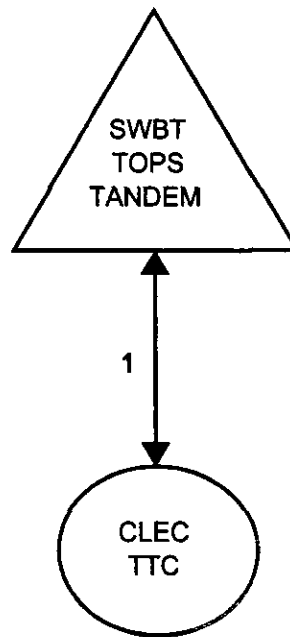


OPTION 2

**SINGLE RATE AREA - COMBINED SWBT LOCAL/ACCESS TANDEM
WHERE SWBT IS NOT THE OPERATOR SERVICES PROVIDER
FOR CLEC AND CLEC'S SWITCH IS THE DESIGNATED
OPERATOR SWITCH (TTC) FOR 121 INWARD ASSISTANCE**



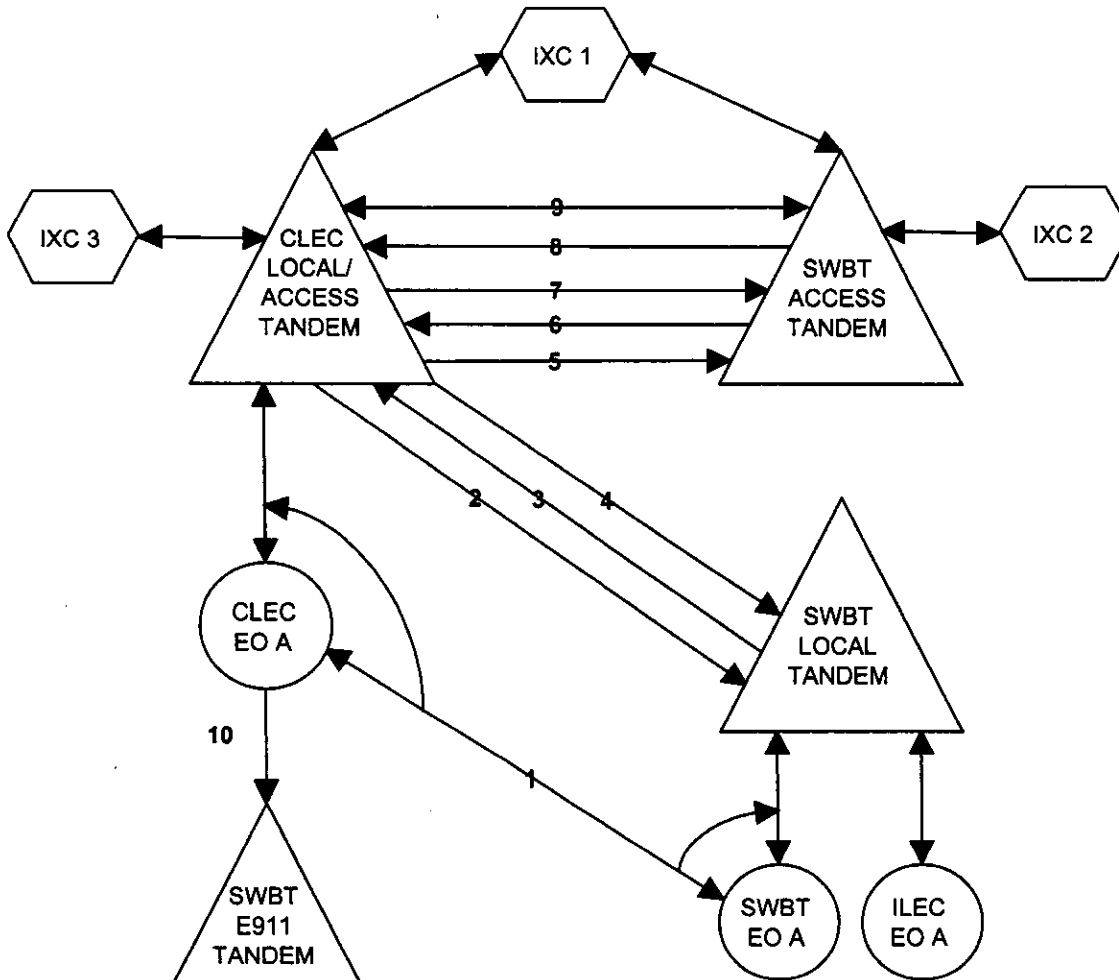
TRAFFIC USE/MODIFIER

1. OAJ

DESCRIPTION

ACCESS TO INWARD OPERATOR (121) (MF SIGNALING)

**SINGLE RATE AREA - SEPARATE SWBT LOCAL AND ACCESS TANDEM
INTERCONNECTED WITH CLEC LOCAL/ACCESS TANDEM (WITH SOME
DIRECT END OFFICE TRUNKING)**



TRAFFIC USE/MODIFIER	DESCRIPTION
1. TEJ	LOCAL, INTRALATA & INTERLATA(SS7 SIGNALING) -2-WAY
2. MTJ	LOCAL ONLY (SS7 SIGNALING)
3. MTJ	LOCAL ONLY (SS7 SIGNALING)
4. TOCRJ	MASS CALLING (MF SIGNALING)
5. DD800J	INTRALATA 800 (MAXMIZER 800)(SS7 SIGNALING)#
6. DD800J	INTRALATA/INTERLATA 800 (SS7 SIGNALING)%
7. ITJ	INTRALATA / INTERLATA(SS7 SIGNALING
8. ITJ	INTRALATA / INTERLATA(SS7 SIGNALING)
9. ITJ	INTRALATA / INTERLATA (SS7 SIGNALING)
10. ESJ	EMERGENCY SERVICE (MF SIGNALING)

Required if SWBT does not perform the database query for CLEC.

% Required if CLEC does not perform the database query for SWBT.

Note: This applies to situations where CLEC supplies separate trunks to LT & AT.
Where CLEC does not, CLEC will send to AT.

APPENDIX NETWORK INTERCONNECTION METHODS (NIM)

This Appendix NIM to Attachment 11: Network Interconnection Architecture designates Network Interconnection Methods (NIMs) to be used by the Parties. These include, but are not limited to: MidSpan Fiber Interconnection (MSFI); Virtual Collocation Interconnection; SONET Based Interconnection; Physical Collocation Interconnection; and leasing of SWBT facilities.

1.0 Mid-Span Fiber Interconnection (MSFI)

Mid-Span Fiber Interconnection (MSFI) between Southwestern Bell Telephone (SWBT) and CLEC can occur at any mutually agreeable, economically and technically feasible point between CLEC's premises and a SWBT tandem or end office. This interconnection will be on a point-to-point SONET system over single mode fiber optic cable.

MSFI may be used to provide interconnection trunking as defined in Appendix ITR to Attachment 11: Network Interconnection Architecture.

1.1 There are two basic mid-span interconnection designs:

1.1.1 Design One: CLEC's fiber cable and SWBT's fiber cable are connected at an economically and technically feasible point between the CLEC location and the last entrance manhole at the SWBT central office.

1.1.1.1 The Parties may agree to a location with access to an existing SWBT fiber termination panel. In these cases, the network interconnection point (POI) shall be designated outside of the SWBT building, even though the CLEC fiber may be physically terminated on a fiber termination panel inside of a SWBT building. In this instance, CLEC will not incur fiber termination charges and SWBT will be responsible for connecting the cable to the SWBT facility.

1.1.1.2 The Parties may agree to a location with access to an existing CLEC fiber termination panel. In these cases, the network interconnection point (POI) shall be designated outside of the CLEC building, even though the SWBT fiber may be physically terminated on a fiber termination panel inside of an CLEC building. In this instance, SWBT will not incur fiber termination charges and CLEC will be responsible for connecting the cable to the CLEC facility.

1.1.1.3 If a suitable location with an existing fiber termination panel cannot be agreed upon, CLEC and SWBT shall mutually determine provision of a fiber termination panel housed in an outside, above ground cabinet placed at the physical POI. Ownership and the cost of provisioning the panel will be negotiated between the two parties.

- 1.1.2 Design Two: CLEC will provide fiber cable to the last entrance manhole at the SWBT tandem or end office switch with which CLEC wishes to interconnect. CLEC will provide a sufficient length of fiber optic cable for SWBT to pull the fiber cable to the SWBT cable vault for termination on the SWBT Fiber Distribution Frame (FDF). In this case the POI shall be at the manhole location.
- 1.1.2.1 Each Party is responsible for designing, provisioning, ownership and maintenance of all equipment and facilities on its side of the POI. Each Party is free to select the manufacturer of its Fiber Optic Terminal (FOT). Neither Party will be allowed to access the Data Communication Channel (DCC) of the other Party's FOT.
- 1.2 The Parties will mutually agree upon the precise terms of each mid-span interconnection facility. These terms will cover the technical details of the interconnection as well as other network interconnection, provisioning and maintenance issues.
- 1.3 The CLEC location includes FOTs, multiplexing and fiber required to take the optical signal handoff from SWBT for interconnection trunking as outlined in Appendix ITR.
- 1.4 The fiber connection point may occur at several locations:
 - 1.4.1 a location with an existing SWBT fiber termination panel. In this situation, the POI shall be outside the SWBT building which houses the fiber termination panel;
 - 1.4.2 a location with access to an existing CLEC fiber termination panel. In these cases, the network interconnection point (POI) shall be designated outside of the CLEC building, even though the SWBT fiber may be physically terminated on a fiber termination panel inside of an CLEC building;
 - 1.4.3 a location with no existing SWBT fiber termination panel. In this situation, SWBT and CLEC will negotiate provisioning, maintenance and ownership of a fiber termination panel and above ground outside cabinet as a POI and for connection of the fiber cables;
 - 1.4.4 a manhole outside of the SWBT central office. In this situation, CLEC will provide sufficient fiber optic cable for SWBT to pull the cable into the SWBT cable vault for termination on the SWBT FDF. The POI will be at the manhole and SWBT will assume maintenance responsibility for the fiber cabling from the manhole to the FDF.
- 1.5 The SWBT tandem or end office switch includes all SWBT FOT, multiplexing and fiber required to take the optical signal hand-off provided from CLEC for interconnection trunking as outlined in Appendix ITR. This location is SWBT's responsibility to provision and maintain.
- 1.6 In both designs, CLEC and SWBT will mutually agree on the capacity of the FOT(s) to be utilized. The capacity will be based on equivalent DS1s that contain trunks and

interLATA traffic. Each Party will also agree upon the optical frequency and wavelength necessary to implement the interconnection. The Parties will develop and agree upon methods for the capacity planning and management for these facilities, terms and conditions for over-provisioning facilities, and the necessary processes to implement facilities as indicated below. These methods will meet quality standards as mutually agreed to by CLEC and SWBT.

2.0 Avoidance of Over-Provisioning

Underutilization is the inefficient deployment and use of the network due to forecasting a need for more capacity than actual usage requires and results in unnecessary costs for SONET systems. To avoid over-provisioning, the Parties will agree to joint facility growth planning as detailed below.

3.0 Joint Facility Growth Planning

3.1 The initial fiber optic system deployed for each interconnection shall be the smallest standard available. For SONET this is an OC-3 system. The following lists the criteria and processes needed to satisfy additional capacity requirements beyond the initial system.

3.2 Criteria:

3.2.1 Investment is to be minimized;

3.2.2 Facilities are to be deployed in a "just in time" fashion.

3.3 Processes:

3.3.1 discussions to provide relief to existing facilities will be triggered when either Party recognizes that the overall system facility (DS1s) is at 90% capacity;

3.3.2 both Parties will perform a joint validation to ensure current trunks have not been over-provisioned. If any trunk groups are over-provisioned, trunks will be turned down as appropriate. If any trunk resizing lowers the fill level of the system below 90%, the growth planning process will be suspended and will not be reinitiated until a 90% fill level is achieved. Trunk design blocking criteria described in Appendix ITR will be used in determining trunk group sizing requirements and forecasts;

3.3.3 if based on the forecasted equivalent DS1 growth, the existing fiber optic system is not projected to exhaust within one year, the Parties will suspend further relief planning on this interconnection until a date one year prior to the projected exhaust date. If growth patterns change during the suspension period, either Party may re-initiate the joint planning process;

- 3.3.4 if the placement of a minimum size FOT will not provide adequate augmentation capacity for the joint forecast over a two year period, and the forecast appears reasonable based upon history, the next larger system may be deployed. In the case of a SONET system, the OC-3 system could be upgraded to an OC-12. If the forecast does not justify a move to the next larger system, another minimal size system (such as on OC-3) could be placed. This criteria assumes both Parties have adequate fibers for either scenario. If adequate fibers do not exist, both Parties would negotiate placement of additional fibers;
- 3.3.5 both Parties will negotiate a project service date and corresponding work schedule to construct relief facilities in an effort to achieve "just in time" deployment;
- 3.3.6 the joint planning process/negotiations should be completed within two months of identification of 90% fill.

4.0 Virtual Collocation Interconnection

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

5.0 SONET-Based Interconnection

The description of SONET-Based Interconnection is contained in SWBT's SONET-Based Interconnection tariffs (i.e., SWBT's Tariff F.C.C. No. 73).

6.0 Physical Collocation Interconnection

The terms and conditions governing Physical Collocation Interconnection are contained in Appendix Collocation to Attachment 13: Ancillary Functions of this Agreement.

7.0 Leasing of SWBT's Facilities

CLEC's leasing of SWBT's facilities for purposes of Attachment 11: Network Interconnection Architecture will be subject to the mutual agreement of the Parties. CLEC will have the option to lease interconnection facilities at an amount equal to the rates found in Appendix Pricing UNE - Schedule of Prices.

8.0 Applicability

- 8.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to

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

APPENDIX SS7 INTERCONNECTION

1.0 Introduction

- 1.1 For the purposes of signaling for the exchange of traffic under this Agreement between the Parties' networks, within each LATA the Parties will connect their signaling networks in accordance with the technical terms of Section 9 of Attachment 6: Unbundled Network Elements.

2.0 Applicability

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

ATTACHMENT 12: COMPENSATION

1.0 Introduction

- 1.1 For purposes of compensation under this Agreement, the telecommunications traffic traded between CLEC and SWBT will be classified as either Local Traffic, Transit Traffic, IntraLATA Interexchange Traffic, InterLATA Interexchange Traffic, FGA Traffic, or Cellular Traffic. The compensation arrangement for terminating calls from a Cellular provider (as defined in Appendix Cellular) to CLEC or SWBT end users is set forth in Appendix Cellular, attached hereto and incorporated by reference. The compensation arrangement for the joint provision of Feature Group A (FGA) Services is covered in Appendix FGA, attached hereto and incorporated by reference. The Parties agree that, notwithstanding the classification of traffic under this Agreement, either Party is free to define its own "local" calling area(s) for purposes of its provision of telecommunications services to its end users. The provisions of this Attachment apply to calls originated over the originating carrier's facilities or, unless otherwise provided in this Agreement, over unbundled Network Elements. The provisions of this Attachment do not apply to traffic originated over services provided under local Resale services.
- 1.2 Calls originated by CLEC's end users and terminated to SWBT's end users (or vice versa) will be classified as "Local Traffic" under this Agreement if: (i) the call originates and terminates in the same SWBT exchange area; or (ii) originates and terminates within different SWBT Exchanges that share a common mandatory local calling area, e.g., mandatory Extended Area Service (EAS), or other like types of mandatory expanded local calling scopes; or (iii) originates and terminates within Metropolitan Calling Areas (MCA) that share either mandatory or optional calling scopes.
- 1.3 The Parties will notify each other of the date when the first commercial call is terminated in Missouri between SWBT and CLEC pursuant to this Section.

2.0 Responsibilities of the Parties

- 2.1 Each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the respective Parties involved.
- 2.2 Each Party will include in the information transmitted to the other for each call being terminated on the other's network (where available), the originating Calling Party Number (CPN).
- 2.3 The type of originating calling number transmitted depends on the protocol of the trunk signaling used for interconnection. Traditional toll protocol will be used with Multi-Frequency (MF) signaling, and Automatic Number Identification (ANI) will be sent

either from the originating Parties end office switch to the terminating Parties tandem or end office switch.

- 2.4 Where one Party is passing CPN but the other Party is not properly receiving information, the Parties will cooperatively work to correctly rate the traffic.

3.0 Reciprocal Compensation for Termination of Local Traffic

- 3.1 The compensation set forth below will apply to all Local Traffic as defined in Section 1.2 of this Attachment.

3.2 Applicability of Rates:

- 3.2.1 The rates, terms, conditions in this Section 3.0 apply only to the termination of Local Traffic, except as explicitly noted.
- 3.2.2 The Parties agree to compensate each other for the termination of Local Traffic on a minute of use (MOU) basis.

3.3 Rate Elements:

- 3.3.1 A Tandem Served rate element is applicable to Tandem Routed Local Traffic on a terminating local MOU basis and includes compensation for the following sub-elements:
- 3.3.1.1 Tandem Switching - compensation for the use of tandem switching functions.
- 3.3.1.2 Tandem Transport - compensation for the transmission facilities between the local tandem and the end offices subtending that tandem.
- 3.3.1.3 End Office Switching - compensation for the local end office switching and line termination functions necessary to complete the transmission.
- 3.3.2 An End Office Served rate element applies to direct-routed Local Traffic on a terminating local MOU basis and includes compensation for End Office Switching. This includes direct-routed Local Traffic that terminates to offices that have combined tandem and end office functions.

3.4 The following prices are for Local Interconnect :

	<u>Prices</u>
<u>Tandem Switching</u>	\$0.00151/MOU
<u>Tandem Common Transport</u>	
Facility Cost per Minute, per Mile:	
Zone 1	\$0.000002
Zone 2	\$0.000007
Zone 3	\$0.000015
Zone 4	\$0.000001
Interzone	\$0.000003
Cost per Minute of Use	
Zone 1	\$0.000190/MOU
Zone 2	\$0.000285/MOU
Zone 3	\$0.000302/MOU
Zone 4	\$0.000162/MOU
Interzone	\$0.000332/MOU
<u>End Office Switching</u>	
Zone 1	\$0.001988/MOU
Zone 2	\$0.002391/MOU
Zone 3	\$0.003444/MOU
Zone 4	\$0.002934/MOU

4.0 Reciprocal Compensation for the Termination of Transit Traffic

- 4.1 Transit Traffic (also known as Through-put) is a switching and transport function only, which allows one Party to send Local Traffic, as defined in Section 1.2, to a third party network through the other Party's tandem. Therefore, a Transit Traffic rate element applies to all MOUs between a Party and third party networks that transit the other Party's tandem switch. The originating Party is responsible for the appropriate rates unless otherwise specified. The following prices apply for the termination of transit traffic. The Transit Traffic rate element is only applicable when calls do not originate with (or terminate to) the transit Party's end user.

	<u>Price</u>
4.2 <u>Transit Traffic:</u>	
<u>Tandem Switching</u>	\$0.00151/MOU
<u>Tandem Common Transport</u>	
Facility Cost per Minute, per Mile:	
Zone 1	\$0.000002
Zone 2	\$0.000007
Zone 3	\$0.000015
Zone 4	\$0.000001
Interzone	\$0.000003
Cost per Minute of Use	
Zone 1	\$0.000190/MOU
Zone 2	\$0.000285/MOU
Zone 3	\$0.000302/MOU
Zone 4	\$0.000162/MOU
Interzone	\$0.000332/MOU

5.0 Reciprocal Compensation For Termination Of IntraLATA Interexchange Traffic

- 5.1 Except as otherwise provided in this Agreement, for intrastate intraLATA traffic compensation for termination of intercompany traffic will be at access rates as set forth in each Party's own applicable intrastate access tariffs. For mandatory extended area service (EAS), or other like types of mandatory expanded local calling scopes; or traffic that originates and terminates within Metropolitan Calling Areas (MCA) that share either mandatory or optional calling scopes, compensation will be applied pursuant to Section 1.2 above.
- 5.2 For intrastate interLATA interexchange service traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge, as set forth in each Party's intrastate access service tariff. For interstate intraLATA service, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party's interstate access service tariff.

