

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True- up
43	4-Wire Mid-band Symmetric Technology Zone 4	4SL1X	\$ 30.08	\$ 28.77	\$ 11.09	
44	PSD #4 Capable Loop - 2 Wire High-band Symmetric Technology Zone 1	2SLDX	\$ 12.71	\$ 26.07	\$ 11.09	
45	PSD #4 Capable Loop - 2 Wire High-band Symmetric Technology Zone 2	2SLDX	\$ 20.71	\$ 26.07	\$ 11.09	
46	PSD #4 Capable Loop - 2 Wire High-band Symmetric Technology Zone 3	2SLDX	\$ 33.29	\$ 26.07	\$ 11.09	
47	PSD #4 Capable Loop - 2 Wire High-band Symmetric Technology Zone 4	2SLDX	\$ 18.23	\$ 26.07	\$ 11.09	
48	PSD #5 2-Wire Capable Loop - 2 -Wire Asymmetrical Digital Subscriber Line Technology Zone 1	U2F	\$ 12.71	\$ 26.07	\$ 11.09	
49	PSD #5 2-Wire Capable Loop - 2 -Wire Asymmetrical Digital Subscriber Line Technology Zone 2	U2F	\$ 20.71	\$ 26.07	\$ 11.09	
50	PSD #5 2-Wire Capable Loop - 2 -Wire Asymmetrical Digital Subscriber Line Technology Zone 3	U2F	\$ 33.29	\$ 26.07	\$ 11.09	
51	PSD #5 2-Wire Capable Loop - 2 -Wire Asymmetrical Digital Subscriber Line Technology Zone 4	U2F	\$ 18.23	\$ 26.07	\$ 11.09	
52	PSD #7 2-Wire Capable Loop - 2-Wire Short Reach Very High-band Symmetric Technology Zone 1	2SLFX	\$ 12.71	\$ 26.07	\$ 11.09	
53	PSD #7 2-Wire Capable Loop - 2-Wire Short Reach Very High-band Symmetric Technology Zone 2	2SLFX	\$ 20.71	\$ 26.07	\$ 11.09	
54	PSD #7 2-Wire Capable Loop - 2-Wire Short Reach Very High-band Symmetric Technology Zone 3	2SLFX	\$ 33.29	\$ 26.07	\$ 11.09	
55	PSD #7 2-Wire Capable Loop - 2-Wire Short Reach Very High-band Symmetric Technology Zone 4	2SLFX	\$ 18.23	\$ 26.07	\$ 11.09	
56	Loop Qualification Process	NRBXU	na	\$ 15.00	\$ 15.00	
57	DSL Shielded Cross Connect to Collocation	UXRRX	\$ 0.80	\$ 19.96	\$ 12.69	
58	2-Wire Analog Cross-Connect to Collocation	UCXD2	\$ 0.31	\$ 19.96	\$ 12.69	
59	2-Wire Digital Cross-Connect to Collo	UCXD2	\$ 0.31	\$ 19.96	\$ 12.69	
60	4-Wire Analog Cross-Connect to Collo	UCXD4	\$ 0.63	\$ 25.38	\$ 17.73	
61	DSL Conditioning Options					
62	Removal of Repeaters	NRBXV	na	\$ 289.51	TBD	

