT's plant, impair the privacy of a communications carried over SWBT's facilities or create hazards to employees or the public. Upon reasonable written notice and after a reasonable opportunity to cure, SWBT may discontinue or refuse service if CLEC violates this provision, provided that such termination of service will be limited to CLEC's use of the element(s) causing the violation. Subject to Section ~~9.1 below~~~~8.3~~ for HFPL, SWBT will not disconnect the elements causing the violation if, after receipt of written notice and opportunity to cure, ~~the~~-CLEC demonstrates that their use of the network element is not the cause of the network harm. If SWBT does not believe ~~the~~-CLEC has made the sufficient showing ~~that it is not the cause of the~~ harm, or if CLEC contests the basis for the disconnection, either Party must first submit the matter to dispute resolution under the Dispute Resolution Procedures set forth in this ~~Agreement~~~~appendix~~. Any claims of network harm by SWBT must be supported with specific and verifiable supporting information.

~~43.6~~ Indemnification

~~4.6.1 3.6.1~~—Covered Claim: Notwithstanding any other provisions of this Appendix, each Party ("Indemnifying Party") will release, indemnify, defend and hold harmless the other Party ("Indemnatee") from and against any loss, liability, claim or damage, including but not limited to direct, indirect or consequential damages, made against Indemnatee by any telecommunications service provider or telecommunications user (other than claims for damages or other losses made by an ~~Eend-U~~~~user~~ of Indemnatee for which Indemnatee has sole responsibility and liability) caused, in whole or substantial part, by the use of non-standard xDSL technologies by the Indemnifying Party, or by the Indemnifying Party's (i.e., CLEC's) provision of splitter functionality under this Appendix or the Indemnifying Party's (i.e., CLEC's) retention of the ~~xDSL L~~loop used to provide the HFPL when the ~~Eend-U~~~~user~~ terminates voice service from Indemnatee (i.e., SWBT) and Indemnatee is requested by another telecommunications service provider to provide a voice grade service or facility to the ~~Eend-U~~~~user~~.

~~4.6.2~~ ~~3.6.2~~ — Indemnifying Party is permitted to fully control the defense or settlement of any Covered Claim, including the selection of defense counsel. Notwithstanding the foregoing, the Indemnifying Party will consult with Indemnitee on the selection of defense counsel and consider any applicable conflicts of interest. Indemnifying Party is required to assume all costs of the defense and any loss, liability, claim or damage indemnified pursuant to Section ~~43~~.6.1 above and Indemnitee will bear no financial or legal responsibility whatsoever arising from such claims.

~~43~~.6.3 Indemnitee agrees to fully cooperate with the defense of any Covered Claim. Indemnitee will provide written notice to the Indemnifying Party of any Covered Claim at the address for notice set forth herein within ten days of receipt, and, in the case of receipt of service of process, will deliver such process to the Indemnifying Party not later than 10 business days prior to the date for response to the process. Indemnitee will provide to Indemnifying Party reasonable access to or copies of any relevant physical and electronic documents or records related to the deployment of non-standard xDSL technologies in the area affected by the claim, ~~or~~ the Indemnifying Party's (i.e., CLEC's) provision of splitter functionality under this Appendix, or retention of the xDSL Loop when the End-User terminates SWBT's retail POTS service to continue to provide xDSL-based service under this Appendix and all other documents or records determined to be discoverable, and all other relevant documents or records that defense counsel may reasonably request in preparation and defense of the Covered Claim. Indemnitee will further cooperate with the Indemnifying Party's investigation and defense of the Covered Claim by responding to the reasonable requests to make its employees with knowledge relevant to the Covered Claim available as witnesses for preparation and participation in discovery and trial during regular weekday business hours. Indemnitee will promptly notify the Indemnifying Party of any settlement communications, offers or proposals received from claimants.

~~4.6.4~~ ~~3.6.4~~ — Indemnitee agrees that Indemnifying Party will have no indemnity obligation under Section ~~43~~.6.1 above, and Indemnitee will reimburse Indemnifying Party's defense costs, in any case in which Indemnifying Party's technology is determined not to be the cause of any of Indemnitee's liability, or ~~and~~ in any case in which the Indemnifying Party's (i.e., CLEC's) provision of splitter

functionality or retention of the xDSL Loop when the End-User terminates SWBT's retail POTS service to continue to provide xDSL-based service under under this Appendix is determined not to be the cause of any of Indemnatee's liability.

4.6.5

~~3.7~~ — Claims Not Covered: No Party hereunder agrees to indemnify or defend any other Party against claims based on the other Party's gross negligence or intentional misconduct.

4.7 CLEC may only purchase the HFPL from SWBT to provide xDSL-based service, and may only continue to provide xDSL-based service over such HFPL when SWBT is providing retail POTS service on the same loop to the same End-User.