6.0 Compensation for Origination and Termination of Switched Access Service Traffic to or from an Interexchange Carrier (IXC) (Meet-Point Billing (MPB) Arrangements)

- 6.1 For interLATA traffic and intraLATA traffic, compensation for termination of intercompany traffic will be at access rates as set forth in each Party's own applicable interstate or intrastate access tariffs.
- 6.2 The Parties will establish MPB arrangements in order to provide Switched Access Services to Interexchange Carriers via a Party's access tandem switch, in accordance with the MPB guidelines adopted by and contained in the Ordering and Billing Forum's MECOD and MECAB documents. Except as modified herein, MPB will be determined during joint network planning.
- 6.3 The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.
- 6.4 As detailed in the MECAB document, the Parties will exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Access Services jointly handled by the parties via the MPB arrangement. The Parties will exchange the information in Exchange Message Record (EMR) format, on magnetic tape or via a mutually acceptable electronic file transfer protocol. Where the EMR records cannot be transferred due to a failure of the Connect: Direct, records can be provided via magnetic tape, under the specifications contained in Attachment 4: Connectivity Billing and Recording. The initial billing company (IBC) will provide the information to the subsequent billing company within ten (10) working days of sending the IBC's bills.
- 6.5 Initially, billing to interexchange carriers for the Switched Access Services jointly provided by the parties via the MPB arrangement will be according to the multiple bill single tariff method. As described in the MECAB document each Party will render a bill in accordance with its tariff for its portion of the service. Each Party will bill its own network access service rates to the IXC. The residual interconnection charge (RIC), if any, will be billed by the Party providing the End Office function.
- 6.6 MPB will also apply to all jointly provided traffic bearing the 900, 800 and 888 NPAs or any other non-geographical NPAs which may likewise be designated for such traffic where the responsible party is an IXC.

7.0 Billing Arrangements for Compensation for Termination of IntraLATA, Local, Transit, and Optional Calling Area Traffic

- 7.1 The Parties agree to the measuring and billing procedures in Section 7.0 of this Attachment. In any circumstance not addressed in those Sections, or where the Parties are unable to agree upon a measurement and billing method, the Parties will report the Percentage Local Usage (PLU) to each other for the purposes of measurement and billing for Local Traffic as defined in Section 1.2. SWBT and CLEC will work together to determine the appropriate PLU method. If the audit process associated with the PLU method becomes problematic, the Parties will use the dispute resolution method set out in Section 9.4.2 of the General Terms and Conditions of this Agreement.
- 7.2 Other than for traffic described in Section 6 above, each Party will deliver monthly settlement statements for terminating the other Party's traffic based on a mutually agreed schedule as follows:
- 7.2.1 On a monthly basis, each Party will record its originating minutes of use including identification of the originating and terminating NXX for all intercompany calls.
- 7.2.2 Each Party will transmit the summarized originating minutes of use from Section 7.2.1 above to the transiting and/or terminating Party for subsequent monthly intercompany settlement billing.
- 7.2.3 Bills rendered by either Party will be paid within 30 days of receipt subject to subsequent audit verification.
- 7.2.4 Detailed technical descriptions and requirements for the recording, record exchange and billing of traffic are included in the Technical Exhibit Settlement Procedures (TESP), a copy of which has been provided to CLEC by SWBT.
- 7.3 MOUs for the rates contained in this Attachment will be measured in seconds by call type, and accumulated each billing period into one minute increments for billing purposes in accordance with industry rounding standards.
- 7.4 Each Party will multiply the tandem routed and end office routed terminating MOUs by the appropriate rate contained in this Attachment to determine the total monthly billing to the other Party.
- 7.5 Through March 31, 1998, if the percentage of calls passed with CPN is greater than ninety percent (90%), all calls exchanged without CPN information will be billed as either Local Traffic or IntraLATA Toll Traffic in direct proportion to the minutes of use (MOU) of calls exchanged with CPN information. Effective April 1, 1998, if the

percentage of calls passed with CPN is less than 90%, all calls passed without CPN will be billed as IntraLATA Toll Traffic.

8.0 Compensation for Terminating Cellular Traffic

- 8.1 Appendix Cellular sets forth the terms and conditions under which the Parties will distribute revenue from their joint provision of Wireless Interconnection Service for mobile to landline traffic terminating through the Parties' respective wireline switching networks within a LATA. If one Party enters into an interconnection agreement with a Commercial Mobile Radio Service (CMRS) provider, Appendix Cellular shall no longer be applicable between the Parties with respect to such CMRS providers, and the other Party shall be obligated within a reasonable length of time to enter into an agreement with such CMRS provider for the termination of wireless to landline traffic.
- 8.2 CLEC will pay the Local Transit Traffic rate to SWBT for calls that originate on CLEC's network and are sent to SWBT for termination to a CMRS Provider as long as such Traffic can be identified as wireless traffic. SWBT will pay the Local Transit Traffic rate to CLEC for such calls that originate on SWBT's network and are sent through CLEC for termination on a CMRS Provider's network. Each Party shall be responsible for interconnection agreements with CMRS providers for terminating compensation regarding traffic originating on the Party's network and terminating on the CMRS provider's network. The Parties agree to cooperate with each other regarding third party compensation issues.
- 8.3 When traffic is originated by either Party to a CMRS Provider, and the traffic cannot be specifically identified as wireless traffic for purposes of compensation between SWBT and CLEC, the traffic will be rated either as Local or Access and the appropriate compensation rates shall be paid by the originating Party to the transiting Party.

9.0 Interim Number Portability (INP)

- 9.1 The Parties agree that under INP, the net terminating compensation on calls to INP numbers will be received by each end user's chosen local service provider as if each call to the end user had been originally addressed by the caller to a telephone number bearing an NPA-NXX directly assigned to the end user's chosen local service provider. In order to accomplish this objective where INP is employed, the Parties will utilize the process set forth below in this Section (or other mutually developed and agreed to arrangement) whereby the net terminating compensation on calls subject to INP will be passed from the Party (the Performing Party) which performs the INP to the other Party (the Receiving Party) for whose end user the INP is provided.
- 9.2 The Parties will treat all ported calls as two separate call segments in the interLATA and intraLATA access billing and local interconnection settlement billing systems.

- 9.3 The Performing Party will quantify the total monthly terminating ported minutes of use to the Receiving Party for each end office of each Performing Party.
- 9.4 The Performing Party will quantify the total monthly interstate, intrastate, and local minutes of use in those Performing Party's end offices in accordance with Section 9.3 above in order to determine the jurisdictional percentages. The Receiving Party has the right to audit those percentages, not to exceed once per quarter. The Performing Party will provide the Receiving Party with detailed summary reporting on a total calling area basis each month.
- 9.5 Each month, using the percentages developed pursuant to Section 9.4 above, the Performing Party will calculate by end office the interstate and intrastate access adjustment amounts from the initial billing amounts under Section 9.2 for subsequent payment to the Receiving Party. This adjustment will be based on the Performing Party's interstate and intrastate access rates utilizing the applicable rate elements, i.e., carrier common line (CCL), residual interconnection charge (RIC), local switching (LS), local transport termination (LTT), and local transport facility (LTF).
- 9.6 Each month the Performing Party will calculate a local interconnection settlement billing credit related to the interstate and intrastate (non-local) ported calls from the initial billing amounts under Section 9.2. The billing credit for these non-local calls will be included with the calculation under Section 9.5 for subsequent reimbursement to the Performing Party on a net payment basis by the Receiving Party.

10.0 Applicability

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

network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

APPENDIX CELLULAR

This Appendix to Attachment 12: Compensation sets forth the terms and conditions under which the Parties will distribute revenue from their joint provision of Cellular Interconnection Service for calls terminating through the Parties' respective wireline switching networks within a Local Access and Transport Area (LATA). The Parties will be compensated under this Appendix only to the extent that they have not already been compensated under other tariffs, settlement agreements or contracts. This Appendix is subject to the terms and conditions of applicable tariffs.

1.0 Definitions

- 1.1 Cellular Interconnection Service - Origination and termination of calls between a Cellular Mobile Carrier's (CMC's) Mobile Telephone Switching Office (MTSO) through SWBT's or CLEC's point of switching for the interchange of traffic with the network
- 1.2 Cellular Geographic Service Area ("CGSA") - The geographic area within which the cellular carrier is authorized to provide service under a single license under Part 22 of the FCC Rules and Regulations.
- 1.3 Cellular Mobile Carrier ("CMC") - A radio common carrier provider of domestic public cellular telecommunication service, as defined in Part 22, Subpart K, of the FCC Rules and Regulations or any other CMRS provider as defined by the FCC's Rules and Regulations.
- 1.4 End Office - A SWBT or CLEC switching system where exchange service customer loops are terminated for the purpose of interconnection to each other and to the network.
- 1.5 End Office Rate Center - An end office selected by the CMC for rating or measuring purposes of type 2A cellular interconnection.
- 1.6 Local Access and Transport Area ("LATA") - A geographic area marking the boundaries beyond which a Bell Operating Company formerly could not carry telephone calls pursuant to the terms of the Modification of Final Judgment (MFJ), U.S. vs. American Tel. & Tel. Co., 552 F.Supp. 131 (D.D.C. 1983), affirmed sub nom. Maryland v. United States, 460 U.S. 1001 (1983).
- 1.7 Local Calling Area or Local Calling Scope - That area in which the message telephone exchange service between two or more end offices, without a toll charge, is provided.
- 1.8 Minutes of Use (MOU) - For the purposes of this Appendix, MOU means the Terminating Traffic as recorded by the Primary Company.

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- 1.9 Mobile Telephone Switching Office ("MTSO") - A CMC's switching equipment or terminal used to provide the CMC's switching services or, alternatively, any other point of termination designated by the CMC. The MTSO directly connects the CMC's customers within its CGSA to the Primary Company's facilities.
- 1.10 Primary Company - The Party that provides the End Office or Tandem Office where the CMC chooses to connect terminating traffic. The Primary Company also bills the CMC for Cellular Interconnection Service.
- 1.11 Revenues - Those monies the Primary Company bills and collects from the CMC for jointly provided Cellular Interconnection Service, using the Primary Company's applicable Cellular Interconnection Service tariffs or contracts.
- 1.12 Secondary Company - The Party that receives Terminating Traffic from the Primary Company.
- 1.13 Tandem Office - A Party's switching system that provides an intermediate switching point for traffic between end offices or the network.
- 1.14 Terminating Traffic - That traffic which is delivered by a CMC to the Primary Company for termination at a point on the intraLATA wireline switching network.

2.0 Administration of Revenue Distribution

- 2.1 The Primary Company will compute, bill, collect and distribute the revenue for jointly provided Cellular Interconnection Service for calls terminating within a LATA. On jointly provided Cellular Interconnection Service, the Primary Company will share the Local Transport (LT) Revenues as described below with the Secondary Company. The Primary Company will distribute applicable Local Switching (LS) and Carrier Common Line (CCL) charges which are collected from the CMC to the Secondary Company, as described below.
- 2.2 When SWBT is the Secondary Company, distribution of revenues will be computed using the rate elements as defined in SWBT's applicable cellular interconnection tariff.
- 2.3 When CLEC is the Secondary Company, distribution of revenues will be computed using the rate elements as defined in SWBT's applicable cellular interconnection tariff.
- 2.4 For Terminating Traffic, actual monthly cellular MOU for each office in the LATA will be measured by the Primary Company or provided to the Primary Company by the CMC in those cases where the Primary Company is unable to measure the actual terminating usage.

- 2.5 Each month, the amount of CCL and LS revenue (based on the rates in the Primary Company's applicable tariffs) due the Secondary Company from the Primary Company will be determined by totaling the actual terminating MOUs associated with each of the Secondary Company's end offices and multiplying those MOUs by the appropriate rates as set out above. The LT revenues due to the Secondary Company will be determined for each Secondary Company end office by multiplying the billed MOUs by the appropriate LT rate multiplied by the applicable end office percentage ownership of facilities listed in Exhibit A to this Appendix.
- 2.6 The Primary Company will prepare a revenue and usage statement on a monthly basis. Within 90 calendar days after the end of each billing period, except in cases of disputes, the Primary Company will remit the compensation amount due the Secondary Company. When more than one compensation amount is due, they may be combined into a single payment. No distribution will be made for the revenue the Primary Company is unable to collect.
- 2.7 The revenue and usage statement will contain the following information:
- 2.7.1 The number of MOU for each of the Secondary Company's end offices, the corresponding rate elements to be applied to the MOU for each end office, and the resulting revenues;
- 2.7.2 The total of the MOU and revenues for the Secondary Company;
- 2.7.3 The percent ownership factor used to calculate the distribution of Local Transport revenues; and,
- 2.7.4 Adjustments for uncollectibles.
- 2.8 The Parties agree that revenue distribution under this Appendix will apply as of the effective date of the Agreement. The Primary Company will start revenue distribution on usage within 60 calendar days from the date this Appendix is effective.
- 3.0 Termination Provisions**
- 3.1 This Appendix shall remain in effect until terminated by either Party upon a minimum of 30 calendar days written notice by such Party to the designated representative of the other.
- 3.2 This Appendix may be terminated by an order of an appropriate regulatory commissioner a court of competent jurisdiction.

4.0 Miscellaneous Provisions

- 4.1 Exhibit A to this Appendix is attached and incorporated into this Appendix by reference. From time to time, by written agreement of both parties, new Exhibits may be substituted for the attached Exhibit A, superseding and canceling the Exhibit A previously in effect.
- 4.2 Each party will, promptly upon request, furnish to the other such information as may reasonably be required to perform under this Appendix.

5.0 Applicability

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

EXHIBIT A TO APPENDIX CELLULAR

End Office Percent Ownership
of Local Transport Facilities

CLLI Code

NPA-NXX

% Ownership of
Transport Facilities

3/4/98

000422

APPENDIX FGA

This Appendix to Attachment 12: Compensation sets forth the terms and conditions under which the Parties will distribute revenue from the joint provision of Feature Group A (FGA) Switched Access Services.

These services will be provided within a Local Access and Transport Area (LATA) and/or an Extended Area Service (EAS) arrangement. The Primary Company will compensate the Secondary Company only to the extent that it has not already been compensated under its interstate or intrastate access service tariffs or other settlement/contract arrangements. This Appendix is subject to applicable tariffs.

1.0 Definitions

- 1.1 Local Access and Transport Area (LATA) means a pre-established geographic area encompassing one or more local exchange areas within which a Party may provide telecommunications services.
- 1.2 The term Extended Area Service (EAS) as used in this Appendix means the provision of message telephone exchange service between two or more local exchange service areas without a toll charge.
- 1.3 Subscriber Access Lines will mean a communication facility provided under a general and/or exchange service tariff extended from a customer premise to a central office switch which may be used to make and receive exchange service calls, intrastate toll service or interstate toll service calls.
- 1.4 Feature Group A Switched Access Service includes all facilities and services rendered in furnishing FGA access service, both in EAS and non-EAS (i.e., LATA wide terminations) areas, in accordance with the schedule or charges, regulations, terms and conditions stated in the interstate or intrastate access service tariffs of the Parties.
- 1.5 The Primary Company denotes the Party with the Primary office(s).
- 1.6 The Primary Office is an office which: (1) directly or jointly connects to an interexchange carrier and /or end user; and (2) provides joint FGA switched access service to that interexchange carrier and/or end user with other end offices.
- 1.7 The Secondary Company denotes the Party with the secondary office(s).

- 1.8 The Secondary Office is any office involved in providing joint FGA switched access to an Interexchange carrier and /or end user through the switching facilities of the Primary office.
- 1.9 Revenues under this Appendix are those FGA Switched Access amounts due the Primary and Secondary Companies under their applicable tariffs, less uncollectible revenues. Revenues for any other services are not included. Uncollectible revenues are those revenues the Primary Company is unable to collect, using its regular established collection procedures. The Primary Company may offset uncollectibles against current revenue distribution.
- 1.10 Access Minutes or Minutes of Use (MOUs) are those minutes of use as described in Part 69 of the Federal Communications Commission's Rules, and are limited to those FGA MOUs which originate and /or terminate in the Secondary Office(s) covered by this Appendix.
- 1.11 Currently Effective Tariff Rate means the approved tariff rate effective on the first day of the month for which compensation is being calculated.

2.0 Undertaking of the Parties

- 2.1 The Secondary Company will notify the Primary Company of all tariff rate revisions, affecting this Appendix which the FCC or other appropriate regulatory authority allows to take effect, at least 30 days in advance of their effective date. Revenue distribution will be based on the revised rates 45 days after the effective date of the tariff revisions. However, if the secondary Company fails to notify the Primary Company of a new rate within 30 days of its effective date, the Primary Company may delay implementation of the new rate until the next months revenue distribution cycle, and will not be required to adjust the previous bills retroactively.
- 2.2 Each Party will furnish to the other such information as may reasonably be required for the administration, computation and distribution of revenue, or otherwise to execute the provisions of this Appendix.

3.0 Administration of Revenue Distribution

The Primary Company will be responsible for the administration, computation and distribution of the FGA access service revenues collected on behalf of the Secondary Company.

4.0 Minutes of Use (MOUs) Development

- 4.1 The Parties will calculate the amount of FGA revenues due each Party, by determining the amount of FGA MOUs attributable to each Party as described below. The Primary Company will then multiply the MOUs by the rates in the Secondary Company's applicable tariff to determine the amounts tentatively due to the Secondary Company.

4.2 Terminating MOUs Development

- 4.2.1 Actual monthly premium (charged at equal access end office) and non-premium (charged at non-equal access end offices) terminating FGA access MOUs for each office in the LATA or a FGA access EAS area will be measured by the Primary Company.
- 4.2.2 Where the Primary Company cannot measure or identify the terminating FGA MOUs by end office, terminating MOUs will be total unmeasured MOUs allocated to the LATA. In this event, those MOUs will be distributed based upon the ratio of each Party's subscriber access lines, as identified in Exhibit B, which is attached hereto and made a part hereof, to the total subscriber access lines in the FGA access area as determined by the Primary Company.

4.3 Originating MOUs Development

- 4.3.1 The Primary Company will derive and distribute monthly originating FGA access MOUs, billed by the Primary Company, to each Secondary Company's end office in the EAS calling area, as identified in Exhibit A, which is attached hereto and made a part hereof, based upon a ration of each Party's subscriber access lines to the total subscriber access lines in the appropriate EAS area as determined by the Primary Company.
- 4.3.2 The parties recognize that since originating non-EAS calls to the FGA service area are rated and billed as intraLATA toll, such usage is assumed to be minimal. Therefore, originating FGA access MOUs will not be distributed to end offices outside an EAS calling area.

5.0 Calculation of Revenue Distribution

- 5.1 The amount of premium or non-premium revenues due each party each month will be equal to the sum of Originating and Terminating premium or non-premium revenue for each end office. These revenues will be calculated by the Primary Company by multiplying each of the Secondary Company's effective interstate and/or intrastate FGA switched access tariff rate elements (except the Local Transport element described below) by the appropriate MOU calculation under Sections 4.2.1 and 4.2.2.

- 5.2 Local Transport (or its equivalent under the Secondary Company's tariff and called Transport in this agreement) compensation will be determined for each company by multiplying each of the Secondary Company's Transport rates by the appropriate MOUs (as calculated under Sections 4.2.1 and 4.2.2.) by the Secondary Company's percentage ownership of facilities agreed on by the Parties and set out in Exhibit B, which is attached hereto and made a part hereof.

6.0 Revenue Distribution Amounts, Monthly Statements And Payments

- 6.1 The Primary Company each month will calculate and prepare a monthly compensation statement reflecting the revenue distribution amounts for FGA, both EAS and non-EAS, access service due the Secondary Company.
- 6.2 The monthly compensation statement will show, for each Secondary Office, separately:
- 6.2.1 The total number of non-premium or premium terminating MOUs and revenue.
- 6.2.2 The total number on non-premium or premium originating MOUs and revenues.
- 6.2.3 The total compensation due the Secondary Company, by rate element.
- 6.2.4 The number of terminating MOUs recorded by the Primary Company.
- 6.2.5 The number of originating MOUs estimated by the Primary Company pursuant to Section
- 6.2.6 The number of access lines used to prorate originating usage pursuant to Section 4.2.1 and 4.2.2.
- 6.2.7 The percent ownership factor, if any, used to prorate Local Transport revenues.
- 6.2.8 Adjustments for uncollectibles.
- 6.3 Within 60 Calendar days after the end of each billing period, the Primary Company will remit the compensation amount due the Secondary Company. Where more than one compensation amount is due, they may be combined into a single payment.