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63	Removal of Bridged Taps and Repeaters	NRBXH	na	TBD	TBD	
64	Removal of Bridged Taps	NRBXW	na	\$ 484.19	TBD	
65	Removal of Bridged Taps and Load Coils	NRBXF	na	TBD	TBD	
66	Removal of Load Coils	NRBXZ	na	\$ 797.78	TBD	
67	Conditioning for loops over 17,500 ft.		na	TBD	TBD	
68	Cross Connects w/testing					
69	Analog Loop to Collo, 2-wire, same C.O.	UCXC2	\$ 1.89	\$ 35.83	\$ 29.44	
70	Analog Loop to Collo, 4-wire, same C.O.	UCXC4	\$ 3.77	\$ 41.63	\$ 35.73	
71	Digital Loop to Collo, 2-wire, same C.O.	UCXC2	\$ 1.89	\$ 35.83	\$ 29.44	
72	Digital Loop to Collo, 4-wire, same C.O.	UCXHX	\$ 9.00	\$ 60.04	\$ 41.06	
73	Analog Loop to Collo/mux, 2-wire, diff C.O.	UCXM2	\$ 4.03	\$ 52.24	\$ 45.85	
74	Analog Loop to Collo/mux, 4-wire, diff C.O.	UCXM4	\$ 5.19	\$ 60.47	\$ 54.57	
75	Digital Loop to Collo/mux, 2-wire, diff C.O.	UCXS2	\$ 6.31	\$ 52.24	\$ 45.85	
76	Digital Loop to Collo/mux, 4-wire, diff C.O.	UDLY4	ICB	ICB	ICB	#
77	Analog Loop to DCS 2-wire	UDLW2	\$ -	\$ -	\$ -	
78	Analog Loop to DCS 4-wire	UCXGX	\$ -	\$ -	\$ -	
79	Digital Loop to DCS 2-wire	UDU5X	\$ -	\$ -	\$ -	
80	Digital Loop to DCS 4-wire	UCXHX	\$ -	\$ -	\$ -	
81	Cross Connects w/out testing					
82	Analog Loop to Collo, 2-wire, same C.O.	UCXD2	\$ 0.31	\$ 19.96	\$ 12.69	
83	Analog Loop to Collo, 4-wire, same C.O.	UCXD4	\$ 0.63	\$ 25.38	\$ 17.73	
84	Digital Loop to Collo, 2-wire, same C.O.	UCXD2	\$ 0.31	\$ 19.96	\$ 12.69	
85	Digital Loop to Collo, 4-wire, same C.O.	UDLD4	\$ -	\$ 34.48	\$ 28.57	

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86	Analog Loop to DCS 2-wire	UDLW2	\$ -	\$ -	\$ -	
87	Analog Loop to DCS 4-wire	UCXGX	\$ -	\$ -	\$ -	
88	Digital Loop to DCS 2-wire	UDU5X	\$ -	\$ -	\$ -	
89	Digital Loop to DCS 4-wire	UCXHX	\$ -	\$ -	\$ -	
90	NCS					
91	2 Wire Analog Loop to Analog Line Port		\$ 5.00	\$ 40.00	na	
92	2 Wire Analog Loop to DID Trunk Port		\$ 5.00	\$ 40.00	na	
93	2 Wire Digital Loop to BRI Port		\$ 5.00	\$ 40.00	na	
94	4 Wire Digital Loop to PRI Port		\$ 5.00	\$ 40.00	na	
95	4 Wire Digital Loop to DS1 Trunk Port		\$ 5.00	\$ 40.00	na	
96	4 Wire Digital Loop to DS1 UDT w/o Mux		\$ 5.00	\$ 40.00	na	
97	2 Wire Analog Loop to DS1 UDT w/Mux		\$ 5.00	\$ 40.00	na	
98	4 Wire Digital Loop to DS3 UDT w/Mux		\$ 5.00	\$ 40.00	na	
99	Local Switching					
100	Temporary Structure w/in a CO					
101	Zone 1	Not Applicable	\$ 0.0019880	na	na	
102	Zone 2	Not Applicable	\$ 0.0023910	na	na	
103	Zone 3	Not Applicable	\$ 0.0034440	na	na	
104	Zone 4	Not Applicable	\$ 0.0029340	na	na	
105	Temporary Structure btwn a CO					
106	Zone 1	Not Applicable	\$ 0.0046330	na	na	

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107	Zone 2	Not Applicable	\$ 0.0055690	na	na	
108	Zone 3	Not Applicable	\$ 0.0077480	na	na	
109	Zone 4	Not Applicable	\$ 0.0064900	na	na	
110	Standard /Per Orig. or Term. MOU (excluding port) - Zone 1KC/St. Louis Metro	Not Applicable	\$ 0.0019880	na	na	
111	Standard /Per Orig. or Term. MOU (excluding port) - Zone 2 (Mo Rate Group B)	Not Applicable	\$ 0.0023910	na	na	
112	Standard /Per Orig. or Term. MOU (excluding port) - Zone 3 (Mo Rate Grp A)	Not Applicable	\$ 0.0034440	na	na	
104	Standard /Per Orig. or Term. MOU (excluding port) - Zone 4 (spfd)	Not Applicable	\$ 0.0029340	na	na	
105	Customized Routing UNE AIN		ICB	ICB	ICB	
106	Blocking/Screening (when LCC Customized Routine is used)		ICB	ICB	ICB	
107	Ports					
108	Analog Line Port Zone 1	UYP/RBQ	\$ 1.74	\$ 39.37	\$ 35.27	
109	Analog Line Port Zone 2	UYP/RBQ	\$ 1.97	\$ 39.37	\$ 35.27	
110	Analog Line Port Zone 3	UYP/RBQ	\$ 2.47	\$ 39.37	\$ 35.27	
111	Analog Line Port Zone 4	UYP / RBQ	\$ 2.25	\$ 39.37	\$ 35.27	
112	BRI Line Port Zone 1	U1P/RBJ	\$ 5.56	\$ 6.47	\$ 3.53	
113	BRI Line Port Zone 2	U1P/RBJ	\$ 5.56	\$ 6.47	\$ 3.53	
114	BRI Line Port Zone 3	U1P/RBJ	\$ 5.56	\$ 6.47	\$ 3.53	
115	BRI Line Port Zone 4	U1P / RBJ	\$ 5.56	\$ 6.47	\$ 3.53	
116	PRI Line Port Zone 1	UJP/RB5	\$ 165.85	\$ 214.53	\$ 98.53	
117	PRI Line Port Zone 2	UJP/RB5	\$ 165.85	\$ 214.53	\$ 98.53	
118	PRI Line Port Zone 3	UJP/RB5	\$ 165.85	\$ 214.53	\$ 98.53	