4.8 CLEC (or CLEC's successor or assign) may continue to serve a Grandfathered End-User via the HFPL for any line sharing arrangement that CLEC had in place prior to October 2, 2003 at a particular location, until the earlier of: (i) the date that the Grandfathered End-User cancels or discontinues the CLEC's (or the CLEC's successor's or assign's) xDSL-based service at the location at which that Grandfathered End-User was being served by CLEC prior to October 2, 2003; or (ii) SWBT's retail POTS service to the Grandfathered End-User is disconnected for whatever reason at the location at which that Grandfathered End-User was being served by SWBT prior to October 2, 2003, in which case CLEC will determine whether its xDSL-based service to that End-User will be converted from the HFPL to a full stand alone xDSL Loop or disconnected, as more specifically addressed in Subsection 4.11 below; or (iii) CLEC (or CLEC's successor or assign), for whatever reason, elects to discontinue providing xDSL-based service to the End-User at the location at which the End-User was being served by CLEC prior to October 2, 2003; or (iv) the FCC issues its Order in its Biennial Review Proceeding or any other Government Action modifies the requirements established by the FCC in its Triennial Review Order as to Grandfathered End-User(s), as more specifically addressed in Section 11 below. Any conforming modifications which need to be made to this Appendix as a result of any Government Action addressed in Section 11 shall be negotiated by the Parties in accordance with that Section.

4.UNBUNDLED xDSL-CAPABLE LOOP OFFERINGS

~~4.1 DSL-Capable Loops: For each of the loop types described in Sections 4.1.1—4.1.2 below, CLEC will, at the time of ordering, notify SWBT as to the~~

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~~Power Spectral Density (PSD) mask of the technology the CLEC will deploy.~~

~~4.1.12 Wire xDSL Loop: A 2-wire xDSL loop for purposes of this section, is a copper loop over which a CLEC may provision various DSL technologies. A copper loop used for such purposes will meet basic electrical standards such as metallic connectivity and capacitive and resistive balance, and will not include load coils, mid-span repeaters or excessive bridged tap (bridged tap in excess of 2,500 feet in length). However removal of load coils, repeaters or excessive bridged tap on an existing loop is optional, subject to conditioning charges, and will be performed at CLEC's request. The rates set forth in Attachment 25: xDSL MO shall apply to this 2-Wire xDSL Loop.~~

~~4.1.2 Sub Loop: In locations where SWBT has deployed: (1) Digital Loop Carrier systems and an uninterrupted copper loop is replaced with a fiber segment or shared copper in the distribution section of the loop; (2) Digital Added Main Line ("DAML") technology to derive multiple voice grade POTS circuits from a single copper pair; or (3) entirely fiber optic facilities to the end user, SWBT will make the following options available to CLEC:~~

~~4.1.2.1 Where spare copper facilities are available, and the facilities meet the necessary technical requirements for the provisioning of DSL, the CLEC has the option of requesting SWBT to make copper facilities available (subject to Section 4.6 below).~~

~~4.1.2.2 The CLEC has the option of collocating a DSLAM in SWBT's Remote Terminal ("RT") at the fiber/copper interface point, pursuant to collocation terms and conditions. When the CLEC collocates its DSLAM at SWBT RTs, SWBT will provide CLEC with unbundled access to subloops to allow CLEC to access the copper wire portion of the loop.~~

~~4.1.2.3 Where the CLEC is unable to obtain spare copper loops necessary to provision a DSL service, and SWBT has placed a DSLAM in the RT, SWBT must unbundle and provide access to its packet switching. SWBT is relieved of this unbundling obligation only if it permits a requesting carrier to collocate its DSLAM in SWBT's remote terminal, on the same terms and conditions that~~

~~apply to its own DSLAM. The rates set forth in Appendix Pricing
UNE Schedule of Prices shall apply to this subloop.~~

4.9 When SWBT is the provider of the retail POTS analog voice service on the same loop to the same end-user, HFPL access will be offered on xDSL Loops ~~that meet the loop requirements as defined in Sections 4.1.1-4.1.2 above~~. The CLEC will provide SWBT with the type of technology it seeks to deploy, at the time of ordering, including the PSD of the technology the CLEC will deploy. If the technology does not have a PSD mask, CLEC shall provide SWBT with a technical description of the technology (including power mask) for inventory purposes.

~~4.1.3.1~~4.10 xDSL technologies may only reside in the higher frequency ranges, preserving a “buffer zone” ~~to ensure the integrity of voice band traffic.~~

~~4.2~~4.11 When SWBT traditional retail POTS services are disconnected and CLEC is providing xDSL-based service to the same End-User at the same location over the HFPL, SWBT will notify the CLEC that the POTS service is being disconnected. Upon receipt of such notification by SWBT, The CLEC will determine whether the xDSL-based broadband service will be converted from the a Line Sharing Circuit, or HFPL, to a full stand-alone xDSL Loop ~~UNE loop~~ or disconnected. All ~~appropriate~~applicable recurring and nonrecurring charges for the establishment rearrangement and/or disconnection of the xDSL Loop and/or HFPL shall apply pursuant to the Appendix Pricing UNE Schedule of Pricing Schedules. ~~Upon request of either Party, the Parties shall meet to negotiate rates, terms and conditions for such notification and disconnection.~~

~~4.3~~4.12 SWBT shall be under no obligation to provide multi-carrier or multi-service line sharing arrangements as referenced in FCC 99-35, paragraph 75.