7.0 Miscellaneous Provisions

- 7.1 This Appendix will remain in effect until terminated by thirty (30) calendar days notice by either Party to the other.

8.0 Applicability

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

EXHIBIT A

EAS Locations for Originating and Terminating

Feature Group A Access Service

Primary Office Company		Secondary Office Company		
CLLI CODE	NPA-NXX	CLLI CODE	NPA-NXX	ACCESS
LINE				

EXHIBIT B

Location for LATA Wide Termination
of Feature Group A Access Service in
Non-EAS Calling Areas

SECONDARY OFFICE COMPANY

CLLI CODE	NPA-NXX	Access Line	% Ownership of Transport Facilities	LATA
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ATTACHMENT 13: ANCILLARY FUNCTIONS

1.0 Introduction

- 1.1 This Attachment 13: Ancillary Functions, and its Appendices set forth the Ancillary Functions that SWBT agrees to offer to CLEC under this Agreement, and the requirements associated therewith. SWBT will offer these Ancillary Functions to CLEC on rates, terms and conditions that are just, reasonable, and non-discriminatory and in accordance with the terms and conditions of this Agreement.

2.0 Collocation

- 2.1 Certain provisions applicable to the Parties' rights and obligations pertaining to physical collocation are set forth in Appendix Collocation, attached hereto.

3.0 Rights of Way (ROW), Conduits and Pole Attachments

- 3.1 The provisions concerning CLEC's access to and use of space on or within a pole, duct, conduit, or right-of-way owned or controlled by SWBT are set forth in Appendix Poles, Conduits, and Rights-Of-Way, attached hereto.

4.0 Applicability

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

customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

APPENDIX COLLOCATION

This Appendix Collocation to Attachment 13: Ancillary Functions, sets forth terms and conditions applicable to the Parties' rights and obligations pertaining to physical collocation.

1.0 Introduction

- 1.1 SWBT is an incumbent local exchange carrier having a statutory duty to provide for "physical collocation" of "equipment necessary for interconnection or access to unbundled network elements" at its Eligible Structures. 47 U.S.C. 251(c)(6).
- 1.2 CLEC wishes to locate certain of its equipment within the Eligible Structures of SWBT (as defined herein) and thereby connect with SWBT and with other Local Service Providers (as specified in Section 10.6 below).
- 1.3 This Appendix will govern CLEC's collocation of its equipment within SWBT's Eligible Structures, subject also to the provisions of the Agreement to which this Appendix is included.

2.0 Allocation of Collocated Space within Eligible Structures

- 2.1 "Eligible Structures," as used herein, include all SWBT central offices, tandem offices and serving wire centers and all buildings and similar structures owned or leased by SWBT that house SWBT network facilities and, all structures that house SWBT facilities on public or private rights-of-way, controlled environmental vaults (CEVs), huts, and cabinets.
- 2.2 Space within an Eligible Structure containing any CLEC collocated equipment is referred to herein as "Collocated Space."
- 2.3 Subject to this Appendix, SWBT grants to CLEC access to and use of Collocated Space within its Eligible Structures.
- 2.4 SWBT may retain a limited amount of floor space for defined future uses within its eligible structures. SWBT will allocate other space within its Eligible Structures on a nondiscriminatory, "first-come, first-served" basis among itself, CLEC, and other collocators, provided that there is space and power available for collocation and for reasonable security arrangements and subject to any other limitations provided by law.
- 2.5 The determination whether there is insufficient space to accommodate physical collocation at a particular Eligible Structure will be made initially by SWBT. If CLEC disputes SWBT's determination, CLEC can elect a review to be made by a third-party engineer, under a nondisclosure agreement. Both parties will agree upon the selection of an engineer the cost of which would be shared equally by both parties. The engineer selected will take into

consideration SWBT's specific requirements of the eligible structure under review.

- 2.6 Subject to Sections 2.4 and 2.5 above, SWBT will make contiguous space available in response to an CLEC request to expand existing Collocated Space.
- 2.7 SWBT will provide CLEC with virtual collocation rather than physical collocation under the following circumstances:
 - 2.7.1 When sufficient space is not available for physical collocation at a particular Eligible Structure as determined under Section 2.5, SWBT will not deny virtual collocation for a particular Eligible Structure to CLEC, unless virtual collocation is not technically feasible.
 - 2.7.2 Upon request from CLEC, so long as technically feasible and space is available, SWBT will provide CLEC with virtual collocation pursuant to applicable tariffs.

3.0 Application for Collocated Space.

- 3.1 To apply for a particular Collocated Space within SWBT's Eligible Structures, CLEC will provide to SWBT a completed "Physical Collocation Application Form" (Rev. 11/19/96 or as subsequently modified) and will pay to SWBT an "Engineering Design Charge" ("EDC"). The Physical Collocation Application Form will contain a list of all forecasted equipment and facilities to be placed within the Collocated Space, with the associated power requirements, floor loading, and heat release of all pieces of forecasted equipment and facilities, as specified further in Section 10.2 below. The Engineering Design Charge will be specified in SWBT's current technical publication for physical collocation.
- 3.2 Upon receipt of CLEC's application for Collocated Space, SWBT will begin to prepare a price quotation for the Collocated Space. SWBT will provide CLEC with the price quotation within thirty-five (35) business days of receipt of CLEC's Physical Collocation Application Form and Engineering Design Charge. When sufficient space is not available for physical collocation at a particular Eligible Structure as determined under Section 2.5, SWBT will refund the unused portion of the Engineering Design Charge to CLEC within thirty-five (35) business days of that determination.
- 3.3 SWBT's price quotation will consist of a "Preparation Charge," "Monthly Charge," and "Completion Interval."
 - 3.3.1 The Preparation Charge will represent a one-time charge for SWBT's preparation of the Collocated Space and related modifications to the Eligible Structure. The Preparation Charge will consist of two Components: (i) the charge to CLEC associated with modifying the Eligible Structure to provide physical collocation ("Common Charge"), as set forth in Section 4.3.1, and (ii) the charge associated with preparing the Collocated Space ("Collocated Space Charge").

SWBT will quote the portion of the Preparation Charge that consists of charges for subcontracted work ("Subcontractor Charges").

- 3.3.2 The Monthly Charge will consist of, the monthly charges for floor space, power usage, maintenance, administration, and taxes for equipment charged by SWBT to CLEC for use of the Collocated Space. Additional monthly charges may be added to this list upon approval of the state commission at the time the ICB is submitted for approval.
- 3.3.3 The Completion Interval will consist of SWBT's estimate of the amount of time required for it to prepare the Collocated Space to comply with CLEC's collocation application.
- 3.4 SWBT's price quotation will be calculated using an actual cost methodology for nonrecurring charges and a Missouri PSC approved forward-looking costing methodology for recurring charges. SWBT's price quotation will be sufficient to cover SWBT's reasonable costs and will be no greater than necessary for SWBT to earn a reasonable profit. CLEC will have 65 calendar days to accept or reject the price quotation. Upon acceptance, CLEC may ask the State Commission to review any of SWBT's charges for conformity with the above standards. However, CLEC remains committed to occupy the space regardless of the Commission's decision concerning pricing.
- 3.5 Prior to any obligation for CLEC to accept or reject SWBT's price quotation, SWBT will permit CLEC to inspect the Collocated Space to determine its suitability for CLEC's intended uses. Such inspection shall be made with a SWBT employee escort, the cost of which will be billed to CLEC at SWBT's then current loaded labor rate for a first level management employee. Subject to an appropriate non-disclosure agreement, SWBT will permit CLEC to review the construction plans as they exist at that time and to inspect supporting documents for the Preparation Charge, including the Common Charge (if CLEC is the first entity to which SWBT provides physical collocation in an Eligible Structure), the Collocated Space Charge, and any Custom Work charge. During this review, CLEC may request changes to the plans for the Collocated Space and to the extent possible, SWBT will incorporate the changes into the construction plans and the associated charges.
- 3.6 SWBT's price quotation will constitute a firm offer that CLEC may accept in writing within sixty-five (65) days of CLEC's receipt of the price quotation, subject only to the true-up procedure specified in Section 5.8 below. SWBT will not reserve the Collocated Space for CLEC during this sixty-five day period. If CLEC does not accept the price quotation in writing within sixty-five (65) days of CLEC's receipt of the price quotation, the price quotation will be automatically rescinded. Within thirty business days following acceptance, payment will be made pursuant to paragraphs 4.2 and 4.3. Failure to make such payment will be deemed a withdrawal of CLEC's acceptance.

- 3.7 CLEC may better SWBT's, quoted Collocated Space Charge, or quoted Completion Interval for the collocated space by subcontracting the preparation of the Collocated Space with contractors approved by SWBT. SWBT's approval of contractors will be based on the same criteria that it uses in approving contractors for its own purposes, which approval will not be unreasonably withheld. CLEC will be responsible for the cost of its own contractors; SWBT will adjust the Preparation Charge to account for CLEC's provision of its own contractors.
- 3.8 If CLEC accepts SWBT's price quotation for a particular Collocated Space, the Parties will submit for regulatory approval whatever documentation is required by the State Commission for the State Commission's approval of the Parties' collocation arrangement. The Parties will cooperate to file the necessary documentation as soon as practicable. If the Commission fails to give unqualified approval to the Parties' collocation arrangement, then SWBT's price quotation, and CLEC's acceptance thereof, will be automatically rescinded unless otherwise agreed to by SWBT and CLEC.

4.0 Preparation of the Collocated Space.

- 4.1 SWBT agrees, at CLEC's sole cost and expense as set forth herein, to prepare the Collocated Space in accordance with working drawings and specifications prepared by SWBT. The preparation will be arranged by SWBT in compliance with all applicable codes, ordinances, resolutions, regulations and laws. Only after CLEC has made the initial payments required by Sections 4.2 and 4.3 and regulatory approval is obtained in accordance with Section 3.8 hereof (unless CLEC chooses to invoke the procedure specified in Section 4.4 below), SWBT will pursue diligently the preparation of the Collocated Space for use by CLEC.
- 4.2 Prior to any obligation on SWBT to start any preparation of the Collocated Space, CLEC will pay SWBT fifty percent (50%) of the Collocated Space Charge and eighty-five percent (85%) of any custom work charge required to create or vacate any entrance facility for CLEC ("Custom Work"). The remainder of the Collocated Space Charge and any Custom Work charge are due upon completion and prior to occupancy by CLEC.
- 4.3 In addition and prior to any obligation on SWBT to start any preparation of the Eligible Structure for physical collocation, CLEC will pay SWBT fifty percent (50%) of the Common Charge, as described in Section 4.3.1 below. The other fifty percent (50%) of the Common Charge is due upon completion and prior to occupancy by CLEC.
- 4.3.1 The first entity to which SWBT provides physical collocation in an Eligible Structure will be responsible for all costs incurred by SWBT associated with the preparation of that Eligible Structure to provide physical collocation in the initial space where physical collocation is to be located ("Initial Common Charge"). The next three subsequent collocators that share such common elements as, but not limited to, HVAC systems, electrical power panels, conduits, and security systems, at the same Eligible Structure will pay a "Common Charge" equal to the

Initial Common Charge multiplied by a fraction, the numerator of which is one and the denominator of which is the total number of collocators in the same Eligible Structure. Each time additional collocator(s) use(s) physical collocation in the same Eligible Structure, within thirty-six (36) months of the first billing date of the initial monthly charge for the physical collocator in that Eligible Structure, each previous collocator will receive a prorated refund of its previously paid Initial Common Charge or Common Charge. The prorated refund to each previous collocator will consist of the Common Charge paid by the most recent collocator (the one who, in a particular instance, will not receive a refund) divided by the total number of previous collocators, using the following schedule:

<u>Collocator(s)</u>	<u>Common Charge</u>	<u>Prorated Refund to Previous Collocator(s)</u>
1 st	100%	N/A
2 nd	50%	50%
3 rd	33 1/3%	16 2/3%
4 th	25%	8 1/3%
5 th and beyond	0%	0%

No interest will be paid on refunds. Refunds shall be based on the Initial Common Charge actually paid by the first physical collocator instead of the price quotation.

- 4.3.2 Notwithstanding the above, SWBT will have no obligation to remit any amount that would result in SWBT being unable to retain the full amount of the Initial Common Charge or to remit any amount based upon charges not actually collected.
- 4.4 At the written election of CLEC, and upon payment of the sums described above in Sections 4.2 and 4.3, SWBT will begin preparing the Collocated Space for CLEC prior to receiving the regulatory approval required by Section 3.8 above. Payment to SWBT of the remaining charges under these sections shall be due upon completion. If the Commission fails to give unqualified approval to the Parties' collocation arrangement as required by Section 3.8, and the Parties do not otherwise agree to continue the collocation arrangement for the Collocated Space, CLEC will pay to SWBT, within a reasonable time after the Commission's decision, an amount equal to SWBT's Non-recoverable costs less net salvage and less the amount already paid to SWBT. Non-recoverable charges include, the non-recoverable cost of equipment and material ordered, provided, or used; trued-up Subcontractor Charges, the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided, or used; labor, transportation and any associated costs. If the amounts already paid to SWBT plus the net salvage exceed SWBT's non-recoverable costs, SWBT will refund to CLEC the excess amount within a reasonable time after the Commission's decision.

- 4.5 SWBT will provide costs for the preparation of the collocated space. SWBT will allow CLEC to evaluate those costs and make a decision as to whether CLEC wishes to obtain their own contractor for the preparation of the collocated space.
- 4.6 SWBT will contract for or perform the preparation of the working drawings and specifications for the modification of the Eligible Structure and the preparation of the Collocated Space. Prior to SWBT commencing any construction or preparation activities on the collocated space, SWBT will provide copies of the working drawings and specifications to CLEC, and CLEC must approve these working drawings and specifications within seven days of receipt. Upon CLEC's request, SWBT will modify the working drawings and specifications in accord with CLEC's requested alterations. SWBT will provide copies of the modified working drawings and specifications to CLEC and CLEC must approve these modified working drawings and specifications within seven days of receipt. The Completion Interval will be abated between SWBT's provision of the working drawings and specifications to CLEC and CLEC's approval of those working drawings and specifications.
- 4.7 CLEC may better SWBT's bids by subcontracting the preparation of the Collocated Space with contractors approved by SWBT. SWBT's approval of contractors will be based on the same criteria that it uses in approving contractors for its own purposes, which approval will not be unreasonably withheld. CLEC will be responsible for the cost of its own contractors; SWBT will adjust the Preparation Charge to account for CLEC's provision of its own contractors.
- 4.8 Except for construction and preparation activities performed by CLEC's own contractors, SWBT or SWBT's subcontractors will perform the construction and preparation activities underlying the Preparation Charge, including the Common Charge, the Collocated Space Charge, and the Subcontractor Charges, and any Custom Work charges, using same or consistent practices that are used by SWBT for other construction and preparation work performed in the Eligible Structure.
- 4.9 SWBT will provide to CLEC ordinary construction documentation submitted to and received from contractors or its internal engineering or installation work force, including but not limited to as-built drawings, for any work related to construction of the Collocated Space.
- 4.10 SWBT will permit CLEC to inspect the ongoing preparation of the Collocated Space at regular intervals. At a minimum, SWBT will permit CLEC to inspect the Collocated Space when construction is approximately 25% completed, when construction is approximately 50% completed, and when construction is approximately 75% completed. During such inspections, CLEC shall be escorted by a SWBT employee to be charged to CLEC at the loaded labor rate of a first line management employee. Should CLEC's inspections reveal that SWBT or

SWBT's subcontractors have deviated from the approved working drawings and specifications in the construction of the Collocated Space, SWBT will correct those deviations as soon as reasonably practicable.

- 4.11 SWBT will notify CLEC when construction of the Collocated Space is 50% completed. SWBT will confirm its Completion Interval, if possible; otherwise SWBT will notify CLEC of all jeopardies that could delay the preparation of the Collocated Space .
- 4.12 SWBT will exercise due diligence to prepare the Collocated Space in a reasonable time period, not to exceed three months from CLEC's acceptance of SWBT's price quotation, unless otherwise mutually agreed to in writing by CLEC and SWBT. In the event that SWBT is not able to prepare the Collocated Space within the quoted Completion Interval, SWBT will provide CLEC with a revised Completion Interval within seven (7) working days after SWBT ascertains that the original Completion Interval cannot be met. If the revised Completion Interval is objectionable to CLEC, and the parties cannot resolve CLEC's objection, the issue may be presented to the State Commission for review. Alternatively, if the revised Completion Interval is objectionable to CLEC, CLEC may individually subcontract the further preparation of the Collocated Space with contractors approved by SWBT. SWBT's approval of contractors will be based on the same criteria that it uses in approving contractors for its own purposes, which approval will not be unreasonably withheld. CLEC will be responsible for the cost of its own contractors; SWBT will, however, reduce the Preparation Charge by CLEC's cost of providing its own contractors.
- 4.13 If SWBT is not able to prepare the Collocated Space within the quoted Completion Interval, SWBT will be liable to CLEC for liquidated damages in the amount of \$1,000.00 for each day between the expiration of the quoted Completion Interval and the completion of the Collocated Space. This provision is subject to the Force Majeure clause in Paragraph 13 of the General Terms and Conditions of this Agreement.
- 4.14 SWBT will notify CLEC within five (5) days after preparation is complete that preparation of the Collocated Space has been completed.

5.0 Occupancy of the Collocated Space

- 5.1 The "Commencement Date" for a particular Collocated Space shall be the first day after which CLEC has been notified that the Collocated Space is complete.
- 5.2 On or after the Commencement Date, CLEC will be permitted to access the Collocated Space and Eligible Structure for the limited purpose of inspecting the collocation space. At CLEC's request and at SWBT's expense, SWBT will correct all errors in SWBT's preparation of the Collocated Space as soon as reasonably practicable. After CLEC has approved both SWBT's

preparation of the Collocated Space, and paid all applicable charges in accordance with paragraph 4.3, CLEC may occupy the Collocated Space.

- 5.3 SWBT will provide a drawing that details the layout of a POTS frame provided by SWBT, if any, at the time of completion of the collocated space.
- 5.4 SWBT will provide CLEC, at the time of the price quotation, sufficient detailed information that will enable CLEC to determine the amount of cable required to reach from the SWBT designated manhole to CLEC's collocated space within the Eligible Structure.
- 5.5 Unless there are unusual circumstances, CLEC must place telecommunications equipment in the Collocated Space within sixty (60) days after CLEC is permitted to occupy the Collocated Space under Sections 5.1 and 5.2 above, provided, however, that this sixty (60) day period will not begin until the ICB is approved by the Commission. If CLEC fails to comply with this requirement, SWBT may offer the Collocated Space to another collocater provided, however, that SWBT may extend an additional ninety (90) days to CLEC upon a demonstration by CLEC that it exercised its best effort to comply with this requirement and that circumstances beyond CLEC's reasonable control that prevented CLEC from complying with this requirement.
- 5.6 Beginning on the first date of occupancy of the Collocated Space, CLEC will pay the Monthly Charge to SWBT for each month that CLEC occupies the Collocated Space. The Monthly Charge may be increased upon thirty (30) days' notice by SWBT.
- 5.7 In the event that CLEC cancels a request for Collocated Space or fails to occupy a Collocated Space in the time provided under Section 5.5 above, then in addition to any other remedies that SWBT might have, CLEC will owe to SWBT its reasonable non-recoverable costs less estimated net salvage and less the amounts already paid to SWBT. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; trued-up Subcontractor Charges, the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs. If the amounts already paid to SWBT plus the estimated net salvage exceed SWBT's reasonable nonrecoverable costs, SWBT will refund to CLEC the excess amount within thirty (30) days of the cancellation of the request. SWBT will provide to CLEC's third party accounting firm under a nondisclosure agreement a detailed invoice itemizing its non-recoverable costs.
- 5.8 Within one hundred twenty (120) days of the completion date of the Collocated Space, SWBT will perform a true-up of all Subcontractor Charges using the actual amounts billed by subcontractors. Any amounts incurred above the Subcontractor Charges will be billed to CLEC or, alternatively, any amount below such Charges will be remitted to CLEC.

6.0 Billing and Payment of Collocation Charges.

- 6.1 Billing shall occur on or about the 25th day of each month with payment due thirty (30) days from the bill date. Payment of a bill does not waive CLEC's right to dispute the charges contained therein.
- 6.2 Charges for interconnection shall be as set forth in any interconnection agreement between SWBT and CLEC and in any applicable tariffs.