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119	PRI Line Port Zone 4	UJP / R85	\$ 165.85	\$ 214.53	\$ 98.53	
120	Analog DID Trunk Port Zone 1	U5P / RBT	\$ 13.55	\$ 64.00	\$ 64.00	
121	Analog DID Trunk Port Zone 2	U5P / RBT	\$ 14.45	\$ 69.47	\$ 69.47	
122	Analog DID Trunk Port Zone 3	U5P / RBT	\$ 10.60	\$ 59.76	\$ 59.76	
123	Analog DID Trunk Port Zone 4	U5P / RBT	\$ 15.12	\$ 62.01	\$ 62.01	
124	DS1 Trunk Port Zone 1	U9Z	\$ 132.14	\$ 162.38	\$ 24.76	
125	DS1 Trunk Port Zone 2	U9Z	\$ 126.71	\$ 162.44	\$ 24.83	
126	DS1 Trunk Port Zone 3	U9Z	\$ 58.04	\$ 160.47	\$ 22.86	
127	DS1 Trunk Port Zone 4	U9Z	\$ 140.35	\$ 164.98	\$ 27.36	
128	EAS Port Additive per MOU	OPXEX	\$ 24.80	na	na	
129	Feature Activation per Analog Port Type					
130	Call Waiting	ESX	None	\$0.00	None	#
131	Call Waiting ID	NWT	None	\$0.00	None	#
132	Call Waiting ID Options (for end users type 2.5 CPE)	NWL	None	\$0.00	None	#
133	Call Forwarding Variable	ESM	None	\$0.00	None	#
134	Call Forwarding Busy Line	EV8	None	\$0.00	None	#
135	Call Forwarding Don't Answer	EVD	None	\$0.00	None	#
136	Call Forward Busy Line/Don't Answer	E5E	None	\$0.00	None	#
137	Remote Access to Call Forwarding	RC3	None	\$0.00	None	#
138	Customer Alert Enablement	AWS	None	\$0.00	None	#
139	Three-Way Calling	ESC	None	\$0.00	None	#
140	Speed Calling 8	ESL	None	\$0.00	None	#
141	Speed Calling 30	ESF	None	\$0.00	None	#

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142	Auto Callback/Auto Redial	NSQ	None	\$0.00	None	#
143	Distinctive Ring/Priority Call	NSK	None	\$0.00	None	#
144	Selective Call Rejection/Call Blocker	NSY	None	\$0.00	None	#
145	Auto Recall/Call Return	NSS	None	\$0.00	None	#
146	Selective Call Forwarding	NCE	None	\$0.00	None	#
147	Calling # Delivery	NSD	None	\$0.00	None	#
148	CNAM Delivery	NMP	None	\$0.00	None	#
149	Calling Number/Name Blocking	NSG	None	\$0.00	None	#
150	Calling Number/Name Delivery Blocking/Per Line Blocking	NBJ	None	na	None	#
151	Anonymous Call Rejection	AYK	None	na	None	#
152	Analog Line Port Features/per arrangement					
153	Personalized Ring	DRS	None	\$0.00	None	#
154	Personalized Ring	DRS1X	None	\$0.00	None	#
155	Personalized Ring	DRS2X	None	\$0.00	None	#
156	Hunting Arrangement	NR931	None	\$0.00	None	#
157	Feature Activation per successful occurrence					
158	Call Trace (per feature per port)	NST	None	\$0.00	None	#
159	Call Trace (per successful occurrence per port)	Under Development	None	\$0.00	None	#
160	ISDN BRI Port Features					
161	CSV/CSD per B channel	STHXX	None	\$0.00	None	#
162	Basic EKTS per B channel	FPG1X	None	\$0.00	None	#