~~4.4~~4.13 HFPL is not available in conjunction with a combination of network elements known as the platform or UNE-P (including loop and switch port combinations) or unbundled local switching or any arrangement where SWBT is not the retail POTS provider.

~~4.5~~CLEC may provide voice and data services over the same loop by engaging in “line splitting” as set forth in paragraph 323-29 of the FCC’s Texas 271 Order (CC Docket 00-65 (FCC 00-238), released June 30, 2000). Consistent with that Order, SWBT shall not be required to provide low frequency voice service to CLEC “A” and high frequency data service to CLEC “B” on the same loop. Any line splitting between two CLECs shall be accomplished between those parties and shall not utilize the HFPL product, as defined in this Appendix, or any SWBT splitters. CLEC

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~~shall provide any splitters used for line splitting. To implement line splitting, CLEC may order, including using supporting OSS, loops, unbundled switching, collocator to collocator connections, and available cross-connects, under the terms and conditions set forth in this Agreement.~~

~~4.64.14~~ SWBT shall be under no obligation to provision xDSL Leapable loops in any instance where physical facilities do not exist. SWBT shall be under no obligation to provide HFPL where SWBT is not the existing retail provider of the traditional, analog voice service (POTS). This shall not apply where physical facilities exist, but conditioning is required. In that event, CLEC will be given the opportunity to evaluate the parameters of the xDSL ~~-based or HFPL~~ service to be provided, and determine whether and what type of conditioning should be performed at its request. CLEC shall pay SWBT for conditioning performed at CLEC's request pursuant to Section ~~s 7.1 and 7.2~~ below.

~~4.74.15~~ For each HFPL, CLEC shall at the time of ordering, notify SWBT as to the PSD mask of the technology the CLEC intends to deploy on the loop. If and when a change in PSD mask is made, CLEC will immediately notify SWBT. Likewise, SWBT will disclose to CLEC upon request information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops SWBT will use this formation for the sole purpose of maintaining an inventory of advanced services present in the cable sheath. If the technology does not fit within a national standard PSD mask (but still remains in the HFPL only), CLEC shall provide SWBT with a technical description of the technology (including power mask) for inventory purposes.

~~4.84.16~~ SWBT will not deny a requesting CLEC's right to deploy new xDSL technologies that do not conform to the national standards and have not yet been approved by a standards body (or otherwise authorized by the FCC, any state commission or which have not been successfully deployed by any carrier without significantly degrading the performance of other services) if the requesting CLEC can demonstrate to the Commission that the loop technology will not significantly degrade the performance of other advanced services or traditional voice band services.

~~4.94.17~~ Each Party must abide by Commission or FCC-approved spectrum management standards. SWBT will not impose its own standards for provisioning xDSL services. —However, SWBT will publish non-binding Technical Publications to communicate SWBT's understanding of current standards and

their application as set forth in Paragraph 72 of FCC Order 99-48 (rel. March 31, 1999), FCC Docket 98-147.

5. HFPL: SPLITTER OWNERSHIP AND RESPONSIBILITIES

5.1 Splitter ownership:

~~4.1.1 Option 1:~~ CLEC will own and have sole responsibility to forecast, purchase, install, inventory, provision and maintain splitters. When physically collocating, splitters shall be installed in the CLECs collocation arrangement area (whether caged or cageless) consistent with SWBT's standard collocation practices and procedure. When virtually collocated, SWBT will install, provision and maintain splitters under the terms of virtual collocation.

~~5.1.2 Option 2: Without waiving its right to decline to provide splitters under any other prices, terms, and conditions, SWBT voluntarily agrees to own, purchase, install, inventory, provision, maintain and lease splitters in accordance with the terms set forth herein, provided, however, that SWBT reserves the right to re-evaluate this voluntary offer (no sooner than 1Q'02) and provide a minimum 6 month notification of any decision to withdraw this voluntary offer. SWBT will determine where such SWBT-owned splitters will be located in each central office. SWBT-owned splitters will be placed in a common area accessible to CLECs if space is available. When placed in common areas accessible to CLECs, CLECs will have test access at the line side of the splitter. Upon CLEC's request, SWBT will perform testing and repair at the SWBT-owned splitter on behalf of CLEC. In the event that no trouble is found at the time of testing by SWBT, CLEC shall pay SWBT for such testing at the rates set forth in this Agreement. CLEC will not be permitted direct physical access to the MDF or the IDF for testing. Upon the request of either Party, the Parties shall meet to negotiate terms for additional test access capabilities.~~