7.0 Relocation of Collocated Space

- 7.1 Notwithstanding Section 2.3 above, in the event that SWBT determines it necessary for the Collocated Space to be moved within an Eligible Structure or to another Eligible Structure, CLEC is required to do so. In such an event, CLEC shall be responsible for the preparation of the new Collocated Space at the new location if such relocation arises from circumstances beyond the reasonable control of SWBT, including condemnation or government order or regulation that makes the continued occupancy of the Eligible Structure uneconomical or when an unsafe or hazardous condition makes abandonment of a central office necessary. Otherwise SWBT shall be responsible for any such preparation and will bear all SWBT and CLEC costs associated with the preparation and relocation. If Collocated Space is relocated under this Section 7.1, SWBT and CLEC will cooperate to insure that CLEC will not experience out of service conditions beyond reasonable cut-over intervals while collocated equipment is relocated, reconnected, and tested. SWBT will not be required to maintain a building strictly for the purposes of providing collocation.
- 7.2 In the event that CLEC requests that the Collocated Space be moved within an Eligible Structure or to another Eligible Structure, SWBT shall permit CLEC to relocate the Collocated Space, subject to the availability of space. CLEC shall be responsible for all applicable charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new Collocated Space and the new Eligible Structure as applicable.

8.0 Fiber Optic Cable and Demarcation Point.

- 8.1 CLEC may use single mode dielectric fiber optic cable as a transmission medium, or other technically-appropriate media as may be approved by SWBT. Said approval shall not be unreasonably withheld. CLEC may use copper cable or coaxial cable only where CLEC can demonstrate that interconnection of copper or coaxial cable will not impair SWBT's ability to serve its own customers or other collocators. CLEC may use microwave transmission facilities as a transmission medium to the Eligible Structure where Collocated Space is located, except where microwave transmission facilities are not practical for technical reasons or because of space limitations. SWBT will provide at least two separate points of entry to the Eligible Structure wherever there are at least two entry points for SWBT's cable facilities and at which

space is available for new facilities in at least two of those entry points. Where such space is not immediately available, if SWBT makes additional entry points available for SWBT's use, SWBT will size such separate points of entry to accommodate CLEC's use of such entry points. In each instance, where SWBT performs such work in order to accommodate its own needs and those specified by CLEC's written request, CLEC and SWBT will share the costs of sizing the entry points incurred by SWBT by prorating those costs using the number of cables to be placed in the entry point by each of the two parties in the first twelve (12) months thereafter.

- 8.2 CLEC and SWBT agree that the demarcation point between SWBT's network and CLEC's network for interconnection and access to unbundled network elements will be within CLEC's Collocated Space (e.g., point-of-termination frame) unless determined otherwise by CLEC and SWBT. Both CLEC and SWBT are responsible for equipment maintenance and other ownership obligations and responsibilities on their side of that demarcation point.

9.0 Technical Requirements

- 9.1 Other than reasonable security restrictions, SWBT will place no restriction on access to the CLEC Collocated Space by CLEC's employees and designated agents. Such space will be available to CLEC employees and designated agents twenty-four (24) hours per day each day of the week.
- 9.2 Subject to the other provisions hereof, CLEC may collocate the amount and type of telecommunications equipment necessary in its Collocated Space for access to SWBT's unbundled network elements and for interconnection to SWBT and, subject to Section 10.6 hereof, other collocators. All CLEC equipment placed in the Collocated Space will conform to the equipment standards set forth in this Agreement and be operated in a manner not inconsistent with SWBT's network. Except as provided herein or as otherwise agreed in writing by the Parties, CLEC shall only collocate and use equipment as allowed by applicable law. Where space permits and for the purposes set forth in this Section 9.3, SWBT shall allow CLEC to locate remote switching module equipment in the Collocated Space if the Collocated Space is within a SWBT central office or tandem office; provided, however, that SWBT shall have no requirement to provide remote switching module equipment on a virtual collocation basis. No power-generating or external power-storage equipment, but in no event lead acid batteries, shall be placed in the Collocated Space. The point of termination (POT) bay will be located inside the caged area, equipped and cabled as requested by CLEC to minimize cable additions on an ongoing basis.
- 9.3 Subject to the other provisions hereof, including Section 11.1, CLEC may select its own vendors for all required engineering and installation services associated with its collocated equipment. SWBT will not require CLEC to use SWBT's internal engineering or installation work forces for the engineering and installation of CLEC's collocated equipment.

- 9.4 SWBT will provide adequate lighting, ventilation, power, heat, air conditioning, and other environmental conditions for CLEC's space and equipment using the same standards that SWBT uses for those elements for its own similar space and equipment, or using other standards to which CLEC and SWBT may agree in writing.
- 9.5 Where security will permit, and where available, SWBT will provide access to eyewash stations, shower stations, bathrooms, and drinking water within the Eligible Structure. Whenever possible, SWBT will design Collocated Space to allow for such access on a twenty-four (24) hour per day, seven (7) day per week basis.
- 9.6 SWBT will provide transmission and power cabling diversity to the Collocated Space under the same guidelines then used for diversity cabling for SWBT within the Eligible Structure. On a custom work order basis, SWBT will consider CLEC's special cabling needs and will implement them where possible.
- 9.7 SWBT will notify CLEC prior to the scheduled start dates of all construction activities (including power additions or modifications) in the general area of CLEC's Collocated Space with potential to disrupt CLEC's services. If possible, SWBT will provide such notification to CLEC at least fourteen (14) days before the scheduled start date of such construction activity. SWBT will inform CLEC as soon as practicable by telephone of all emergency-related activities that SWBT or its subcontractors are performing in the general area of the CLEC Collocated Space, or in the general area of the AC and DC power plants which support CLEC equipment. If possible, notification of any emergency-related activity will be made immediately prior to the start of the activity so that CLEC may take reasonable actions necessary to protect CLEC's Collocated Space.
- 9.8 SWBT will comply with all federal and state laws regarding environmental, health and safety issues as applicable to SWBT. SWBT is required to provide CLEC a copy of any environmental, health and safety questionnaires that SWBT has previously completed or is required to complete in the future for its own purposes.

10.0 Use of Collocated Space

- 10.1 The Collocated Space is to be used by CLEC for access to SWBT's unbundled network elements and for interconnection to SWBT and, subject to Section 10.6 hereof, other collocators. Consistent with the nature and the environment of the Eligible Structure and Collocated Space, CLEC shall not use the Collocated Space for office, retail, or sales purposes. No signage or markings of any kind by CLEC shall be permitted on the Eligible Structure or on the SWBT grounds surrounding the Eligible Structure. CLEC may, however, place signage and markings on the inside of its Collocated Space.

- 10.2 CLEC will list all of its equipment and facilities that will be placed within the Collocated Space, with the associated power requirements, floor loading, and heat release of each piece on the "Physical Collocation Application Form." CLEC warrants that this list is complete and accurate. Any incompleteness or inaccuracy may be a material breach of the particular physical collocation arrangement to which that list was associated. CLEC shall not place or leave any equipment or facilities within the Collocated Space beyond those listed on the Physical Collocation Application Form without the express written consent of SWBT, as specified in Section 10.2.1 below.
- 10.2.1 In the event that, subsequent to the submission of the Physical Collocation Application Form, CLEC desires to place in the Collocated Space any equipment or facilities not listed on the Physical Collocation Application Form, CLEC shall furnish to SWBT a written list and description of the equipment or facilities substantially in the same form. SWBT may provide such written consent or may condition any such consent on necessary additional charges arising from the subsequent request, including any engineering design charges and any additional requirements such as power and environmental requirements for such listed and described equipment and/or facilities. SWBT will not unreasonably withhold consent under this Section 10.2.1.
- 10.2.2 Except as may be required by law, including state and federal regulations, the foregoing imposes no obligation upon SWBT to purchase additional plant or equipment, relinquish used or forecasted space or facilities, or to undertake the construction of new quarters or to construct additions to existing quarters in order to satisfy a subsequent request for additional space or the placement of additional equipment or facilities.
- 10.3 CLEC may use the Collocated Space for placement of equipment and facilities only. CLEC's employees, agents and contractors shall be permitted access to the Collocated Space at all times, provided that CLEC's employees, agents and contractors comply with SWBT's policies and practices pertaining to fire, safety and security. CLEC agrees to comply promptly with all laws, ordinances and regulations affecting the use of the Collocated Space. Upon CLEC's termination of the use of the Collocated Space, CLEC shall surrender the Collocated Space to SWBT, in the same condition as when first occupied by CLEC, ordinary wear and tear excepted.
- 10.4 CLEC equipment or operating practices representing a significant demonstrable technical threat to SWBT's network or facilities, including the Eligible Structure, are strictly prohibited.
- 10.5 Notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in Collocated Space shall not interfere with or impair service over any facilities of SWBT or the facilities of any other person or entity located in the Eligible Structure; create hazards for or cause damage to those facilities or to the Eligible Structure; impair the privacy of any communications carried in, from, or through the Eligible Structure; or

create hazards or cause physical harm to any individual or the public. Any of the foregoing events in this Section may be a material breach of the particular physical collocation arrangement.

- 10.6 To the extent that SWBT is required by law, SWBT will permit CLEC to interconnect its network with that of another collocated party at the same Eligible Structure pursuant to this Section 10.6 and its subsections.
- 10.6.1 Upon CLEC's written request and as soon as practicable, SWBT will provide the connection between collocation arrangements on a time and materials basis whenever CLEC and another collocator cannot for technical reasons provide the connection for themselves by passing the facility through the cage wall(s). SWBT will provide nothing more than the labor and physical structure(s) necessary for the collocator(s) to pull facilities provided by one collocator from its cage to the cage of another collocator. If the collocators are not located on the same floor and cannot physically pull the cable themselves through the SWBT provided structure(s), SWBT will perform the cable pull on an time and materials basis. At no time will the collocators be allowed access to any portion of the central office other than the collocation area. SWBT will not make the physical connection within the collocator's cage, SWBT will not accept any liability for the cable or the connections, and SWBT will not maintain any records concerning these connections.
- 10.7 Subject to this Appendix, CLEC may place or install in or on the Collocated Space such fixtures and equipment as it shall deem desirable for the conduct of business. Personal property, fixtures and equipment placed by CLEC in the Collocated Space shall not become a part of the Collocated Space, even if nailed, screwed otherwise fastened to the Collocated Space, but shall retain their status as personality and may be removed by CLEC at any time. Any damage caused to the Collocated Space by the removal of such property shall be promptly repaired by CLEC at its expense.
- 10.8 In no case shall CLEC or any person purporting to be acting through or on behalf of CLEC make any rearrangement, modification, improvement, addition, repair, or other alteration to Collocated Space or the Eligible Structure without the advance written permission and direction of SWBT, which permission and direction will not be unreasonably withheld. SWBT will consider a modification, improvement, addition, repair, or other alteration requested by CLEC, provided that SWBT will have the right to reject or modify any such request to the extent permitted by law. The cost of any such construction shall be paid by CLEC in accordance with SWBT's then-standard custom work order process.

11.0 Standards

- 11.1 This Appendix and the physical collocation provided hereunder is made available subject to and in accordance with the standards set forth in (i) Bellcore Network Equipment Building System (NEBS) Generic Requirements (GR-63-CORE and GR-1089-CORE), as may be amended at any time and from time to time, and any successor documents; (ii) SWBT's Emergency Operating Procedures, as may be amended from time to time; and (iii) any statutory and/or regulatory requirements in effect at the execution of this Agreement or that subsequently become effective and then when effective. CLEC shall strictly observe and abide by the standards set forth in each; SWBT shall strictly observe and abide by the standards set forth in SWBT's Emergency Operating Procedures and the statutory and/or regulatory requirements referenced above. CLEC acknowledges the standards set forth in SWBT's publications entitled "Interconnector's Technical Publication for Physical Collocation" dated February 1997 and "Technical Publication 76300, Installation Guide," and CLEC will follow those publications, except as those publications are modified by this Appendix. In the event of any inconsistency between this Appendix and SWBT's "Interconnector's Technical Publication for Physical Collocation" and "Technical Publication 76300, Installation Guide," and any revision of the foregoing publications (whether or not objected to by CLEC), this Appendix will control.
- 11.2 Within ninety (90) days of the effective date of the Interconnection Agreement, CLEC may object in writing to any of the provisions in SWBT's "Interconnector's Technical Publication for Physical Collocation," "Technical Publication 76300, Installation Guide," or SWBT's Emergency Operating Procedures, providing therewith an explanation for each such objection. At CLEC's discretion, CLEC may pursue such objections informally with SWBT, may pursue them with the State Commission, or may invoke the applicable dispute resolution provisions of this Appendix.
- 11.3 Any revision to SWBT's Technical Publication for Physical Collocation, its Technical Publication 76300, or its Emergency Operating Procedures shall become effective and thereafter applicable under this Appendix thirty (30) days after such revision is released by SWBT. At CLEC's discretion, CLEC may pursue objections to these revisions informally with SWBT or with the State Commission, or may invoke the applicable dispute resolution provisions of this Agreement. Notwithstanding the foregoing, any revision made to address situations potentially harmful to SWBT's network, the Eligible Structure, or the Collocated Space, or to comply with statutory and/or regulatory requirements shall become effective immediately. SWBT will immediately notify CLEC of any such revisions, and CLEC may object to those revisions in the manner and with the effect specified in this section 11.3.
- 11.4 CLEC warrants and represents compliance with the Bellcore Network Equipment Building System (NEBS) Generic Requirements (GR-63-CORE and GR-1089-CORE) for all equipment and facilities placed in the Collocated Space unless otherwise permitted by SWBT in writing on a case-by-case basis. CLEC also warrants and represents that any equipment or facilities that

may be placed in the Collocated Space pursuant to Section 10.2.1 or otherwise shall be so compliant. DISCLOSURE OF ANY NON-COMPLIANT ITEM IN THE PHYSICAL COLLOCATION APPLICATION FORM, PURSUANT TO SECTION 10.2.1, OR OTHERWISE, SHALL NOT QUALIFY THIS ABSOLUTE CERTIFICATION IN ANY MANNER.

12.0 Responsibilities of the Parties

- 12.1 CLEC and SWBT each are responsible for providing to the other's personnel a contact number for technical personnel who are reasonably accessible 24 hours a day, 7 days a week and who are knowledgeable regarding the technical implementation of the collocation provided for in the particular Eligible Structure.
- 12.2 CLEC and SWBT are each responsible for providing trouble report upon request from the other.
- 12.3 CLEC is responsible for bringing the transmission media permitted by Section 8.1 to the points of entry to the Eligible Structure designated by SWBT, and for leaving sufficient cable length in order for SWBT to fully extend the CLEC-provided cable through the cable vault to the Collocated Space. The cost of extending the cable to the collocation space will be identified in the estimated price quotation. SWBT shall base the cost upon the loaded labor rate multiplied by the number of work hours required to perform the task and other charges that may be appropriate and specific to the work project in question.
- 12.4 Upon reasonable notice to SWBT, SWBT will fully extend the CLEC-provided cable through the cable vault to the Collocated Space on the same day that CLEC brings the CLEC-provided cable to the points of entry to the Eligible Structure designated by SWBT. While performing this operation, SWBT will be liable for any damage to the CLEC-provided cable that results from the placing operation. As used in this section, "same day" means same business day, provided that CLEC makes cables available at the points of entry to the Eligible Structure designated by SWBT by noon; otherwise, "same day" means the same time that the cable is made available on the next business day.
- 12.5 CLEC is responsible for removing any equipment, property or other items that it brings into the Collocated Space or any other part of the Eligible Structure. If CLEC fails to remove any equipment, property, or other items from the Collocated Space within thirty (30) days after discontinuance of use, SWBT may perform the removal and shall charge CLEC on a time and materials basis applicable to custom work. Further, in addition to the other provisions herein, CLEC shall indemnify and hold SWBT harmless from any and all claims, expenses, fees, or other costs associated with any such removal by SWBT.

- 12.6 CLEC is solely responsible for the design, engineering, testing, performance, and maintenance of the equipment and facilities used by CLEC in the Collocated Space. CLEC will be responsible for servicing, supplying, repairing, installing and maintaining the following facilities within the Collocated Space: (a) its fiber optic, coaxial, or copper cable(s), as applicable; (b) its equipment; (c) required point of termination cross connects; (d) point of termination maintenance, including replacement of fuses and circuit breaker restoration, if and as required; and (e) the connection cable and associated equipment which may be required within the Collocated Space to the point(s) of termination. SWBT NEITHER ACCEPTS NOR ASSUMES ANY RESPONSIBILITY WHATSOEVER IN ANY OF THESE AREAS.
- 12.7 CLEC and SWBT each are responsible for immediate verbal notification to the other of significant outages or operations problems which could impact or degrade the other's network, switches, or services, and for providing an estimated clearing time for restoral. In addition, written notification must be provided within twenty-four (24) hours.
- 12.8 CLEC and SWBT are each responsible for coordinating with the other to ensure that services are installed in accordance with the service request.
- 12.9 CLEC is responsible for testing to identify and clear a trouble when the trouble has been isolated to an CLEC-provided facility or piece of equipment. SWBT is responsible for testing to identify and clear a trouble when the trouble has been isolated to a SWBT-facility or piece of equipment.

13.0 Services, Utilities, Maintenance, and Facilities

- 13.1 SWBT shall maintain for the Eligible Structure customary building services and utilities (excluding telephone facilities), including janitor and elevator services, 24 hours a day. CLEC shall be permitted a single-line business telephone service for the Collocated Space. If technically feasible for CLEC in the Collocated Space, CLEC may provide its own telephone service; otherwise, SWBT will provide that service subject to applicable SWBT tariffs. Upon CLEC's request, such SWBT service shall be available at the CLEC Collocated Space on the day that the space is turned over to CLEC by SWBT.
- 13.2 SWBT will provide negative DC and AC power, back-up power, heat, air conditioning and other environmental support necessary for CLEC's equipment, in the same manner that it provides such support items for its own equipment within its Eligible Structures.
- 13.3 SWBT shall maintain the exterior of the Eligible Structure and grounds, and all entrances, stairways, passageways, and exits used by CLEC to access the Collocated Space.
- 13.4 SWBT agrees to make, at its expense, all changes and additions to the Eligible Structure required by laws, ordinances, orders or regulations of any municipality, county, state, or other

public authority including the furnishing of required sanitary facilities and fire protection facilities, except fire protection facilities specially required because of the installation of telephone or electronic equipment and fixtures in the Collocated Space.

- 13.5 SWBT will provide CLEC with access to, and use of, electrical power where available (e.g., 48 volt D/C, 110 volt A/C convenience outlets) at the Collocated Space. At a minimum, SWBT will supply power to CLEC at parity with that provided by SWBT to itself or to any third party. If SWBT performance, availability, or restoration falls below industry standards, SWBT will bring itself into compliance with such industry standards as soon as technologically feasible. All D/C power to the Collocated Space will be from protected power sources. Upon CLEC's request, SWBT will provide requested A/C power to the Collocated Space from protected power sources.
- 13.5.1 "Power" as referenced in this document refers to any electrical power source supplied by SWBT for CLEC equipment, and it includes all superstructure, infrastructure, and overhead facilities for the delivery of power, including, but not limited to, cable, cable racks and bus bars.
- 13.5.2 Central office power supplied by SWBT into an CLEC Collocated Space shall be supplied in the form of power feeders (cables) on cable racking as required. SWBT will provide in the Collocated Space a ground electrode that is connected to a central office ground and/or an isolated ground, where requested and where technically feasible. The power feeders (cables) will support the requested quantity and capacity of CLEC equipment. The location of the termination and the ground electrode will be as requested by CLEC or as mutually agreed to by the parties. The number of feeder cables will be specified by CLEC in writing based on the manufacturer's recommendation for the equipment and facilities collocated by CLEC.
- 13.5.3 SWBT power equipment supporting CLEC's equipment will: (1) comply with applicable industry standards (e.g., Bellcore NEBS and IEEE) or manufacturer's equipment power requirement specifications for equipment installation, cabling practices, and physical equipment layout; (2) provide feeder capacity and quantity to support the ultimate equipment layout for CLEC equipment in accordance with CLEC's collocation request; and (3) provide electrical safety procedures and devices in conformance with the OSHA or industry guidelines.