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163	CACH EKTS per B channel	EFV1X	None	\$0.00	None	#
164	Individual features (per feature per B Channel)					
165	Additional Call Offering for CSV	NCO	None	\$0.00	None	#
166	Call Forwarding Don't Answer	NQ6	None	\$0.00	None	#
167	Call Forwarding Interface Busy	NQ5	None	\$0.00	None	#
168	Call Forwarding Variable	NVF	None	\$0.00	None	#
169	Calling Number Delivery	ZCN	None	\$0.00	None	#
170	Hunt Group for CSD	HTKPG	None	\$0.00	None	#
171	Hunt Group for CSV	GXH	None	\$0.00	None	#
172	Message Waiting Indicator	NZW	None	\$0.00	None	#
173	Secondary Only Telephone Number	DO6	None	\$0.00	None	#
174	Three Way Conference Calling	NZ3	None	\$0.00	None	#
175	ISDN PRI Port Features					
176	CSV/CSD per B channel (required/provided)	STHXX				
177	Backup D Channel (per PRI)	ZPBXD	None	\$0.00	None	#
178	Calling Number Delivery (per PRI)	NXN	None	\$0.00	None	#
179	Dynamic Channel Allocation (per PRI)	CCZ	None	\$0.00	None	#
180	Analog DID Trunk Port					
181	DID #s - Initial 100 #s	ND8	None	\$0.00	None	#
182	DID #S - Addtl. 100 #s	ND9	None	\$0.00	None	#
183	DID #s - Initial 10 #s	NDZ	None	\$0.00	None	#

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184	DID #s - Addtl. 10 #s	NDA	None	\$0.00	None	#
185	DS1 Digital Trunk Port DID					
186	DID #s - Initial 100 #s	ND8	None	\$0.00	None	#
187	DID #s - Addtl. 100 #s	ND9	None	\$0.00	None	#
188	DID #s - Initial 10 #s	NDZ	None	\$0.00	None	#
189	DID #s - Addtl. 10 #s	NDA	None	\$0.00	None	#
190	Centrex-like System Charges					
191	System Establishment per serving office - Analog Only	SEPUX	None	\$0.00	\$0.00	#
192	System Establishment per serving office - Analog/ISDN BRI Mix	SEPUY	None	\$0.00	\$0.00	#
193	System Establishment per serving office - ISDN BRI Only	SEPUU	None	\$0.00	\$0.00	#
194	System Subsqnt Conversion per serving office - Add Analog to existing ISDN BRI only system	NR93W	None	\$0.00	\$0.00	#
195	System Subsqnt Conversion per serving office - Add ISDN to existing Analog only system	NR93X	None	\$0.00	\$0.00	#
196	Analog Port Features for unbundled Centrex					
197	Standard feature initialization per analog port	NR935	None	\$0.00	None	#
198	Auto Callback Calling/Business Group Callback	RGE	None	\$0.00	None	#
199	Call Forwarding Variable/ Business Group Call Forwarding Variable	HWJ	None	\$0.00	None	#
200	Call Forwarding Busy Line	GCE	None	\$0.00	None	#
201	Call Forwarding Don't Answer	69H	None	\$0.00	None	#
202	Call Hold	6AB	None	\$0.00	None	#

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203	Call Pickup	E3P	None	\$0.00	None	#
204	Call Transfer - All Calls	TF1PS	None	\$0.00	None	#
205	Call Waiting - Intragroup/Business Call Forwarding Var.	NGW	None	\$0.00	None	#
206	Call Waiting - Orig.	6SZ	None	\$0.00	None	#
207	Call Waiting - Term.	HUH	None	\$0.00	None	#
208	Class of Service Restr. - Fully	ERSFC	None	\$0.00	None	#
209	Class of Service Restr. - Semi	RQW	None	\$0.00	None	#
210	Class of Service Restr. - Toll	ERSPA	None	\$0.00	None	#
211	Consult. Hold	EBE	None	\$0.00	None	#
212	Dial Call Waiting	WDK	None	\$0.00	None	#
213	Directed Call Pickup - Non Barge in	69D	None	\$0.00	None	#
214	Directed Call Pickup - With Barge in	6MD	None	\$0.00	None	#
215	Distinctive Ring and Call Waiting Tone	DRJ	None	\$0.00	None	#
216	Hunting Arrgmt - Basic	HRK	None	\$0.00	None	#
217	Hunting Arrgmt - Circular	HCK	None	\$0.00	None	#
218	Speed Calling Personal	E18	None	\$0.00	None	#
219	Three Way Calling	ESCPS	None	\$0.00	None	#
220	Voice/Data Protection	D7N	None	\$0.00	None	#
221	ISDN (BRI) Port Features					
222	CSV per B channel	STHXX	None	\$0.00	None	#
223	CSD per B channel	STHXX	None	\$0.00	None	#