~~5.1.2.1 SWBT will agree to lease such splitters a line at a time subject to the following terms and conditions:~~

~~5.1.2.1.1 Forecasts: CLEC will provide SWBT with a forecast of its demand for each central office prior to submitting its first LSR for that individual office and then every January and July thereafter (or as otherwise agreed to by both parties). CLEC's failure to submit a forecast for a given office may affect provisioning intervals. In the event CLEC fails to submit a forecast in a central office which does not have available splitter ports, SWBT shall have an additional ten (10) business days to install CLEC's line sharing order after such time as the additional splitter equipment is installed in the SWBT central office. For requests for SWBT provided splitters in offices not provisioned in the initial deployment, all such requests, including forecasts, must be made in the CLEC's~~

~~collocation application. Installation intervals will be consistent with the collocation intervals for the applicable state.~~

~~5.1.2.1.2 Forecasts will be non-binding on both SWBT and CLEC. As such, SWBT will not face liability from failure to provision facilities if the cause is simply its reliance on non-binding forecasts.~~

~~Splitter provisioning will use standard SWBT configuration cabling and wiring in SWBT locations. Connecting Block layouts will reflect standard recognizable arrangements and will be wired out in contiguous 100 pair complements, and numbered 1-100. All arrangements must be consistent with SWBT's Operational Support Systems ("OSS").~~

~~Splitter technology will adhere to established industry standards for technical, test access, common size, configurations and shelf arrangements.~~

~~5.1.2.4 All SWBT-owned splitter equipment will be compliant with applicable national standards and NEBS Level 1.~~

~~5.1.2.5 When an end-user disconnects SWBT's POTS service, SWBT will advise the end user to also notify their data CLEC. SWBT will also notify CLEC of the disconnect and will reconfigure the loop to remove the splitter in order to conserve the splitter ports for future line sharing orders. CLEC shall pay a nonrecurring charge for any such reconfiguration. The loop reconfiguration will result in temporary downtime of the loop as the splitter is removed from the circuit. Upon request of either Party, the Parties shall meet to negotiate terms for such notification and disconnection.~~

~~5.1.2.6 SWBT retains the sole right to select SWBT-owned splitter equipment and installation vendors.~~

5.2 When physically collocated ~~and choosing Option 1 above~~, CLEC-owned splitters will be placed in traditional collocation areas as outlined in the physical collocation terms and conditions in this Agreement or applicable Commission-ordered tariff. In this arrangement, the CLEC will have test access to the line side of the splitter (assuming CLEC has provisioned when the splitter is placed in an area commonly accessible by CLECs. It is recommended that the CLEC provision splitter cards that provide test port capabilities). When virtually collocated, to the extent that CLEC wishes to have additional testing capabilities for purposes of maintenance and repair

~~(including remote testing) in connection with its virtually collocated splitter, it may request that the Parties negotiate additional provisions for such testing. Any outstanding disputes between the Parties as to such provisions, after negotiations, shall be resolved in accordance with the Dispute Resolution procedures set forth elsewhere in this~~

~~5.2 SWBT will install the splitter in a SWBT bay and SWBT will access the splitter on behalf of the CLEC for line continuity tests. Additional testing capabilities (including remote testing) may be negotiated by the Parties.~~

5.3 CLEC-Owned Splitters will meet the following criteria:

~~5.3.1 CLEC-owned splitters~~ Splitter provisioning will use standard SWBT configuration cabling and wiring in SWBT locations. ~~The –In situations where the CLEC –owns the splitter, the~~ splitter data port and DSLAM will be hardwired to each other. CLEC's Connecting Block layouts will reflect standard recognizable arrangements that will work with SWBT Operations Support Systems ("OSS").

~~5.45.3.2~~ CLEC's Splitter technology needs to adhere to established industry standards for technical, test access, common size, configurations and shelf arrangements.

5.3.3

CLEC's ~~All~~ splitter equipment must be compliant with applicable national standards and NEBS Level 1.

~~5.5~~

6.6. OPERATIONAL SUPPORT SYSTEMS: LOOP MAKEUP INFORMATION AND ORDERING

~~6.1~~ 6.1 General: SWBT will provide CLEC with nondiscriminatory access by electronic or manual means, to its loop makeup information set forth in SWBT's Plan of Record. ~~In the interim, Loop~~ makeup data will be provided as set forth below. ~~In accordance with the FCC's UNE Remand Order,~~ CLEC will be given nondiscriminatory access to the same loop makeup information that SWBT is providing any other CLEC and/or SWBT's retail operations or its advanced services affiliate.