14.0 Quiet Enjoyment

- 14.1 Subject to the other provisions of this Appendix, SWBT covenants that it has full right and authority to permit the use of the Collocated Space by CLEC and that, so long as CLEC performs all of its obligations under this Appendix, CLEC may peaceably and quietly enjoy the Collocated Space during the term of this Appendix.

15.0 Assignment

- 15.1 CLEC may permit, with the written approval of SWBT any third party to jointly occupy CLEC's Collocated Space for the purposes of interconnecting with the SWBT network and/or UNEs. Such approval of SWBT will not be unreasonably withheld. In such instance, CLEC will retain its obligation to pay a monthly charge to SWBT for the Collocated Space. CLEC may interconnect with other collocators at the same Eligible Structure, in accord with Section 10.6 above.

16.0 Casualty Loss

- 16.1 If the Collocated Space is damaged by fire or other casualty, and the Collocated Space is not rendered untenable in whole or in part, SWBT shall repair the Collocated Space at its expense (as hereafter limited) and the Monthly Charge will not be abated.
- 16.2 If the Collocated Space is damaged by fire or other casualty, and the Collocated Space is rendered untenable in whole or in part and such damage or destruction can be repaired within a reasonable time, SWBT has the option to repair the Collocated Space at its expense (as hereafter limited) and the Monthly Charge shall be abated while CLEC is deprived of use of the Collocated Space. If the Collocated Space cannot be repaired within a reasonable time, or SWBT opts not to rebuild, then the collocation arrangement with respect to that Collocated Space will terminate. Upon CLEC's written request, SWBT will provide to CLEC a comparable suitable collocation arrangement at another mutually agreeable location.
- 16.3 Any obligation on the part of SWBT to repair the Collocated Space shall be limited to repairing, restoring, and rebuilding the Collocated Space as prepared by SWBT for CLEC and shall not include any obligation to repair, restore, rebuild or replace any alterations or improvements made by CLEC or by SWBT on request of CLEC; or any fixture or other equipment installed in the Collocated Space by CLEC or by SWBT on request of CLEC. The limitation contained in this section will not apply to any damage resulting from intentional misconduct or a negligent act or omission by SWBT, its employees, or agents.
- 16.4 In the event that an Eligible Structure is so damaged by fire or other casualty that closing, demolition, or substantial alteration or reconstruction of that Eligible Structure shall be advisable in SWBT's opinion, then, notwithstanding that any particular Collocated Space in the same Eligible Structure may not be damaged, SWBT, at its option, may terminate the collocation arrangement with respect to a Collocated Space in the same Eligible Structure by giving CLEC ten (10) days prior written notice within thirty (30) days following the date of such occurrence.

17.0 Re-entry

- 17.1 If CLEC materially breaches any of its obligations under this Appendix with respect to a particular Collocated Space, and the breach shall continue for forty-five (45) days after CLEC's receipt of written notice of breach, SWBT may, immediately or at any time thereafter, without notice or demand, enter and repossess that particular Collocated Space, expel CLEC and any person or entity claiming under CLEC, remove CLEC's property, forcibly if necessary, and terminate the collocation arrangement with respect to that particular Collocated Space, without prejudice to any other remedies SWBT might have. SWBT must notify CLEC by facsimile that it has repossessed a Collocated Space within twenty-four (24) hours of its repossession of that Collocated Space. Thereafter, until the breach is cured or otherwise resolved by the parties, SWBT may also refuse additional applications for collocation and/or refuse to complete any pending orders for additional space by CLEC in the Eligible Structure where that Collocated Space is located.
- 17.2 If CLEC is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, SWBT may, immediately or at any time thereafter, without notice or demand, enter and repossess any and all Collocated Spaces, expel CLEC and any person or entity claiming under CLEC, remove CLEC's property, forcibly if necessary, and terminate all collocation arrangements with respect to those Collocated Spaces, without prejudice to any other remedies SWBT might have. SWBT must notify CLEC by facsimile that it has repossessed a Collocated Space within twenty-four (24) hours of its repossession of that Collocated Space. SWBT may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service by CLEC at any time thereafter.
- 17.3 SWBT may refuse requests for additional space in Eligible Structures if CLEC is in material breach for forty-five days or more of this Appendix, including CLEC's owing any past due charges hereunder. In any and each such event, CLEC hereby releases and shall hold SWBT harmless from any duty to negotiate with CLEC or any of its affiliates for any additional space or physical collocations.

18.0 SWBT's Right of Access

- 18.1 SWBT, its agents, employees, and other SWBT-authorized persons shall have the right to enter Collocated Space at any reasonable time on three days advance notice of the time and purpose of the entry to examine its condition, make repairs required to be made by SWBT hereunder, and for any other purpose deemed reasonable by SWBT. SWBT may access the Collocated Space for purpose of averting any threat of harm imposed by CLEC or its equipment or facilities upon the operation of SWBT equipment, facilities and/or personnel located outside of the Collocated Space; in such case, SWBT will immediately notify CLEC by telephone of that entry and will leave written notice of entry in the Collocated Space. If routine inspections are required, they shall be conducted at a mutually agreeable time.

19.0 Limitation of Liability

- 19.1 Limitation of liability provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions portion of this Agreement.
- 19.2 CLEC acknowledges and understands that SWBT may provide space in or access to its Eligible Structures to other persons or entities ("Others"), which may include competitors of CLEC; that such space may be close to the Collocated Space, possibly including space adjacent to the Collocated Space and/or with access to the outside of the Collocated Space; and that the cage around the Collocated Space is a permeable boundary that will not prevent the Others from observing or even damaging CLEC's equipment and facilities.

20.0 Indemnification

- 20.1 Indemnification provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions Portion of the Agreement.

21.0 Dispute Resolution

- 21.1 All disputes arising under this Appendix will be resolved in accordance with the dispute resolution procedures set forth in the General Terms and Conditions portion of this Agreement, with the exception that disputes relating to SWBT's price quotation or Completion Interval may be brought to the Commission for resolution, as set forth in this Appendix, and that disputes relating to the content of SWBT's technical publications related to collocation will be resolved in accordance with Section 11.2 above.

22.0 Insurance

- 22.1 CLEC shall, at its sole cost and expense procure, maintain, pay for and keep in force the insurance coverage specified below and any additional insurance and/or bonds required by law and underwritten by insurance companies having a BEST Insurance rating of A+VII or better, and which are authorized to do business in the state of Missouri. SWBT shall be named as an ADDITIONAL INSURED on CLEC's general liability policy. CLEC may meet the insurance coverage requirements specified below utilizing its captive insurer or by establishing that it is authorized under the laws of the state of Missouri to self-insure for any of the coverage requirements specified below.
- 22.2 CLEC shall maintain Comprehensive General Liability insurance including Products/Completed Operations Liability insurance including the Broad Form Comprehensive General Liability endorsement (or its equivalent(s)) with a Combined Single limit for Bodily Injury and Property Damage of \$1,000,000. Said coverage shall include the contractual,

independent contractors products/completed operations, broad form property, personal injury and fire legal liability.

- 22.3 CLEC shall maintain, if use of an automobile is required or if CLEC is provided or otherwise allowed parking space by SWBT in connection with this Appendix, automobile liability insurance with minimum limits of \$1 million each accident for Bodily Injury, Death and Property Damage combine. Coverage shall extend to all owned, hired and non-owned automobiles. CLEC hereby waives its rights of recovery against SWBT for damage to CLEC's vehicles while on the grounds of the Eligible Structure and CLEC will hold SWBT harmless and indemnify it with respect to any such damage or damage to vehicles of CLEC's employees, contractors, invitees, licensees or agents.
- 22.4 CLEC shall maintain Workers' Compensation insurance with benefits afforded in accordance with the laws of the state of Missouri.
- 22.5 CLEC shall maintain Employer's Liability insurance with minimum limits of \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease per employee and \$500,000 for bodily injury by disease policy aggregate.
- 22.6 CLEC shall maintain Umbrella/Excess liability coverage in an amount of \$5 million excess of coverage specified above.
- 22.7 CLEC shall maintain all Risk Property coverage on a full replacement cost basis insuring all of CLEC's personal property situated on or within the Eligible Structure or the Collocated Space. CLEC releases SWBT from and waives its right of recovery, claim, action or cause of action against SWBT, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to CLEC or located on or in the space at the instance of CLEC by reason of fire or water or the elements or any other risks would customarily be included in a standard all risk property insurance policy covering such property, regardless of cause or origin, including negligence of SWBT, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on CLEC's fixtures and other personal property shall contain a waiver of subrogation against SWBT, and any rights of CLEC against SWBT for damage to CLEC's fixtures or personal property are hereby waived.
- 22.8 SWBT has no liability for loss of profit or revenues should an interruption of service occur.
- 22.9 The limits set forth above may be increased by SWBT from time to time during the term of occupancy to at least such minimum limits as shall then be customary in respect of comparable situations within the existing SWBT Eligible Structures.

- 22.10 All policies purchased by CLEC shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by SWBT.
- 22.11 All insurance must be in effect on or before occupancy date and shall remain in force as long as any of CLEC's facilities or equipment remain within the Collocated Space or the Eligible Structure. If CLEC fails to maintain the coverage, SWBT may pay the premiums thereon and, if so, shall be reimbursed by CLEC.
- 22.12 CLEC shall submit certificates of insurance and copies of policies reflecting the coverages specified above prior to the commencement of the work called for in this Appendix. CLEC shall arrange for SWBT to receive thirty (30) days advance written notice from CLEC's insurance company(ies) of cancellation, non-renewal or substantial alteration of its terms.
- 22.13 CLEC must also conform to the recommendation(s) made by SWBT's Property Insurance Company which CLEC has already agreed to or to such recommendations as it shall hereafter agree to. With respect to recommendations for which SWBT seeks CLEC's agreement, SWBT will provide CLEC copies of recommendations and compliance requirements by its Property Insurer for CLEC's review.
- 22.14 Failure to comply with the provisions of this section will be deemed a material violation of this Appendix.
- 22.15 Through this Appendix, CLEC is placing telecommunications equipment and facilities on SWBT property for the purpose of access to SWBT's unbundled network elements and for interconnection to SWBT and, subject to section 10.6 hereof, other collocators. The parties agree that this Appendix does not constitute, and shall not be asserted to constitute, an admission or waiver or precedent with any State commission, the Federal Communications Commission, any other regulatory body, and State and Federal Court, or in any other form that SWBT has agreed or acquiesced that any piece of CLEC equipment or facility is Aequipment necessary for interconnection or access to unbundled network elements under 47 U.S.C. 251(c)(6).

23.0 Miscellaneous

- 23.1 If CLEC constitutes more than one person, partnership, corporation, or other legal entities, the obligation of all such entities under this Appendix is joint and several.
- 23.2 This Appendix may not be modified by the Parties except by a subsequent written document executed by the Parties.
- 23.3 Whenever this Appendix requires the consent of a party, any request for such consent shall be in writing.

- 23.4 Neither party shall be deemed to have waived or impaired any right, authority, or option reserved by this Appendix (including the right to demand exact compliance with every term, condition and covenant herein, or to declare any breach hereof to be a default and to terminate this Appendix prior to the expiration of its term), by virtue of any custom or practice of the parties at variance with the terms hereof or any failure, refusal or neglect to exercise any right under this Appendix or to insist upon exact compliance by the other with its obligations hereunder, including any rule or procedure, or any waiver, forbearance, delay, failure or omission by SWBT to exercise any right, power or option, whether of the same, similar or different nature, with respect to one or more other collocators.
- 23.5 No remedy herein conferred upon is intended to be exclusive of any other remedy in equity, provided by law, or otherwise, but each shall be in addition to every other such remedy.
- 23.6 The CLEC and all persons acting through or on behalf of CLEC shall comply with the provisions of the Fair Labor Standards Act, the Occupational Safety and Health Act, and all other applicable federal, state, county, and local laws, ordinances, regulations and codes (including identification and procurement of required permits, certificates, approvals and inspections) in its performance hereunder.

24.0 Applicability

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

APPENDIX POLES, CONDUITS, AND RIGHTS-OF-WAY

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

This Appendix is made by and between Southwestern Bell Telephone Company ("SWBT") and Everest Connections Corporation ("CLEC"). As provided in this Appendix, SWBT will provide CLEC nondiscriminatory access, in accordance with the Pole Attachment Act, the Telecommunications Act of 1996, and applicable rules, regulations, and commission orders, to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT and located in this state.

ARTICLE 1: PARTIES

1.01 Southwestern Bell Telephone Company. Southwestern Bell Telephone Company ("SWBT") is a corporation chartered in the State of Missouri. SWBT's principal office is located at 1010 Pine Street, St. Louis, Missouri 63101.

1.02 Everest Connections Corporation. Everest Connections Corporation ("CLEC") is a corporation chartered in the State of Delaware. CLEC maintains an office at 425 Woods Mill Road South, Suite 300, Town & Country, MO 63017. CLEC is more fully described in EXHIBIT II ("Identification of CLEC").

ARTICLE 2: PURPOSE OF APPENDIX

The Communications Act of 1934, as amended by the Telecommunications Act of 1996, states that each local exchange carrier has the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier on rates, terms, and conditions that are consistent with the Pole Attachment Act, 47 U.S.C. §224, as amended by the Telecommunications Act of 1996. The Missouri Public Service Commission has stated that the FCC's First Report and Order in CC Docket No. 96-98 clearly requires a utility to provide access that does not favor itself over new entrants and that nondiscriminatory access means more than requiring incumbent local exchange carriers to treat all new entrants equally. This Appendix has been drafted and shall be construed to effectuate these principles. This Appendix is intended by the parties to implement, rather than abridge, their respective rights and remedies under federal and state law.

ARTICLE 3: DEFINITIONS

3.01 Definitions in general. As used in this Appendix, the terms defined in this article shall have the meanings set forth below in Sections 3.02 to 3.48 except as the context otherwise requires.

3.02 Anchor. The term "anchor" refers to a device, structure, or assembly which stabilizes a pole and holds it in place. An anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or guy wire which, in turn, is attached to the pole. The term "anchor" does not include the guy strand which connects the anchor to the pole.

3.03 Appendix. When capitalized, the term "Appendix" refers to this Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way by and between SWBT and CLEC.

3.04 Assigned. When used with respect to pole, duct, conduit, or right-of-way space, the term "assigned" refers to space that is occupied by, or has been designated for occupancy by, either party or by another telecommunications carrier, cable television system, provider of telecommunications services, governmental entity, or other person or entity having occupancy rights. Except as otherwise specifically provided in this Appendix, no person or entity shall have the right to occupy space assigned to another person or entity (other than on a temporary basis in the event of emergency) until the assignment has been released or lapsed. Assignment is further described in Section 8.02 of this Appendix.

3.05 Authorized contractor. "Authorized contractors" are contractors selected by CLEC who may, subject to CLEC's direction and control, perform facilities modification or make-ready work which would ordinarily be performed by SWBT or persons acting on SWBT's behalf. As used in this Appendix, the term "authorized contractor" does not refer to contractors performing routine installation, maintenance, or repair work on CLEC's behalf or other contractors who may be selected by CLEC to perform work on CLEC's behalf without SWBT's approval. More specifically, the term "authorized contractor" refers only to those contractors included on a list of contractors mutually approved by CLEC and SWBT to perform one or more of the following tasks within a specified SWBT construction district: (a) installation of those sections of CLEC's ducts or facilities which connect to SWBT's conduit system as provided in Section 6.08(c); (b) installation of inner duct as provided in Section 10.02(b); (c) excavation work in connection with the removal of retired or inactive (dead) cables as provided in Section 10.02(c); or (d) make-ready work as provided in Sections 10.04 and 10.05. A person or entity approved as an authorized contractor is only an authorized contractor with respect to those tasks for which such person or entity has been approved by both parties and is an authorized contractor only in those SWBT construction districts agreed to by both parties. Designation of an authorized contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an authorized contractor for other purposes, nor shall approval of an authorized contractor by one SWBT construction district constitute approval of such authorized contractor for the area served by a different SWBT construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an authorized contractor shall, for the purposes of that job, be deemed to have been

approved by all SWBT construction districts in which the work is to be performed. CLEC shall be considered to be an authorized contractor for all tasks specified in this section as tasks which may be performed by an authorized contractor.

3.06 Available. When used with respect to pole, duct, conduit, and right-of-way space, the term "available" refers to space that is not occupied or assigned. In conduit systems owned or controlled by SWBT, maintenance ducts shall not be considered "available" for assignment. All other unassigned ducts, inner ducts, sub-ducts, and partitioned conduits in a conduit system owned or controlled by SWBT shall be deemed available for assignment.

3.07 Cables. The term "cable" includes but is not limited to twisted-pair copper, coaxial, and fiber optic cables. Cables are transmissions media which may be attached to or placed in poles, ducts, conduits, and rights-of-way but are not themselves poles, ducts, conduits, or rights-of-way. Nothing contained in this Appendix shall be construed as a grant of access to cables attached to SWBT's poles or placed in SWBT's ducts, conduits, or rights-of-way.

3.08 Conduit. The term "conduit" refers to all conduits subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, conduits are tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. Except as the context otherwise requires, the term "conduit" refers only to conduit owned or controlled by SWBT, including the re-entable manholes and handholes used to connect ducts and provide access to the cables, wires, and facilities within the ducts. As used in this Appendix, the term "conduit" refers only to conduit structures (including ducts, manholes, and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other SWBT structures (such as huts and cabinets) which branch off from SWBT's conduit.

3.09 Conduit occupancy. The term "conduit occupancy" refers to the presence of wire, cable, optical conductors, or other facilities within any part of SWBT's conduit system.

3.10 Conduit system. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Appendix, the term "conduit system" refers only to conduit systems owned or controlled by SWBT and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other SWBT structures (such as huts and cabinets) which branch off from SWBT's conduit.

3.11 Construction District. The term "construction district" refers to the SWBT organization responsible for outside plant construction in a specified geographic area. The term "construction district" connotes responsibility for handling a function and not to the official name of the organization responsible for outside plant construction matters.

3.12 Cost/Cost-based. The terms "cost" and "costs" refer to costs determined in a manner consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders. The term "cost-based" refers to rates, fees, and other charges which are based on costs and determined in a manner consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders.

3.13 Duct. The term "duct" refers to all SWBT ducts subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, a duct is a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities. As used in this Appendix, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels. Except as the context otherwise requires, the term "duct" refers only to ducts owned or controlled by SWBT and space within those ducts and does not include cables and other telecommunications equipment located within such ducts.

3.14 Exhibit. The capitalized term "EXHIBIT" refers to one of the following exhibits to this Appendix.

EXHIBIT I:	Reserved for future use.
EXHIBIT II:	Identification of CLEC.
EXHIBIT III:	Administrative Forms and Notices
SW-9433:	Pole Attachments
SW-9434:	Access Application and Make-Ready Authorization Work
SW-9435:	Conduit Occupancy
SW-9436A:	Notification of Surrender or Modification of Pole Attachment License by Licensee
SW-9436B:	Notification of Surrender or Modification of Conduit Occupancy License by CLEC

SW-9436C: Notification of Unauthorized Attachments by CLEC.

- EXHIBIT IV: Insurance Requirements
- EXHIBIT V: Nondisclosure Agreement
- EXHIBIT VI: Reserved for future Notices to CLEC
- EXHIBIT VII: Notices to SWBT
- EXHIBIT VIII: Identification of Utility Liaison Supervisor (ULS)

3.15 Facilities. The terms “facility” and “facilities” refer to any property, equipment, or items owned or controlled by any person or entity.

3.16 FCC. The acronym “FCC” refers to the Federal Communications Commission.

3.17 First Interconnection Order. The term “First Interconnection Order” refers to the First Report and Order adopted by the FCC on September 1, 1996, and released on September 8, 1996, in CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and CC Docket No. 95-185, In the Matter of Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers. Access to poles, ducts, conduits, and rights-of-way is addressed in the First Interconnection Order in Paragraphs 1119-1240.

3.18 Handhole. The term “handhole” refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Appendix, the term “handhole” refers only to handholes which are part of SWBT’s conduit system and does not refer to handholes which provide access to buried cables not housed within SWBT ducts or conduits. As used in this Appendix, the term “handhole” refers only to handhole structures owned or controlled by SWBT and does not include cables and other telecommunications equipment located within handhole structures.