~~6.2~~ Loop Pre-Qualification: ~~Subject to 6.1 above, SWBT's pre-qual will provide a near-real time response to CLEC queries. Until replaced with OSS access as provided in 6.1, SWBT will provide mechanized access to a loop length indicator via Verigate and DataGate. The loop length is an indication of the approximate loop length, based on a 26 gauge equivalent and is calculated on the basis of~~

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~~Distribution Area distance from the central office. This is an optional service to the CLEC and is available at no charge.~~

~~6.3~~6.2 Loop Qualification: Subject to 6.1 above, SWBT's uniform GUI and application to application OSS interfaces ~~will develop and deploy enhancements to its existing DataGate and EDI interfaces that will~~ allow CLECs, as well as SWBT's retail operations or its advanced services affiliate, to have near real time electronic access as a preordering function to the loop makeup information. As more particularly described below, this loop makeup information will be categorized by ~~two~~three separate pricing elements: mechanized and, manual, ~~and detailed manual~~.

~~6.3-16.2.1~~ 6.2.1 Mechanized loop qualification includes data that is available electronically and provided via an electronic system. Electronic access to loop makeup ~~data information through SWBT's uniform through the OSS interfaces enhancements~~ described in 6.1 above will return information in all fields described in SWBT's Plan of Record when such information is contained in SWBT's electronic databases. CLEC will be billed a mechanized loop qualification charge for each xDSL capable loop order submitted at the rates set forth in Attachment 25: xDSL-MO.

~~6.3-26.2.2~~ 6.2.2 Manual loop qualification requires the manual look-up of data that is not contained in an electronic database. Manual loop makeup data includes the following: (a) the actual loop length; (b) the length by gauge; (c) the presence of repeaters, load coils, bridged taps; and shall include, if noted on the individual loop record, (d) the total length of bridged taps; (e) the presence of pair gain devices, DLC, and/or DAML, and (f) the presence of disturbers in the same and/or adjacent binder groups. CLEC will be billed a manual loop qualification charge for each manual loop qualification requested at the rates set forth in Attachment 25: xDSL-MO.

~~6.3-3~~ Detailed manual loop qualification includes all fields as described in SWBT's Plan of Record, including the fields described in fields 6.3.2 above. CLEC will be billed a detailed manual loop qualification charge for each detailed manual loop qualification requested at the rates set forth in Attachment 25: xDSL-MO.

~~6.4~~6.3 Each ~~All three~~ categoryies of loop qualification ~~is~~are subject to the following:

~~6.4-1~~ 6.3.1 If load coils, repeaters, or excessive bridged tap are present on a loop under 12,000 feet in length, conditioning to remove these elements will be performed without request and at no charge to the CLEC.

~~6.4.26.3.2~~ If a CLEC elects to have SWBT provide loop makeup through a manual process for information not available electronically, then the loop qualification interval will be 3-5 business days, or the interval provided to SWBT's affiliate, whichever is less.

~~6.4.36.3.3~~ If the results of the loop qualification indicate that conditioning is available, CLEC may request that SWBT perform conditioning to remove excessive bridged tap, load coils and/or repeaters at the charges set forth in Attachment 25: xDSL-MO. The CLEC may order the loop without conditioning or with partial conditioning if desired; provided, however, -

~~6.4.4~~ ~~For HFPL,~~ if CLEC's requested conditioning would degrade the customer's analog voice service, SWBT is not required to condition the loop. However, should SWBT refuse the CLEC's request to condition a loop, SWBT will make an affirmative showing to the relevant state commission that conditioning the specific loop in question will significantly degrade voice band services.

7.7. PROVISIONING

~~7.7.1~~ Provisioning: SWBT will not guarantee that the ~~HFPL local loop(s)~~ ordered will perform as desired by CLEC for xDSL-based ~~HFPL~~, or other advanced services, but will assure guarantee basic metallic loop parameters, including continuity and pair balance. CLEC-requested testing by SWBT beyond these parameters will be billed on a time and materials basis at the applicable tariffed rates as addressed in Section 9.2.2 below. ~~On loops where CLECs have requested that no conditioning be performed, SWBT's maintenance will be limited to verifying loop suitability based on POTS design. For loops having had partial or extensive conditioning performed at CLEC's request, SWBT will verify continuity, the completion of all requested conditioning, and will repair at no charge to CLEC any gross defects which would be unacceptable based on current POTS design criteria and which do not result from the loop's modified design. For loops less than 12,000 feet, SWBT will remove load coils, repeaters, and excessive bridged tap at no charge to CLEC.~~

~~7.27.2~~ Subject to Section 6.34.34 above, CLEC shall designate, at the CLEC's sole option, what loop conditioning (the removal of excessive bridged tap, load coils and/or repeaters) SWBT is to perform in provisioning the xDSL loop(s), subloop(s), or HFPL on the loop order. Conditioning may be ordered on loop(s), subloop(s), or HFPLs of any length at the Loop conditioning rates set forth in the Attachment 25: xDSL-MO. The loop, subloop, or HFPL will be provisioned to meet the basic metallic and electrical characteristics such as electrical conductivity and capacitive and resistive balance.

~~7.3.7.3~~ The following provisioning intervals are applicable to the HFPL regardless of the loop length. ~~The Parties will meet to negotiate and agree upon subloop provisioning intervals.~~

7.3.1 HFPL Provisioning Intervals When No Loop Conditioning Requested:

~~7.3.1.7.3.1.1~~ The provisioning and installation interval for the HFPL, where no conditioning is requested (including outside plant rearrangements that involve moving a working service to an alternate pair as the only possible solution to provide the HFPL), on orders for 1-240 ~~HFPLs-loops~~ per order or per ~~Eend-U~~user location, will be ~~35~~ business days, or the provisioning and installation interval applicable to SWBT's tariffed xDSL-based services, or its affiliate's, whichever is less.

7.3.1.2 For CLEC orders of 25-48 HFPLs per order or per End-User at the same location where no conditioning is requested, the provisioning and installation interval will be six (6) business days or as otherwise agreed upon by the parties.

7.3.1.3 For CLEC orders of 49-99 HFPLs per order or per End-User at the same location where no conditioning is requested, the provisioning and installation interval will be seven (7) business days, or as otherwise agreed upon by the Parties.

7.3.1.4 For CLEC orders of 100 or more HFPLs per order or per End-User at the same location where no conditioning is requested, the provisioning and installation interval will be as agreed upon by the Parties.

~~7.3.2~~7.3.2 HFPL Provisioning Intervals When Loop Conditioning Requested:

7.3.2.1 The provisioning and installation intervals for the HFPL where conditioning is requested to remove excessive bridged tap, load coils and/or repeaters or outside plant rearrangements are necessary, as defined above, on orders for 1-24 HFPLs per order or per ~~Eend-U~~user ~~customer~~at the same location, will be ten (10) business days, or the provisioning and installation interval applicable to SWBT's tariffed xDSL-based services or to its affiliate's xDSL-based services where conditioning is required, whichever is less.~~end-user customer e ueustomer~~

7.3.2.2 For CLEC orders of 25 or more HFPLs per order or per End-User at the same location where conditioning is requested, the provisioning and installation interval will be as agreed upon by the Parties.

~~7.3.3 Orders to convert existing stand-alone DSL-capable UNE loops to line shared loops, regardless of quantity, will be handled as Special Projects. The interval for such conversions will be determined on a case-by-case basis and will be jointly agreed upon by the Parties.~~

~~7.3.4.4 Orders for more than 20 loops per order or per end-user location, where no conditioning is requested will have a provisioning and installation interval of 15 business days, or as agreed upon by the Parties. For HFPL orders, intervals are contingent upon Eend-U-user release during normal working hours. In the event the CLEC's Eend-U-user customers requires conditioning during non-working hours, the due date may be adjusted consistent with Eend-U-user's release of the voice grade circuit and out-of-hours charges may apply as addressed in Section 9.2.2 below.~~

~~7.3.5 Orders for more than 20 loops per order which require conditioning will have a provisioning and installation interval agreed by the parties in each instance.~~

7.5 Subsequent to the initial order for the HFPL (while CLEC's initial HFPL order is still pending or after CLEC has been provisioned an HFPL), additional conditioning to remove excessive bridged tap, load coils and/or repeaters may be requested by CLEC by submitting a Local Service Request ("LSR") to SWBT in connection with the HFPL for which CLEC elected, on its initial HFPL order, not to have any of the recommended loop conditioning performed or only partial loop conditioning performed. In such event, CLEC will be billed and shall pay for any requested loop conditioning on such loop(s) at the rates set forth in the Attachment 25: xDSL-MO and the applicable service order charges will apply; provided, however, when requests to add or modify conditioning are received for a pending HFPL order(s), no additional service order charges shall be assessed, but the due date may be adjusted if necessary to meet standard provisioning intervals. The provisioning interval for additional requests for conditioning after an HFPL has been provisioned to CLEC pursuant to this subsection will be the same as set forth above.

~~7.4.7.6 The~~ CLEC, at its sole option, may request shielded cabling between network elements and frames within the central office for use with ~~2-wire xDSL loop or the~~ HFPL when used to provision ADSL ~~over a DSL-capable Loop or HFPL provided for herein~~ at the rates set forth in the Attachment 25: xDSL-MO. Tight Twist cross-connect wire will be used on all identified DSL services on all central office frames.