3.19 Hazardous substances. The term “hazardous substances” refers to hazardous and toxic substances, waste, pollutants, contaminants, and materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601(14), as amended, and other federal, state, and local health, safety, and environmental laws, ordinances, statutes, rules, and regulations applicable to sites subject to this Appendix, including but not limited to the Occupational Safety and Health Act (“OSHA”).

3.20 Interconnection agreement. The term "interconnection agreement" refers to the interconnection agreement, if any, to which this Appendix has been made an appendix, attachment, or exhibit, or, as the context may require, any other interconnection agreement between the parties.

3.21 Jacket. The term "jacket" refers to a single enclosed outer covering containing communications wires, fibers, or other communications media. As used in this Appendix, the term "jacket" refers to the outermost sheath or jacket of a cable.

3.22 Joint user. The term "joint user" refers to any person or entity which has entered or may enter into an agreement or arrangement with SWBT permitting it to attach its facilities to SWBT's poles or anchors or place its facilities in SWBT's conduit system.

3.23 License. The term "license" refers to a written instrument confirming that SWBT has afforded CLEC or another joint user access to specific space on or within a pole, duct, conduit, or right-of-way owned or controlled by SWBT in accordance with applicable federal and state laws and regulations. The term "license" includes licenses issued by SWBT pursuant to this Appendix and may, if the context requires, refer to licenses issued by SWBT prior to the date of this Appendix.

3.24 Local service provider ("LSP"). The terms "local service provider" and "LSP" refer to telecommunications carriers authorized by applicable federal and state laws and regulations to provide local exchange service. As used in this Appendix, these terms include SWBT.

3.25 Maintenance duct. The term "maintenance duct" generally refers to a full-sized duct (typically three inches in diameter or larger) which may be used by SWBT and joint users (including CLEC) on a short-term basis for maintenance, repair, or emergency restoration activities. Maintenance ducts will be available, on a nondiscriminatory basis, to all persons and entities (including SWBT, CLEC, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located for (a) short-term emergency repairs as provided in Article 15 of this Appendix and (b) short-term non-emergency maintenance or repair activities as provided in Articles 12 and 13 of this Appendix. No more than one full-sized duct within any given conduit system cross-section shall be designated by SWBT as the maintenance duct. In those locations where, on the effective date of this Appendix, there is not a full-sized duct available to be used as a maintenance duct, SWBT will designate an inner duct, if one is available, as the maintenance duct although such inner duct may be too small to accommodate some of the cables occupying the conduit section in which such inner duct is located. The term "maintenance duct" does not include ducts and conduits extending from a SWBT manhole to customer premises. Maintenance ducts shall not be considered "available" (as defined in Section 3.07) for assignment to SWBT, CLEC, or joint users for purposes other than short-term use as contemplated in this section; provided, however, that SWBT may assign the duct currently designated as a maintenance duct if another

suitable full-sized duct will be made available to serve as a replacement maintenance duct and may assign an inner duct currently designated as a maintenance duct if another inner duct will be made available to serve as a replacement maintenance duct. Maintenance duct designations may change from time to time and may or may not be reflected in SWBT's outside plant records. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.

3.26 Make-ready work. The term "make-ready work" refers to all work performed or to be performed to prepare SWBT's poles, ducts, conduits, and rights-of-way and related facilities for the requested occupancy or attachment of CLEC's facilities. Make-ready work does not include the actual installation of CLEC's facilities. "Make-ready work" includes, but is not limited to, clearing obstructions (e.g., by "rodding" ducts to ensure clear passage), the rearrangement, transfer, replacement, and removal of existing facilities on a pole or in a conduit system where such work is required to accommodate CLEC's facilities (as contrasted from work performed on SWBT's behalf in furtherance of SWBT's own business needs, or convenience). "Make-ready work" may require "dig-ups" of existing facilities and may include the repair, enlargement or modification of SWBT's facilities (including, but not limited to, conduits, ducts, handholes and manholes), consolidating services into fewer cables, or the performance of other work required to make a pole, anchor, duct, conduit, manhole, handhole or right-of-way usable for the initial placement of CLEC's facilities.

3.27 Manhole. The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron, cast aluminum, steel, or concrete manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in a conduit. The term "handhole" refers to a structure similar in function to a manhole, but which is usually too small for personnel to enter. As used in this Appendix, the term "manhole" refers only to manhole structures owned or controlled by SWBT and does not include cables and other telecommunications equipment located within manhole structures.

3.28 Occupancy. The term "occupancy" refers to the physical presence of cables or other facilities on a pole, in a conduit or duct, or within a right-of-way.

3.29 Overlashing. The term "overlashing" refers to the practice of placing an additional cable or inner duct by lashing such cable or inner duct with spinning wire over existing cable(s) and strands.

3.30 Person acting on CLEC's behalf. The terms "person acting on CLEC's behalf," "personnel performing work on CLEC's behalf," and similar terms include both natural persons and firms and ventures of every type, including, but not limited to, corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on CLEC's behalf," "personnel performing work on CLEC's behalf," and similar terms specifically include, but are not limited to, CLEC, its

officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by CLEC and its respective officers, directors, employees, agents, and representatives. An authorized contractor selected by CLEC to perform make-ready work shall be deemed to be a person acting on CLEC's behalf while performing such work at CLEC's request.

3.31 Person acting on SWBT's behalf. The terms "person acting on SWBT's behalf," "personnel performing work on SWBT's behalf," and similar terms include both natural persons and firms and ventures of every type, including but not limited to corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on SWBT's behalf," "personnel performing work on SWBT's behalf," and similar terms specifically include, but are not limited to, SWBT, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request or on behalf of SWBT and its respective officers, directors, employees, agents, and representatives. An authorized contractor selected by SWBT to perform make-ready work shall be deemed to be a person acting on SWBT's behalf while performing such work at SWBT's request.

3.32 Pole. The term "pole" refers to all SWBT poles subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). Except as the context otherwise requires, the term "pole" refers only to utility poles and anchors which are either owned or controlled by SWBT and does not include cables and other telecommunications equipment attached to pole structures.

3.33 Pole Attachment. As defined in the Pole Attachment Act, 47 U.S.C. §224(a)(4), the term "pole attachment" refers to "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." In this Appendix, except as the context otherwise requires, the term "pole attachment" refers to any attachment by a cable television system or provider of telecommunications service to a pole (and associated anchors) owned or controlled by SWBT. The term "pole attachment" includes all such facilities attached to or supported by a SWBT pole, including but not limited to cables, risers and U-guards, equipment boxes, drop wires, anchors, bolts, clamps, drive rings, guys, hooks, strands, and other hardware affixed to the pole. Groupings of associated pole attachments for billing purposes shall be consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders. Except as otherwise authorized by applicable FCC rules, regulations, or orders, CLEC's pole attachments occupying the same usable space (or otherwise associated with facilities occupying the same usable space on a pole) shall be treated as a single attachment for billing purposes.

3.34 Pole Attachment Act. The term "Pole Attachment Act" refers to those provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, now codified as 47 U.S.C. § 224, as those provisions may be amended from time to time.

3.35 Pre-license survey. The term "pre-license survey" refers to work and activities performed or to be performed by SWBT or by persons acting on SWBT's behalf for the primary purpose of:

- (a) confirming or determining the existing availability and capacity of a pole, duct, conduit or right-of-way and identifying capacity, safety, reliability, or engineering concerns, if any, relating to CLEC's application;
- (b) confirming or determining the extent, if any, to which modifications to SWBT's poles, ducts, conduits, or rights-of-way are required to accommodate CLEC's facilities;
- (c) confirming or determining what make-ready work, if any, will be required to prepare SWBT's poles, ducts, conduits, or rights-of-way to accommodate CLEC's facilities; and
- (d) estimating the costs, if any, that CLEC will be required to pay for any such make-ready work or facilities modifications.

3.36 Pre-occupancy survey. The term "pre-occupancy survey" refers to work and activities performed or to be performed by CLEC or persons acting on behalf of CLEC for the primary purpose of enabling CLEC to determine:

- (a) whether SWBT's poles, ducts, conduits, or rights-of-way, in their existing condition, are suitable for CLEC's intended use;
- (b) the extent, if any, to which modifications of SWBT's poles, ducts, conduits, or rights-of-way will be proposed by CLEC to expand the capacity of SWBT's poles, ducts, conduits, or rights-of-way to accommodate CLEC's facilities; and
- (c) what other make-ready work, if any, will be proposed by CLEC to prepare SWBT's poles, ducts, conduits, and rights-of-way to accommodate CLEC's facilities.

3.37 Primary point of contact. The term "primary point of contact" refers to the persons designated by CLEC and SWBT, respectively, to coordinate arrangements for

CLEC's access to SWBT's poles, ducts, conduits, and rights-of-way and records relating to such poles, ducts, conduits, and rights-of-way. SWBT's designated primary point of contact shall be the Utility Liaison Supervisor unless the parties have arranged for that function to be performed by a designated account representative who will serve as an intermediary between CLEC and the Utility Liaison Supervisor.

3.38 Rights-of-way. The term "rights-of-way" refers to all SWBT rights-of-way subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, rights-of-way are legal rights to pass over or use the land of another for limited purposes as defined in a statute, ordinance, easement, grant or other conveyance. Rights-of-way include, but are not limited to, (a) public rights-of-way authorizing SWBT to locate facilities on, under, or over public lands and roadways and (b) servitudes created by private easements or obtained through the exercise of eminent domain authority enabling SWBT to pass over, place facilities on, and have rights of ingress and egress to the land of another. Rights-of-way also include easements which, at the time of land development or subdivision, were dedicated for use by public or private utilities and are being occupied, in whole or in part, by SWBT's facilities. Except as the context otherwise requires, the term "rights-of-way" refers only to rights-of-way owned or controlled by SWBT. As used in this Appendix, the term "rights-of-way" does not include cables, telecommunications equipment, and structures (such as controlled environment vaults, huts and cabinets) buried or otherwise placed on rights-of-way.

3.39 Sheath. The term "sheath" refers to an enclosed covering containing communications wires, fibers, or other communications media. A cable may include both inner and outer sheaths.

3.40 Spinning. The term "spinning" refers to a method of attaching a cable or inner-duct to a supporting strand. "Spinning" is sometimes referred to as "lashing."

3.41 State. When capitalized, the term "State" (as used in terms such as "this State") refers to the State of Missouri.

3.42 State Commission. The term "State Commission" refers to the Missouri Public Service Commission.

3.43 Strand. The term "strand" refers to supporting wires, typically stranded together, or other devices attached to a pole and connecting that pole to an anchor or to another pole for the purpose of increasing pole stability or supporting wires, cables, and associated facilities. The term "strand" includes, but is not limited to, strands sometimes referred to as "anchor strands," "anchor/guy strands," "down guys," "guy strands," "pole-to-pole guys," and "messengers."

3.44 Telecommunications Act of 1996. The term "Telecommunications Act of 1996" refers to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, enacted February 8, 1996.

3.45 Third party. The terms "third party" and "third parties" refer to persons and entities other than the parties to this Appendix (that is, persons and entities other than CLEC and SWBT).

3.46 Utility Liaison Supervisor ("ULS"). The terms "Utility Liaison Supervisor" and "ULS" refer to the person or persons designated by SWBT to be responsible for handling and processing requests for access to SWBT's poles, ducts, conduits, and rights-of-way in this State. The term "ULS" connotes responsibility for handling a function and is not a job title. Except as otherwise specifically provided in this Appendix or in the parties' interconnection agreement, the ULS shall serve as CLEC's single point of contact for arranging access to SWBT's poles, ducts, conduits, and rights-of-way and access to SWBT's records relating to SWBT's poles, ducts, conduits, and rights-of-way. The Utility Liaison Supervisor for this State is identified in EXHIBIT VIII.

3.47 Vault. The term "vault" includes central office vaults and controlled environment vaults ("CEVs"). Vaults may be connected to, but are not considered part of, SWBT's conduit system. Access, if any, to vaults (and to ducts, conduits, and risers which serve no purpose other than to provide a means of entry to and exit from such vaults) shall be governed by the tariffs, agreements, or commission orders, if any, establishing arrangements for interconnection, collocation, and access to unbundled network elements, and not by this Appendix.

3.48 "Vicinity of ...". When used in terms such as "vicinity of SWBT's conduit system," "vicinity of SWBT's poles," "vicinity of SWBT's rights-of-way," or "vicinity of SWBT's poles, ducts, conduits, or rights-of-way," the term "vicinity of ..." includes sites on, within, near to, surrounding, or adjoining SWBT's poles, ducts, conduits, and rights-of-way. These sites include, but are not limited to, all sites within a distance of 10 feet of any SWBT pole, duct, conduit, or right-of-way.

ARTICLE 4: NATURE AND SCOPE OF AGREEMENT

4.01 Scope of Agreement. This Appendix establishes procedures for grants of non-discriminatory access to SWBT poles, ducts, conduits, and rights-of-way located within this State, without regard to whether the site is located on public or private property. SWBT will provide CLEC and other telecommunications carriers, cable television systems, and competing providers of telecommunications services with nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by SWBT and located within this State on rates, terms, and conditions that are consistent with the Pole Attachment Act, 47 U.S.C. §224. Separate agreements or tariffs,

including other portions of the parties' Interconnection Agreement, and not this Appendix, shall govern CLEC's access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Appendix: (a) SWBT's central office vaults and ducts, conduits, and risers entering and exiting SWBT's central offices; (b) controlled environment vaults, huts, cabinets, and other similar outside plant structures housing SWBT's telecommunications equipment other than cables and ancillary non-terminating distribution equipment, and the ducts, conduits, and risers entering such vaults, huts, cabinets, and structures; and (c) ducts, conduits, and risers located within or entering SWBT buildings.

4.02 No Transfer of Property Rights. Nothing contained in this Appendix or any license subject to this Appendix shall create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other. The payment of fees and charges as provided by this Appendix and licenses subject to this Appendix shall not create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other. No use, however extended, of SWBT's poles, ducts, conduits, or rights-of-way shall create or vest (or be construed as creating or vesting) in CLEC any right, title, or interest in or to any real or personal property owned by SWBT, and the placement of CLEC's facilities on or in SWBT's poles, ducts, conduits and rights-of-way shall not create or vest in SWBT any right, title, or interest in such facilities.

4.03 No Effect on SWBT's Rights to Manage its Poles, Ducts, Conduits, and Rights-of-Way. Subject to CLEC's rights under this Appendix and applicable federal and state laws, rules, regulations, and commission orders, SWBT may (a) locate, relocate, move, replace, modify, maintain, and remove all poles, ducts, conduits, and rights-of-way subject to this Appendix at any time and in any manner as SWBT deems appropriate and (b) enter into new agreements or arrangements with other persons or entities permitting them to attach facilities to SWBT's poles or place facilities in or on SWBT's ducts, conduits, or rights-of-way.

4.04 Third-party Beneficiaries. Except as specifically set forth in Section 8.02(g), this Appendix does not provide and shall not be construed to provide third parties with any remedy, claim, right of reimbursement, cause of action, or other privilege.

4.05 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.

ARTICLE 5: ACCESS TO RIGHTS-OF-WAY

5.01 Public Rights-of-Way. SWBT and CLEC agree that neither party has the right to restrict or interfere with the other party's access to public rights-of-way. Except as specifically provided in Section 5.03 below, SWBT and CLEC shall each be responsible for obtaining their own rights-of-way and permission to use real or personal property owned or controlled by any governmental body.

5.02 Private Rights-of-Way Not Owned or Controlled by SWBT. SWBT and CLEC agree that neither party has the right to restrict or interfere with the other party's access to private rights-of-way not owned or controlled by SWBT. Each party shall make its own, independent legal assessment of its right to enter upon or use the land or property of third-party property owners and shall bear all expenses, including legal expenses, involved in making such determinations, subject to the procedures set forth in Section 5.03 below.

5.03 Access to Associated Rights-of-Way. Each pole attachment and conduit occupancy license made under this Appendix shall include access to and use of all associated rights-of-way, including, but not limited to, rights-of-way required by CLEC for ingress, egress, or other access to any sites where SWBT's solely or partly owned or controlled poles, manholes, conduit, ducts, or other parts of SWBT's solely or partly owned or controlled conduit system are located, but only to the extent, if any, that SWBT has the legal authority to grant such access and use. SWBT also agrees to provide nondiscriminatory access to rights-of-way containing Controlled Environment Vaults (CEVs), huts, cabinets, and other similar structures to the extent that collocation to such facilities is agreed or required by order of any court or governmental agency having jurisdiction over the subject matter. SWBT agrees that it shall place no restrictions on CLEC's ability to construct, maintain, and monitor its facilities at these sites that are more restrictive than those SWBT places on itself. Such access to these sites shall be provided by SWBT in an expeditious manner. This section relates only to access to the rights-of-way and not to the CEVs, huts, cabinets, and similar structures placed by SWBT on such rights-of-way. Neither this section nor any other part of this Appendix establish collocation rights with respect to CEVs, huts, cabinets, and similar structures.

- (a) Although SWBT shall afford access to rights-of-way owned or controlled by it and permit CLEC to utilize SWBT's rights-of-way to the extent that SWBT has legal authority to do so, CLEC acknowledges that SWBT may not own or control certain rights-of-way to the extent necessary to permit CLEC full access to such rights-of-way. The following general principles shall be applied with respect to access to rights-of-way on third-party real estate:

- (1) CLEC shall first attempt to obtain right-of-way directly from the property owner.

- (2) If SWBT has legal authority to permit access by CLEC to a right-of-way on third-party property, SWBT will not restrict CLEC's use of the right-of-way.
- (3) If CLEC has the right of eminent domain under state law, CLEC shall independently attempt to obtain the right-of-way it seeks through the exercise of that right.
- (4) If CLEC is unable to obtain access to a right-of-way under paragraphs (1), (2), and (3) above, CLEC will request in writing that SWBT exercise its right of eminent domain to condemn the right-of-way for CLEC's use and SWBT shall respond to CLEC's written request within 45 days. SWBT shall exercise its right of eminent domain on CLEC's behalf only if permitted to do so under applicable state law, and only if CLEC agrees to bear all costs and expenses, including but not limited to legal fees arising out of or in connection with the condemnation proceedings.

5.04 Access to Certain Exclusive Rights-of-Way. 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 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, sub-license, sub-easement, or other mutually acceptable writing. Except as otherwise agreed to by the parties, SWBT's charges for such access (obtained from SWB 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 size of the area used by Applicant and the number of users occupying the right-of-way.

ARTICLE 6: SPECIFICATIONS

6.01 Compliance with Requirements, Specifications, and Standards. CLEC agrees that CLEC's facilities attached to SWBT's poles or occupying space in SWBT's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Appendix.

6.02 Design to Minimize the Need for Access to SWBT's Poles and Conduits. The parties shall each design their facilities to minimize the need for the parties to access SWBT's poles, ducts, or conduits.

6.03 Infrequent Construction Techniques and Connectivity Solutions. Unless precluded by documented engineering criteria or written guidelines SWBT applied to itself as of January 1, 1996, consistent with considerations of safety, reliability, and/or engineering practices, SWBT agrees to permit CLEC at its own expense to utilize the following techniques to avoid high or unusual expenditures: (a) placement of pole attachments on both the "field" side and "road" side of a pole; (b) placement of extension arms or stand-off brackets on poles; and (c) building conduit branches into SWBT's conduit systems. CLEC acknowledges that use of the above techniques will be rare and will be permitted only on a case-by-case basis, and must be performed in a manner which does not jeopardize the structural integrity of SWBT's facilities. Except as otherwise agreed to by the parties in writing, extension arms or stand-off brackets, if utilized, shall be installed as make-ready work in accordance with SWBT's specifications and at CLEC's expense. Once installed, extension arms and stand-off brackets shall become part of the pole and shall be owned by SWBT. Unused capacity on any such extension arms or stand-off brackets shall be deemed "available" (as defined in Section 3.07) for assignment and be considered as capacity expansion.

6.04 Published Standards. SWBT and CLEC agree that the following standards equally apply to either party with respect to facilities attached to or placed in SWBT's poles, ducts, conduits, and rights-of-way and further agree that facilities shall be placed, constructed, maintained, repaired, and removed in accordance with, current (as of the date when such work is performed) editions of the following publications:

- (a) the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book";
- (b) the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE"); and

- (c) the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA").