8.8. TESTING

8.1 Line Sharing Turn-Up Testing Procedures:

- 8.1.1 The Line Sharing Turn-Up Test will be performed only on HFPL orders. Line Sharing Turn-Up Test is comprised of several work steps to be completed by SWBT's central office technician to ensure that no loads are present on the loop, cross-connects are verified, and the correct telephone number is verified on the cable pair leaving the central office.
- 8.1.2 Line Sharing Turn-Up Test will be completed by close of business one (1) day prior to due date.
- 8.1.3 Detailed procedures of this Line Sharing Turn-Up Test can be located in SWBT's CLEC Handbook. CLECs will not be billed for the Line Sharing Turn-Up Test described in 8.1.1 above.

9.9. MAINTENANCE /SERVICE ASSURANCE

- 9.1 ~~If requested by either Party, the parties will negotiate in good faith to arrive at terms and conditions for Acceptance Testing on repairs.~~

~~9.2~~ Narrowband/voice service: If the narrowband, or voice, portion of the loop becomes significantly degraded due to CLEC's xDSL-based service being provided over the ~~the broadband or high frequency portion of the loop~~ HFPL, certain procedures as detailed below will be followed to restore the narrowband, or voice service. Should only the narrowband or voice service be reported as significantly degraded or out of service, SWBT shall repair the narrowband portion of the loop without disturbing the HFPL ~~broadband portion of the loop~~ if possible. In any case, SWBT shall attempt to notify the Eend-U-user and CLEC for permission any time SWBT repair effort has the potential of

affecting service on the ~~HFPL broadband portion of the loop~~. SWBT may proceed with repair of the voice circuit if unable to reach ~~the~~ End-User after a reasonable attempt has been made to do so. When connected facility assignment or additional point of termination (CFA/APOT) change is required due to trouble, the pair change will be completed during the standard repair interval.

~~9.23~~ SWBT will provide resolution of CLEC-referred trouble tickets for the HFPL in parity with repair intervals SWBT provides its advanced services affiliates for the HFPL.

9.~~23~~.1 If the CLEC opens a trouble ticket for the HFPL portion of the loop to SWBT and the problem is determined to be in the CLEC's network, the CLEC will pay SWBT the applicable commissioned-ordered tariffed rate for trouble isolation, maintenance, and repair (as specified in Section 9.~~23~~.2 below) upon closing the trouble ticket.

9.2.2 ~~9.3.2~~—The applicable rates for trouble isolation, maintenance, and repair are contained in

~~*Sections 13.4.2 and 13.4.4 of the FCC Tariff No. 73, section 13.4.8(A).~~
~~*Rates subject to tariff changes, as such tariffs may be modified from time to time.~~

If requested by the CLEC, Overtime or Premium time charges will apply for ~~Acceptance Testing~~ requests in off-hours at overtime time charges calculated at one and one half times the standard price and premium time being calculated at two times the standard price.

~~9.3.3—SWBT-owned line splitters:~~

~~9.3.3.1 SWBT will offer a 24-hour clearing time, excluding weekends and holidays, or parity with the repair intervals SWBT provides its advanced services affiliates, whichever is less, for trouble reports on the HFPL only referred by CLEC where the voice service has not been impacted, after such trouble has been isolated to the SWBT central office.~~

~~9.3.3.4—CLEC-owned line splitters:~~

~~9.3.4.1~~ If SWBT isolates a trouble (causing significant degradation or out of service condition to the POTS service) caused by the CLEC data equipment or splitter, SWBT will notify the CLEC and request a trouble ticket and a committed restoration time from CLEC for clearing the reported trouble.

9.~~23.4.5~~ Either Party may offer the End--User the option of restoring the POTS line if the End--User is not satisfied with the repair interval provided by the CLEC. If the End--User chooses to have the POTS line restored before the HFPL problem can be corrected and notifies either CLEC or SWBT, the contacted Party will notify the other and provide contact names prior to SWBT “cutting around” the POTS Splitter/DSLAM equipment to restore POTS.

9.~~23.5.6~~ ———When the CLEC resolves the trouble condition in its equipment, the CLEC will contact SWBT to restore the HFPL.

9.~~23.6.7~~ In the event the trouble is identified and corrected in the CLEC equipment, SWBT will charge the CLEC the applicable commission-ordered tariffed rate for trouble isolation, maintenance, and repair upon closing the trouble ticket as addressed in Section 9.2.2 above.

9.~~34~~ Maintenance, other than assuring loop continuity and balance on unconditioned or partially conditioned loops greater than 12,000 feet, will only be provided on a time and material basis as addressed in Section 9.2.2 above. On loops where CLEC has requested recommended conditioning not be performed, SWBT’s maintenance will be limited to verifying loop suitability for POTS. For loops having had partial or extensive conditioning performed at CLEC’s request, SWBT will verify continuity, the completion of all requested conditioning, and will repair at no charge to CLEC any defects which would be unacceptable for POTS and which do not result from the loop’s modified design. For loops under 12,000 feet, SWBT will remove load coils, repeaters and excessive bridge tap at no charge.

9.~~45~~ SWBT will provide CLECs access to its legacy Mechanized Loop Testing MLT system and its inherent testing functions. Prior to a CLEC utilizing MLT intrusive test scripts, the CLEC must have established data service on the HFPL at loop and have specifically informed the End-User~~customer~~ that service testing will interrupt both the data and voice telephone services served by that line. CLEC may not perform intrusive

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testing without having first obtained the express permission of the Eend-U
~~user customer~~ and the name of the person providing such permission.
CLEC shall make a note on the applicable screen space of the name of the
Eend-U~~user customer~~ providing permission for such testing before
initializing any intrusive test or so note such information on the CLEC's
trouble documentation for non-mechanized tests.

9.~~56~~ CLEC hereby agrees to assume any and all liability for any such intrusive
testing it performs, including the payment of all costs associated with any
damage, service interruption, or other telecommunications service
degradation or damage to SWBT facilities and hereby agrees to release,
defend and indemnify SWBT, and hold SWBT harmless, from any claims
for loss or damages, including but not limited to direct, indirect or
consequential damages, made against SWBT by an Eend-U~~user customer~~,
any telecommunications service provider or telecommunications user
relating to such testing by CLEC.

9.~~67~~ ~~The~~ CLEC shall not rearrange or modify the retail-POTS within its
equipment in any way without first coordinating with SWBT.

~~10.~~10. SPECTRUM MANAGEMENT

10.1 Spectrum management for HFPL shall be provided under the same terms
and conditions as set forth in the Attachment 25: xDSL-MO.

~~11.~~11. RESERVATION OF RIGHTS

11.1 In entering into this Appendix, neither Party waives, but instead expressly
reserves, all of its rights, remedies and arguments with respect to any orders, decisions,
legislation or proceedings and any remands thereof and any other federal or state
regulatory, legislative or judicial action(s), including, without limitation, its intervening
law rights relating to the following actions, which the Parties have not yet fully
incorporated into this Agreement or which may be the subject of further government
review: the D.C. Circuit's decision in United States Telecom Association, et. al v. FCC,
290 F.3d 415 (D.C. Cir. 2002); the FCC's Triennial Review Order, released on August
21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of
Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the
Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No.
96-98, Deployment of Wireline Services Offering Advanced Telecommunications
Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review

Appendix 1

Proceeding which the FCC announced, in its Triennial Review Order, is scheduled to commence in 2004; the FCC's Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188 in CC Docket No. 98-147, 13 FCC Rcd 24011 (rel. August 7, 1998); the FCC's First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 in CC Docket 98-147, 14 FCC Rcd 4761 (rel. March 31, 1999); the FCC's Supplemental Order Clarification, In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Third Report and Order on Reconsideration and Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and its Fourth Report and Order on Reconsideration and Sixth Further Notice of Proposed Rulemaking in CC Docket 96-98, 16 FCC Rcd 2101 (rel. Jan. 19, 2001) (collectively "Government Actions"). If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement including, without limitation, this Appendix and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement including, without limitation, this Appendix, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

12. PRICING

12.1 The rates applicable to the HFPL and the associated charges are set forth in the Pricing Schedule to the Agreement.

12.2 Notwithstanding anything to the contrary in this Agreement, the Parties understand and agree that nothing in this Agreement shall foreclose and/or otherwise affect SWBT's right to retroactive true-up and prospective change for any interim HFPL recurring rate of \$0.00 to which it may be entitled for the period prior to or following the effective date of this Agreement. Rather, in entering into this Agreement, SWBT reserves, and does not waive, any and all rights it may have to a retroactive true-up and to prospective change for the period prior to or following the effective date of this Agreement as to any interim HFPL recurring rate of \$0.00 ("Interim HFPL Rate"), or any other

interim rates which may be subject to adjustment prior to or following the effective date of this Agreement.

~~The Parties acknowledge and agree that the provision of the HFPL and the associated rates, terms and conditions set forth above are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). If any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory body or court of competent jurisdiction stays, modifies or otherwise affects any of the rates, terms and conditions herein, specifically including those arising with respect to Federal Communications Commission orders (whether from the Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188 (rel. August 7, 1998), in CC Docket No. 98-147, the FCC's First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), in CC Docket 98-147, the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC-99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket 96-98 (FCC 99-370) (rel. November 24, 1999) ("the UNE Remand Order"), or the FCC's 99-355 Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999), or any other proceeding, the Parties shall negotiate in good faith to arrive at an agreement on conforming modifications in this appendix. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or the provisions affected shall be handled under the Dispute Resolution procedures set forth in this Agreement. In the event that the FCC, a state regulatory agency or a court of competent jurisdiction, in any proceeding, based upon any action by any telecommunications carrier, finds, rules and/or otherwise orders ("orders") that any of the UNEs and/or UNE combinations provided for under this Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be invalidated, modified or stayed as required to immediately effectuate the subject order upon written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement on the modifications required to the Agreement to immediately effectuate such order.~~