6.05 Additional Electrical Design Specifications: Conduit. The parties agree that, in addition to the specifications and requirements referred to in Sections 6.01-6.04 above, facilities placed in SWBT's conduit system after the effective date of this Appendix shall meet the electrical design specifications set forth in this section.

- (a) No facilities shall be placed in SWBT's conduit system in violation of FCC regulations, including regulations relating to electrical interference. In addition, neither party shall place any facility in SWBT's conduit system which causes or may cause electrical interference with the facilities of the other party or joint users sufficient to jeopardize network integrity or degrade the quality of any communications services offered by either party or a joint user. If either party is notified by the other party or a joint user that its facilities are causing, or have the potential to cause, unacceptable levels of electrical interference, the party notified shall either correct the problem, remove the facility, or initiate good faith negotiations with the complaining party or joint user to resolve the issue.
- (b) Facilities placed in SWBT's conduit system shall not be designed to use the earth as the sole conductor for any part of the circuits.
- (c) Facilities placed in SWBT's conduit system and carrying more than 50 volts AC (rms) to ground or 135 volts DC to ground shall be enclosed in an effectively grounded sheath or shield.
- (d) No coaxial cable shall be placed in SWBT's conduit system unless such cable meets the voltage limitations of Article 820 of the National Electrical Code.
- (e) Coaxial cable placed in SWBT's conduit system may carry continuous DC voltages up to 1800 volts to ground where the conductor current will not exceed one-half ampere and where such cable has two separate grounded metal sheaths or shields and a suitable insulating jacket over the outer sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer sheath shall not exceed 200 microamperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.

- (f) Neither party shall circumvent the corrosion mitigation measures of the other party or joint users.

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

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

6.07 Efficient Use of Conduit. To ensure efficient use of conduits, 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 4-inch duct) as needed for SWBT's own business purposes and to accommodate CLEC and other joint users; provided, however, that SWBT shall not be required to install inner duct in anticipation of potential future requests for access by CLEC and other joint users. In addition, the parties shall, in accordance with SWBT's duct selection standards, install cables in inner duct when cable diameters permit.

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

- (a) CLEC shall not bore, make, or enlarge any hole in, or otherwise structurally modify or alter any manhole, handhole, duct, conduit, or other facility which is part of SWBT's conduit system except as provided in this Appendix or licenses, or as mutually agreed upon by the parties in writing.
- (b) Nothing contained in subsection (a) shall be construed as precluding CLEC or an authorized contractor from reattaching cable racks or performing similar routine work which is minor in nature and associated with the placement and splicing of CLEC's cable.
- (c) Where CLEC's duct or facility physically connects with SWBT's manhole, the section of CLEC's facility which connects to SWBT's manhole shall be installed by SWBT or its contractor at CLEC'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 CLEC's needs, CLEC as an authorized contractor may perform the work itself or arrange for the work to be performed by an authorized contractor selected by CLEC from a list, jointly developed by CLEC and SWBT, of mutually agreed contractors qualified to perform such work. Work performed on SWBT's facilities by an authorized contractor selected by CLEC to perform work under this subsection shall be performed in accordance with SWBT's standards and practices.
- (d) SWBT shall have the option to monitor the entrance and exit of CLEC's facilities into SWBT's conduit system and the physical placement of CLEC's facilities in any part of SWBT's conduit system. Notice requirements for, and expenses associated with, this monitoring are addressed in Section 6.11 of this Appendix.
- (e) If CLEC constructs or utilizes a duct connected to SWBT's conduit system, the duct and all connections between that duct and SWBT's conduit system shall be sealed to prevent the entry of gases or liquids into SWBT's conduit system. If CLEC's duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into SWBT's conduit system.

6.09 General Requirements Relating to Personnel, Equipment, Materials, and Public Safety. The parties contemplate that CLEC, its contractors, and other persons

acting on its behalf will perform work for CLEC on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. The provisions of this section are intended to protect the integrity of the networks, facilities and operations of SWBT, CLEC and joint users, to protect the health and safety of persons working on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, and to protect the public at large.

- (a) Neither party nor any person acting on such party's behalf shall permit any person to climb or work on SWBT's poles or in the vicinity of SWBT's poles, or enter SWBT's manholes or work within or in the vicinity of SWBT's conduit system, unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to the pole or conduit system and to perform the work safely.
- (b) Neither party nor any person acting on such party's behalf shall permit any person acting on its behalf to perform any work on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way without first verifying, to the extent practicable, on each date when such work is to be performed, that conditions at the work site (including but not limited to the physical condition of the pole or any part of SWBT's conduit system) are safe enough for the work to be performed. If CLEC or any person acting on CLEC's behalf determines that the condition of the pole, duct, conduit, or right-of-way is not sufficiently safe for the work to be performed, CLEC shall notify SWBT of conditions at the site and shall not proceed with the work until CLEC is satisfied that the work can be safely performed.
- (c) Neither party nor any person acting on such party's behalf shall knowingly permit defective equipment or materials to be used on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.
- (d) When CLEC or personnel performing work on its behalf are working on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way located within, under, over, adjacent to, or in the vicinity of streets, highways, alleys or other traveled rights-of-way, CLEC and all personnel performing work on CLEC's behalf shall follow procedures which CLEC deems appropriate for the protection of persons and property. CLEC and/or its contractors shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. CLEC or its designated contractor

will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers, and property from danger. CLEC and/or its contractors shall have sole responsibility for the safety of all personnel performing work on CLEC's behalf, for the safety of bystanders, and for insuring that all operations conform to current OSHA regulations and all other governmental rules, ordinances or statutes.

- (e) Neither party nor any persons acting on such party's behalf shall engage in any conduct which damages public or private property in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way or creates a hazard or nuisance on such property (including but not limited to a hazard or nuisance resulting from any abandonment of or failure to remove its facilities or any construction debris from the property, failure to erect warning signs or barricades as may be necessary to exclude others from the premises or give notice to others of unsafe conditions on the premises while work performed on its behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).
- (f) CLEC shall promptly suspend activities on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way (other than sites owned or controlled by CLEC) if notified by SWBT that such activities create an unreasonable risk of injury to persons or property (including unreasonable risks of service interruptions). CLEC shall not resume such activities on or in the vicinity of SWBT's poles or rights-of-way until CLEC is satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified and shall not resume such activities within or in the vicinity of SWBT's conduit system until both CLEC and SWBT are satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified. In the event that SWBT requires CLEC to suspend work activities and it is later determined that there was no reasonable basis for the work suspension, SWBT agrees to compensate CLEC for the cost resulting from the delay.
- (g) SWBT shall promptly suspend activities on, within, or in the vicinity of its poles, ducts, or conduits if notified by CLEC that such activities create an unreasonable risk of injury to persons or property (including unreasonable risks of service interruptions to CLEC's customers). SWBT shall not resume such activities on or in the vicinity of its poles until it is satisfied that the work may safely proceed and that any hazardous conditions at the site have

been rectified and shall not resume such activities within or in the vicinity of SWBT's conduit system until both CLEC and SWBT are satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified. In the event that CLEC requires SWBT to suspend work activities and it is later determined that there was no reasonable basis for the work suspension, CLEC agrees to compensate SWBT for the cost resulting from the delay.

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

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

- (a) Except as may be mutually agreed upon by the parties in writing, CLEC shall not "rod" or clear any duct or inner duct in SWBT's conduit system other than a duct or inner duct assigned to CLEC. Following the assignment of a specific duct or inner duct to CLEC, CLEC may request that SWBT rod or clear the duct or inner duct. If the duct or inner duct cannot be cleared, SWBT shall assign the next available duct or inner duct to CLEC. CLEC's request for assignment of the next available duct shall be in writing, may be transmitted to SWBT via fax or other transmission media mutually agreed upon by the parties, and shall be processed within the same intervals applicable to the processing of similar requests by SWBT's own personnel.
- (b) Personnel performing work within SWBT's conduit system on either party's behalf shall not climb on, step on, or otherwise disturb the cables, air pipes, equipment, or other facilities located in any manhole or other part of SWBT's conduit system.
- (c) Personnel performing work within or in the vicinity of SWBT's conduit system (including any manhole) on either party's behalf

shall, upon completing their work, make reasonable efforts to remove all tools, unused materials, wire clippings, cable sheathing and other materials brought by them to the work site.

- (d) All of CLEC's facilities shall be firmly secured and supported in accordance with Bellcore and industry standards and any applicable construction standards adopted by SWBT and applicable to SWBT's own facilities.
- (e) CLEC's facilities shall be plainly identified with CLEC's name in each manhole with a firmly affixed permanent tag that meets the identification standards set by SWBT for its own facilities.
- (f) Manhole pumping and purging required in order to allow work operations to proceed shall be performed in accordance with the requirements of Sections 6.14 and 6.15.
- (g) Planks or other types of platforms shall be supported only by cable racks.
- (h) Any leak detection liquid or device used by CLEC or personnel performing work on CLEC's behalf within or in the vicinity of SWBT's conduit system shall be of a type approved by SWBT and included on SWBT's then-current list of approved types of leak-detection liquids and devices; provided, however, that CLEC may use any type of leak detection liquid or device which meets Bellcore's published standards if SWBT has not provided CLEC SWBT's list of approved types of leak detection liquids or devices at least 60 days in advance of CLEC's work.
- (i) CLEC and its contractors shall be responsible for providing proper ventilation while work is being performed in SWBT's conduit system on CLEC's behalf. Except for protective screens, no temporary cover shall be placed over an open manhole unless it is at least four feet above the surface level of the manhole opening.
- (j) Smoking or the use of any open flame is prohibited in manholes, in any other portion of the conduit system, or within 10 feet of any open manhole entrance.
- (k) Artificial lighting, when required by CLEC, will be provided by CLEC. Only explosion-proof lighting fixtures shall be used.
- (l) Neither SWBT nor CLEC nor personnel performing work on either

party's behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in SWBT's conduit system (including any manhole) during work operations performed within or in the vicinity of SWBT's conduit system.

- (m) CLEC shall comply with the standards set by SWBT for its own personnel restricting the use of spark-producing tools, equipment, and devices (including but not limited to such tools as electric drills and hammers, meggers, breakdown sets, induction sets, and the like) in manholes and other portions of SWBT's conduit system, provided that such standards have been communicated in writing to CLEC at least 60 days in advance of CLEC's work.
- (n) Cable lubricants used in conduit systems shall be of a type or types approved by SWBT and included on SWBT's then-current list of approved types of cable lubricants; provided, however, that CLEC may use any type of cable lubricant which meets Bellcore's published standards if SWBT has not provided CLEC SWBT's list of approved types of cable lubricants at least 60 days in advance of CLEC's work.

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

- (a) CLEC will notify SWBT not less than 48 hours in advance before entering SWBT's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the parties. The notice shall state the general nature of the work to be performed. As a courtesy, CLEC shall, when feasible, provide SWBT with 10 working days' advance notice before entering SWBT's conduit system.
- (b) An authorized employee or representative of SWBT may be present at any time when CLEC or personnel acting on CLEC's behalf enter or perform work within SWBT's manhole.
- (c) The parties contemplate that CLEC may need to perform operations in SWBT's conduit system other than during normal business hours and may occasionally require access to manholes on shorter notice than contemplated in subsection (a) above. Under these circumstances, CLEC shall notify SWBT as soon as is reasonably possible of its intent to enter and perform work in the conduit system and SWBT shall not, without due cause and justification,

insist on literal compliance with the scheduling requirements of subsection (a) in such circumstances. SWBT will establish procedures enabling SWBT to receive notices from CLEC under this subsection 24 hours a day, seven days a week.

- (d) Each party must obtain any necessary authorization from appropriate authorities to open manholes for such party's own conduit work and operations therein.
- (e) As ordered by the Public Service Commission of Missouri, when SWBT considers it necessary to be present during CLEC's access to manholes and CEVs, SWBT may, at its option, send its employees to review CLEC's installation, maintenance, and similar routine work. CLEC and SWBT will share the cost of a single SWBT employee present during such work on an equal basis (50 percent/50 percent). CLEC shall not compensate SWBT for any additional SWBT employees present.
- (f) If the presence of SWBT personnel at the site is requested by CLEC or in CLEC's opinion, is integral to successful completion of CLEC's work, CLEC shall pay the costs of having such personnel present.

6.12 OSHA Compliance. Each party agrees that:

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

6.13 Hazardous Substances. CLEC acknowledges that, from time to time, hazardous substances (as defined in Section 3.20 of this Appendix) may enter SWBT's conduit system and accumulate in manholes or other conduit facilities and that hazardous substances may be present at other sites where SWBT's poles, ducts, conduits, or rights-of-way are located.

- (a) CLEC may, at its expense, perform such inspections and tests at the site of any pole, duct, conduit, or right-of-way occupied by or

assigned to CLEC as CLEC may deem necessary to determine the presence at such sites of hazardous substances. SWBT will assist CLEC, at CLEC's request and expense, in the performance of such inspections and tests.

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

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

- (a) Facilities attached by either party to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way following the effective date of this Appendix shall be constructed, placed, maintained, repaired, and removed by such party in accordance with all

applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws.

- (b) All persons acting on CLEC's or SWBT's behalf, including but not limited to CLEC's or SWBT's employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.
- (c) From and after the effective date of this Appendix, neither party nor personnel acting on either party's behalf shall discharge or release hazardous substances onto or from the site of any SWBT pole, duct, conduit, or right-of-way. Neither CLEC nor SWBT nor personnel acting on either party's behalf shall discharge water or any other substance from any SWBT 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.

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

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

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

7.01 Designation of Primary Points of Contact. Each party will, at the request of the other party, designate a primary point of contact to facilitate communications

between the parties and the timely processing of CLEC's applications for access to SWBT's poles, ducts, conduits, and rights-of-way located within this State. Designations of primary points of contact will be made by written notices including the name, title, address, phone number, and fax number of the person designated as the primary point of contact; provided, however, that unless and until a different designation is made, SWBT's primary point of contact shall be the Utility Liaison Supervisor identified in EXHIBIT VIII. Designation of primary points of contact pursuant to this section shall not affect notice requirements or other legal requirements set forth in other provisions of this Appendix or the parties' interconnection agreement.

7.02 Determinations by CLEC of Suitability and Availability. CLEC shall make its own, independent assessment of the suitability of SWBT's poles, ducts, conduits, and rights-of-way for CLEC's intended purposes.

7.03 Access to Records Relating to SWBT's Poles, Ducts, Conduits, and Rights-of-Way. This section establishes procedures through which certain records and information relating to SWBT's poles, ducts, conduits, and rights-of-way will be made available to CLEC. Access to such records and information shall be conditioned on CLEC's execution of a nondisclosure agreement equivalent in substance to the Nondisclosure Agreement attached to this Appendix as Exhibit V or such other nondisclosure agreement as shall be mutually acceptable to the parties, and no person acting on CLEC's behalf shall be granted access to such records and information without first signing such a nondisclosure agreement. CLEC shall reimburse SWBT for all reasonable costs incurred by SWBT in granting CLEC's requests for access to records and information under this section.

- (a) CLEC shall, after the effective date of this Appendix, have reasonable access to (1) SWBT's pole and conduit maps and records, (2) SWBT's cable plat maps, and, (3) in addition, other SWBT plant location records recording or logging assignments of pole, duct, and conduit space. CLEC shall be permitted to examine these records during regular business hours at a location where copies of such records are maintained or at such other location as may be mutually agreed upon by the parties. Access to such maps and records shall be by appointment only, and SWBT shall make such maps and records available for inspection by CLEC on two business days notice; provided, however, that CLEC shall, as a courtesy, whenever feasible, provide SWBT with additional advance notice (e.g., 10 business days) of its intent to examine such records.
- (b) The access described in subsection (a) shall include the right to make copies, at CLEC's expense, except for cable plat maps, which shall be made available for inspection only. In all instances, such

access shall include the ability to take notes and make drawings with references to those maps and records. No references to cable counts or circuit information may be included in any such copies, notes, or drawings. With respect to other cable-specific or customer-specific information, CLEC's copies, notes, or drawings may include only such information as needed for engineering purposes (e.g., proposing cable consolidations and identifying plant discrepancies) and not for sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities. CLEC's copies, notes, and drawings may include estimates regarding the physical characteristics (such as size and weight) of cables when necessary to make engineering determinations regarding the capacity, safety, reliability, or suitability of SWBT's poles, ducts, conduits, and rights-of-way for CLEC's intended uses.

- (c) SWBT shall provide CLEC the best information available from SWBT's current pole and conduit maps and records, cable plat maps, and other outside plant and construction records. SWBT represents that such records reflect approximate geographical locations of the facilities depicted and may not accurately reflect information such as:
 - (1) the exact location of the facilities depicted;
 - (2) the physical size, characteristics, or condition of the facilities depicted;
 - (3) the ducts or inner ducts presently occupied, assigned, or available within any particular conduit segment or manhole;
 - (4) the arrangement of facilities attached to a pole, the position of facilities suspended between poles or their relationship to each other and to the ground, or the positioning of cables and other facilities housed within ducts, conduits, manholes or other portions of SWBT's conduit system; and
 - (5) other information which must be assessed before it can be determined that space is available on or in a pole, duct, or conduit for the attachment or occupancy of CLEC's facilities or that the pole, duct, or conduit depicted is suitable for CLEC's intended use.

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

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

ARTICLE 8: POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

8.01 Selection of Space. SWBT must allow CLEC to select the space CLEC will occupy on poles or in conduit systems based upon the same criteria SWBT applies to itself and must provide CLEC information about the network guidelines and engineering protocols used by SWBT in determining the placement of facilities on poles and in conduits. In conduit systems owned or controlled by SWBT, maintenance ducts (as defined in Section 3.26) shall not be considered available for CLEC's use except as specifically provided elsewhere in this Appendix. All other ducts, inner ducts, sub-ducts, and partitioned conduits which are not assigned or occupied shall be deemed available for use by SWBT, CLEC, and third parties entitled to access under the Pole Attachment Act.

8.02 Pole, Duct, and Conduit Space Assignments. Pole, duct, and conduit space selected by CLEC will be assigned to CLEC as provided in this section. Information received by SWBT in connection with this section shall be subject to the provisions of Article 28 of this Appendix (Confidentiality of Information).

- (a) On receipt of CLEC's application for a pole attachment or conduit occupancy license by SWBT, the pole, duct, and conduit space selected by CLEC shall be assigned to CLEC for a pre-occupancy period not to exceed 12 months, beginning with the date of such assignment. The assignment (and date and time) of assignment shall be logged and recorded in the appropriate SWBT records. If such space has been provisionally assigned to CLEC as authorized below in subsection (b), the 12-month pre-occupancy assignment period will begin on the date the provisional assignment is recorded

in SWBT's records or the date of SWBT's receipt of CLEC's notice of intent to occupy under subsection (b), whichever date first occurs.

- (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 CLEC and other applicants prior to the submission of formal applications required pursuant to Section 9.02 of 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 CLEC and other applicants. SWBT may, on 60 days advance notice to CLEC, revise such interim procedures if such procedures prove to be unworkable, in which event CLEC may challenge SWBT's decision to revise or terminate such interim procedures in accordance with procedures available to CLEC under applicable federal and state laws and regulations. The procedures shall enable CLEC 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 CLEC or such other applicant by logging 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 CLEC or such other applicant shall not be available for assignment to any other person or entity, including SWBT. Notwithstanding such provisional assignment, CLEC 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.

- (1) Before giving SWBT a notice of its intent to occupy unassigned space, CLEC shall make a good faith determination that it actually plans to occupy such space. The assignment process shall not be used by either party for the purpose of holding or reserving space which such party does not plan to use or for the purpose of precluding SWBT or any other person or entity from utilizing or having access to SWBT's poles, ducts, conduits, or rights-of-way.

- (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 CLEC desires to occupy. The notice must, therefore, include, at a minimum, the following information:
- (i) identification of the conduit sections, and each manhole, to be occupied unless specific information by which CLEC would identify or designate the space to be occupied is not discernible from SWBT's records available for inspection under Section 7.03 in which case CLEC will cooperatively work with SWBT to develop an acceptable description;
 - (ii) the number of ducts, and number of inner ducts, to be occupied by CLEC within each conduit section;
 - (iii) the physical size (diameter) of the cables to be placed in such duct, if known, or the maximum and minimum sizes of the cables which may be placed if more than one size cable is being considered for the space to be occupied;
 - (iv) the anticipated use by CLEC of any infrequent construction techniques and connectivity solutions under Section 6.03 to avoid high or unusual expenditures;
 - (v) CLEC's best estimates of the dates when CLEC plans to begin and complete construction at the sites specified in the notice;
 - (vi) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital letters) or indication that CLEC intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix;

- (vii) if applicable, a conspicuous statement that the notice pertains to a building entrance or building distribution duct or conduit or other space within a building.
- (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 CLEC desires to occupy. The notice must, therefore, include, at a minimum, the following information:
 - (i) identification of the poles to be occupied, unless specific information by which CLEC would identify or designate the space to be occupied is not discernible from SWBT's records available for inspection under Section 7.03 in which case CLEC will cooperatively work with SWBT to develop an acceptable description;
 - (ii) the specific space on each pole to be occupied, including the height (distance from the ground) of the attachment and the side (road or field) where the attachment is to be made;
 - (iii) the anticipated number and types of cables to be attached, together with the anticipated physical size (diameter) and weight (weight per foot) of such cables and the anticipated number and types of strands, if any, to be used to support the cables, such information to be sufficient to give notice to SWBT and other joint users of the remaining space on the pole available and what make-ready work may be required of subsequent applicants as a result of the provisional assignment of space to CLEC;
 - (iv) the anticipated use by CLEC of any infrequent construction techniques and connectivity solutions under Section 6.03 to avoid high or unusual expenditures; and

- (v) CLEC's best estimates of the dates when CLEC plans to begin and complete construction at the sites specified in the notice.
 - (vi) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital letters) or indication that CLEC intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix.
- (4) No later than 30 days after giving such notice, CLEC shall file an application under Section 9.02 or the provisional assignment shall lapse.
- (5) As stated in Section 7.03(c), SWBT does not represent that its records accurately reflect the information necessary to enable CLEC to rely upon a records-based assignment process. SWBT shall have no duty to verify that space provisionally assigned pursuant to this subsection is actually available.
- (c) Assignments made prior to the issuance of a license shall be provisional assignments and shall be subject to modification if it is subsequently determined that the space selected by or assigned to CLEC is already occupied or that a different assignment is required to comply with SWBT's standards for assigning pole, duct, and conduit occupancy space.
- (d) CLEC's obligation to pay semi-annual pole attachment or conduit occupancy fees shall commence from the date the assignment or provisional assignment is logged and recorded in the appropriate SWBT records.
- (e) During the 12-month assignment period following the date space is assigned to CLEC and entered into the appropriate SWBT record, SWBT shall not occupy or use such space without CLEC's permission, shall not assign such space to any party other than CLEC, and shall not knowingly permit any party other than CLEC to occupy or use such space without CLEC's permission except as otherwise specifically provided in this Appendix. The assignment to CLEC shall automatically lapse 12 months after the date the assignment has been entered into the appropriate SWBT record if CLEC has not occupied such assigned space within such 12-month

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

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

- (h) Except as provided in subsection (e)-(f) above, assignments shall not be extended, renewed, or sequentially repeated in any manner (other than by actual occupancy) that enables CLEC, SWBT, or any third party to preclude access by others to unused pole attachment or conduit occupancy space for any period greater than 12 months after the date of initial assignment.
- (i) At CLEC's election, CLEC may file an application for access which specifically requests that the space sought by CLEC not be assigned to CLEC immediately and not be recorded immediately in the SWBT records available for inspection by other telecommunications carriers, cable television systems, or other providers of telecommunications services under Section 7.03 of this Appendix. In that event, the space sought by CLEC will not be assigned to CLEC and will remain available for assignment to others without restriction until such time as such space is formally assigned to CLEC in accordance with CLEC's written instructions and the assignment is recorded in the records available for inspection under Section 7.03. The assignment shall be made no later than the date of issuance to CLEC of a license confirming that CLEC has the right to occupy the space described in the license. In the event that CLEC elects to proceed under this subsection, CLEC's obligation to pay pole attachment and conduit occupancy fees shall not commence until the date the assignment is recorded in the appropriate SWBT records and CLEC shall bear the risks that (1) the space sought by CLEC will be assigned to and occupied by another person or entity or (2) circumstances will occur which may require that SWBT reevaluate CLEC's application and repeat the field inspection portion of the pre-license survey at CLEC's expense.
- (j) Notices and applications including assignment requests will be date- and time-stamped on receipt. Because space will be selected and further assignments made based on entries logged and recorded in the appropriate SWBT records, the date and time of assignment will be the date and time when the assignment is recorded rather than the date and time of receipt of the application or notice requesting such assignment. CLEC acknowledges that, to maximize the probability that CLEC will be assigned the space CLEC desires, CLEC should, when possible, submit applications and notices including assignment requests in person to SWBT at the site where the applicable records are maintained and should countersign the entry reflecting the assignment and time of assignment.

8.03 Immediate Occupancy. SWBT shall, within 60 days after the effective date of this Appendix, adopt interim procedures which will provide CLEC 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 CLEC's use and no make-ready work or infrequent construction techniques or connectivity solutions are required. SWBT may, on 60 days advance notice to CLEC, revise such interim procedures if they prove to be unworkable, in which event CLEC may seek renegotiation of this Appendix or challenge SWBT's decision in accordance with procedures available to CLEC 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.

- (a) Upon giving SWBT the notice required by this subsection, CLEC may immediately occupy space assigned or provisionally assigned to CLEC 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. CLEC 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) CLEC shall not occupy space which has not been assigned or provisionally assigned to CLEC. The assignment must be recorded on the appropriate SWBT records, as provided in Section 8.02, prior to CLEC's occupancy. If CLEC subsequently determines that the records are inaccurate and that the space assigned to CLEC is not available, or that the space assigned is not suitable for CLEC's intended use, CLEC 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, CLEC 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 CLEC will occupy. To avoid high or unusual expenditures resulting from unanticipated conditions at the site, CLEC may occupy space not assigned to CLEC subject to the following terms and conditions.
 - (1) CLEC may occupy the next available space shown on SWBT's records as available at the time of CLEC's

last review of the records. CLEC 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, CLEC shall submit to SWBT a written notice of intent to occupy or an application for the space occupied showing the reason for CLEC's use of the space occupied.
- (3) CLEC shall bear the risk that space occupied by CLEC pursuant to this section was assigned to SWBT or a third party during the period between CLEC's last review of the records and CLEC's occupancy of such space. After occupying space not previously assigned to CLEC, CLEC shall review the records and promptly notify the affected party if CLEC determines that it has occupied space assigned to such party. At the request of the party to whom such space has been assigned, CLEC 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. SWBT and CLEC 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 CLEC actual costs, if any, directly incurred by SWBT as a result of CLEC's decision under this subsection to occupy space subject to a valid prior assignment to SWBT. CLEC 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 CLEC's decision under this subsection to occupy space assigned to such third party.

- (c) Nothing in this section authorizes CLEC 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 CLEC, 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 CLEC) or (2) utilize any infrequent construction technique or connectivity solution described in Section 6.03.
- (e) If CLEC has not done so already, within 24 hours after occupying space pursuant to this section, CLEC 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) CLEC 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 CLEC 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 CLEC's occupancy of space in violation of this section.

ARTICLE 9: APPLICATIONS AND PRE-LICENSE SURVEYS

9.01 Licenses Required. Except as otherwise specifically permitted in this Appendix, CLEC shall apply in writing for and receive a license before attaching facilities to specified SWBT poles or placing facilities within specified SWBT ducts or conduits. License applications and information received by SWBT in connection with such applications shall be subject to the provisions of Article 30 of this Appendix (Confidentiality of Information).

9.02 Application Form. To apply for a pole attachment or conduit occupancy license under this Appendix, CLEC shall submit to 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) shall be interim forms only. SWBT reserves the right to change the format and content of these forms upon 60 days written notice to CLEC; provided however, that changes to the forms shall not be made to amend the terms of this Appendix.

- (a) To apply for a pole attachment license, CLEC shall submit to SWBT two signed copies of SWBT's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9433 ("Pole Attachments"). An application for a pole attachment license shall not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that such forms shall be deemed to be substantially complete if they contain the information specified in subsections (c)-(g) below, as applicable. Copies of Forms SW-9433 and SW-9434 are attached to this Appendix as parts of Exhibit III.
- (b) To apply for a conduit occupancy license, CLEC shall submit to SWBT two signed copies of SWBT's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9435 ("Conduit Occupancy"). An application for a conduit occupancy license shall not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that such forms shall be deemed to be substantially complete if they contain the information specified in subsections (c)-(g) below, as applicable. Copies of Forms SW-9434 and SW-9435 are attached to this Appendix as parts of Exhibit III.
- (c) Each application for a license under this Appendix shall include, at a minimum, the following information:
 - (1) the poles, ducts, and conduits (including all manholes) along CLEC's proposed route to or within which CLEC desires to attach or place its facilities;
 - (2) a description of the facilities to be attached to SWBT's poles and a description of the facilities to be placed within each component of SWBT's conduit system (including but not limited to ducts, conduits, manholes, and handholes) along the proposed route; and
 - (3) for poles, the proposed points of attachment;
 - (4) for building entrance or building distribution ducts or conduits or other space within a building, a conspicuous statement that the application pertains to a building entrance of building distribution duct or conduit or other space within a building;

- (5) if applicable, a conspicuous notation that the space requested is not to be assigned (or billed) to CLEC until SWBT has received CLEC's written instruction to make such assignment or issued a license authorizing CLEC to occupy the space requested; and
 - (6) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital letters) or indication that CLEC intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix.
- (d) Facilities descriptions which apply to multiple pole attachments or conduit occupancies need only be described once on any form. Facilities descriptions shall include, at a minimum, the following information:
 - (1) the number and types of cables, including the physical size (diameter) and weight (weight per foot);
 - (2) the number and types of strands, if any, which will be used to support the cables, including the rated holding capacity expressed in thousand pound increments (e.g., 2.2M) of such strands; and,
 - (3) sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to SWBT's poles or placed in SWBT's conduit system.
- (e) When it appears to CLEC that facilities modification, capacity expansion, or make-ready work may be required to accommodate CLEC's access requests, CLEC shall describe the facilities modification, capacity expansion or make-ready work which CLEC proposes. CLEC shall also describe its intent to use any infrequent construction techniques or connectivity solutions under Section 6.03 to avoid high or unusual expenditures and its reasons for the utilization of such techniques or solutions.
- (f) CLEC acknowledges that the poles along a particular pole line or route may include poles owned by firms (such as electric utilities) other than SWBT, that it may be necessary for SWBT to rearrange

its facilities or perform other make-ready work on poles other than poles it owns or controls in order to accommodate CLEC's request for access to SWBT's poles and that, at the time an application is submitted, it may be difficult for CLEC to determine with certainty whether a particular pole is owned or controlled by SWBT or by another entity. Accordingly, the application shall, to the extent feasible, identify all poles utilized by SWBT (without regard to ownership) along CLEC's proposed route.

- (g) Each application for a license under this Appendix shall be accompanied by a construction schedule showing CLEC's projected dates for beginning and completing construction at the sites specified in the application. Information on this schedule may be used by SWBT's engineering and outside plant construction personnel in scheduling work required to process CLEC's applications and scheduling such capacity expansions, make-ready work, and facilities modifications, if any, as may be necessary to accommodate CLEC's facilities.

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

- (a) Before submitting a formal written application for access to SWBT's poles, ducts, conduits, and rights-of-way, the firm submitting the application shall make a good faith determination that it actually plans to attach facilities to or place facilities within the poles, ducts, conduits, or rights-of-way specified in the application. Applications shall not be submitted for the purpose of holding or reserving space which the applicant does not plan to use or for the purpose of precluding SWBT or any other provider of telecommunications services from using such poles, ducts, conduits, or rights-of-way.
- (b) CLEC shall only submit applications for access to poles, ducts, conduits, and rights-of-way which it plans to use within one year following the date access is granted and will use its best efforts to submit applications in an orderly manner in accordance with CLEC's needs. If CLEC contemplates the need to submit more than 10 applications within any 45-day period with respect to poles,

ducts, conduits, and rights-of-way within the territory of any single SWBT construction district, CLEC shall give SWBT advance notice as promptly as is reasonably practicable.

- (c) No more than 300 poles shall be the subject of any single pole attachment license application.
- (d) No more than 20 manholes shall be the subject of any single conduit occupancy license application.

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

9.05 Pre-license Survey. A pre-license survey (including a review of records and field inspection, if necessary) will be completed by SWBT after CLEC 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 CLEC.

- (a) The field inspection portion of the pre-license survey, which includes the visual inspection of existing pole and conduit facilities, shall be performed by 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 CLEC'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 CLEC'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 CLEC's license application is already available from existing sources, including the application forms and such other information as may be available to SWBT. If CLEC has occupied the space requested before the issuance of a license, a post-installation inspection of CLEC'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

CLEC. SWBT may charge CLEC for post installation inspection expenses only if the inspection reflects that CLEC is in substantial noncompliance with the terms of this Appendix.

- (b) The administrative processing portion of the pre-license survey (which includes processing the application and reviewing records) will be performed by SWBT.
- (c) Before performing any portion of the pre-license survey, SWBT shall obtain CLEC'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 CLEC's facilities when installation has occurred, pursuant to Section 8.03, before the issuance of a license.

**ARTICLE 10: ISSUANCE AND DENIAL OF LICENSES
(INCLUDING FACILITIES MODIFICATIONS, CAPACITY EXPANSIONS, AND
MAKE-READY WORK)**

10.01 Response Within 45 Days. Within 45 days of CLEC's submission of a license application pursuant to Section 9.02 of this Appendix, or within such other period of time as may be mutually agreed upon in writing by the parties, 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 CLEC's request for access become aware of hazardous substances at the site requested by CLEC, SWBT shall promptly advise CLEC and shall, at CLEC's request, discuss alternatives to denial and issues associated with the presence of such hazardous substances.

- (a) If access is granted, SWBT shall, no later than 45 days after CLEC's submission of the license application, further advise CLEC in writing (1) what capacity expansions, make-ready work, or facilities modifications, if any, will be required to prepare SWBT's pole or conduit facilities (2) provide CLEC an estimate of charges for such capacity expansions, make-ready work, or facilities modifications, and (3) disclose to CLEC any hazardous substances known by SWBT to be present at the site.
- (b) If access is denied, SWBT will confirm the denial in writing by the 45th day after the receipt by SWBT of CLEC's completed application. The denial of access shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how such evidence and information relates to a denial of access for reasons of lack of capacity, safety, reliability, or

generally applicable engineering purposes. If CLEC in its completed application sets forth in writing specific proposals for expanding capacity, the denial statement shall specifically address such proposals.

- (c) CLEC agrees that if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific poles, ducts, or conduit facilities, CLEC shall promptly withdraw or amend its application.
- (d) Notwithstanding the 45-day deadline, SWBT will, pursuant to Section 8.03 of this Appendix, make available to CLEC for immediate occupancy any pole, duct, or conduit space which is not currently assigned, not designated as a maintenance duct, and not subject to applicable make-ready requirements. Availability determinations will be based on the appropriate SWBT records to be maintained by SWBT and made available for viewing by CLEC on two business days notice as provided in Section 7.03 of this Appendix.

10.02 Obligation to Construct or Modify Facilities; Capacity Expansions. The parties agree that SWBT may grant access subject to CLEC's approval of such make-ready work or facilities modifications as may be required to expand capacity to accommodate CLEC's request, in which event CLEC shall either accept such conditions, initiate good faith negotiations to explore other potential accommodations, or withdraw its request for access. If SWBT does not offer to expand capacity and denies CLEC's request for access, SWBT shall promptly notify CLEC of such determination as provided in Section 10.01(b). SWBT shall not deny CLEC's request for access on lack of capacity grounds when capacity can be expanded as provided in this section and in Section 6.03 of this Appendix dealing with infrequent construction techniques and connectivity solutions:

- (a) SWBT agrees to modify its outside plant facilities to the extent that CLEC agrees to pay for the modification at cost 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 CLEC the costs of modifying its outside plant facilities for CLEC's space. Except as otherwise specifically provided in this subsection, CLEC will pay half of SWBT's charges for such modifications at 50 percent job completion and the remainder at 100 percent completion. If the estimated out-of-pocket costs with respect to any project authorized by CLEC under this section will exceed \$250,000, SWBT may request that CLEC reimburse SWBT for materials and outside contractor costs as such

costs are incurred, and CLEC shall not refuse such request without due cause and justification. As provided in Section 10.08 of this Appendix, CLEC shall be entitled to partial reimbursement for capacity expansion costs incurred pursuant to this section in accordance with the Pole Attachment Act and applicable rules, regulations, and Commission orders.

- (b) SWBT will, at its own expense, install inner duct in a timely manner to accommodate CLEC's space needs in accordance with the same time interval SWBT provides to itself. If SWBT's interval for beginning or completing make-ready work does not meet CLEC's needs, CLEC, as an authorized contractor, may perform the inner-duct installation itself or arrange for the work to be performed by an authorized contractor selected by CLEC from a list, jointly developed by CLEC and SWBT, of mutually agreed contractors qualified to perform such work. When inner duct is installed in SWBT's conduit system by CLEC or an authorized contractor selected by CLEC, SWBT shall provide the inner-ducting materials to be installed and CLEC shall bear all other installation expenses. CLEC shall give SWBT sufficient advance notice of the materials needed to enable SWBT to provide such materials to CLEC on a timely basis. CLEC shall return all unused materials, including unused inner duct and reels, to SWBT or purchase them from SWBT. Inner duct installed by CLEC or an authorized contractor selected by CLEC shall be installed 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. Neither CLEC nor persons acting on CLEC's behalf shall arrange for inner duct installation to be performed under this section by subcontractors who are not authorized contractors.
- (c) SWBT shall, at its expense, remove cables that are retired or inactive (dead) to free-up requested duct and pole space, provided that such removal is reasonably feasible (i.e. cable pulls easily without incident). If a section of cable is "frozen" in a duct and would require excavation to remove, CLEC, at its option, may request that SWBT excavate the obstruction. In the alternative, CLEC may (as an authorized contractor) excavate the obstruction itself or arrange for the work to be performed by an authorized contractor selected by CLEC from a list, jointly developed and maintained by CLEC and SWBT, of mutually agreed contractors qualified to do such work. Such excavations will be at CLEC's expense; removal of the remainder of the cable will be at SWBT's expense. Excavation work performed by CLEC or an authorized

contractor selected by CLEC shall be performed 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. CLEC shall not conduct conduit excavation activities in any manner which jeopardizes or degrades the integrity of SWBT's structures. Neither CLEC nor persons acting on CLEC's behalf shall arrange for excavation work to be performed under this subsection by subcontractors who are not authorized contractors.

10.03 Issuance of Licenses and Immediate Access When No Make-ready Work is Required. If the parties agree that no make-ready work is necessary to accommodate CLEC's facilities, SWBT will issue a license without performing make-ready work and pole attachment or conduit occupancy space will be made available to CLEC for immediate occupancy. Immediate occupancy prior to the issuance of a license shall be governed by Section 8.03.

10.04 Performance of Make-ready Work. Except as otherwise specifically provided in Section 10.02, in Section 10.05, and in this section, make-ready work shall be performed by SWBT or by contractors, subcontractors, or other persons acting on SWBT's behalf and shall be performed by SWBT in accordance with the same time intervals which would be applicable if SWBT were performing the work for itself.

- (a) CLEC and SWBT will mutually establish and maintain for each construction district a list of authorized contractors who may be selected by CLEC to perform make-ready work when SWBT's interval for beginning or completing such make ready work does not meet CLEC's needs.
- (b) If SWBT's interval for beginning or completing make-ready work does not meet CLEC's needs, CLEC may, as an authorized contractor, perform the make-ready work itself or arrange for the work to be performed by an authorized contractor selected by CLEC from the applicable list of authorized contractors. Subject to the availability of personnel, CLEC may also request that SWBT perform the work on an expedited basis; provided, however, that make-ready work will not be performed on an expedited basis unless CLEC first approves any overtime or premium rates or charges associated with performance of the work on an expedited basis.
- (c) From time to time, additional contractors, subcontractors or other vendors may be approved by CLEC and SWBT to perform make-ready work in the event that the workload exceeds the capacity of the authorized contractors on the approved list to perform the make-ready work in a timely manner.