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224	Standard feature initialization per ISDN BRI port	NR936	None	\$0.00	None	#
225	Add'l Call Offering for CSV	NCO	None	\$0.00	None	#
226	Automatic Callback Calling	RGE	None	\$0.00	None	#
227	Call Forwarding Busy Line	GCE	None	\$0.00	None	#
228	Call Forwarding Don't Answer	NQ6	None	\$0.00	None	#
229	Call Forwarding Variable	NVF	None	\$0.00	None	#
230	Call Hold	6AB	None	\$0.00	None	#
231	Call Pickup	E3P	None	\$0.00	None	#
232	Call Transfer - All Calls	TF1PS	None	\$0.00	None	#
233	Class of Service Restr. - Fully	ERSFC	None	\$0.00	None	#
234	Class of Service Restr. - Semi	RQW	None	\$0.00	None	#
235	Class of Service Restr. - Toll	ERSPA	None	\$0.00	None	#
236	Consult. Hold	EBE	None	\$0.00	None	#
237	Dial Call Waiting	WDK	None	\$0.00	None	#
238	Directed Call Pickup - Non Barge in	69D	None	\$0.00	None	#
239	Directed Call Pickup - With Barge in	6MD	None	\$0.00	None	#
240	Distinctive Ringing	DRJ	None	\$0.00	None	#
241	Hunting Arrgmt - Basic	HRK	None	\$0.00	None	#
242	Hunting Arrgmt - Circular	HCK	None	\$0.00	None	#
243	Speed Calling Personal	NXG	None	\$0.00	None	#
244	Three Way Calling	NZ3	None	\$0.00	None	#

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245	Tandem Switching					
246	Per MOU per call	Not Applicable	\$ 0.001510	na	na	
247	Blended Transport					
248	Blended Transport ZONE 1	Not Applicable	\$ 0.000671	na	na	
249	Blended Transport ZONE 2	Not Applicable	\$ 0.000835	na	na	
250	Blended Transport ZONE 3	Not Applicable	\$ 0.000912	na	na	
251	Blended Transport Interzone	Not Applicable	\$ 0.000865	na	na	
252	Common Transport					
253	Termination MOU Zone 1	Not Applicable	\$ 0.000190	na	na	
254	Termination MOU Zone 2	Not Applicable	\$ 0.000285	na	na	
255	Termination MOU Zone 3	Not Applicable	\$ 0.000302	na	na	
256	Termination MOU Zone 4 load as Zone 1	Not Applicable	\$ 0.000162	na	na	
257	Termination MOU Interzone	Not Applicable	\$ 0.000332	na	na	
258	Facility Mile MOU Zone 1	Not Applicable	\$ 0.000002	na	na	
259	Facility Mile MOU Zone 2	Not Applicable	\$ 0.000007	na	na	
260	Facility Mile MOU Zone 3	Not Applicable	\$ 0.000015	na	na	
261	Facility Mile MOU Zone 4 load as Zone 1	Not Applicable	\$ 0.000001	na	na	
262	Facility Mile MOU Interzone	Not Applicable	\$ 0.000003	na	na	
263	Dedicated Transport					
264	DS1 Entrance Facilities					
265	Zone 1	UENHX	\$ 162.30	\$ 628.00	\$ 456.00	#

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266	Zone 2	UENHX	\$ 162.30	\$ 628.00	\$ 456.00	#
267	Zone 3	UENHX	\$ 162.30	\$ 628.00	\$ 456.00	#
268	Zone 4	UENHX	\$ 162.30	\$ 628.00	\$ 456.00	#
269	DS3 Entrance Facilities					
270	Zone 1	UENJX	\$ 1,884.49	\$ 637.00	\$ 496.00	#
271	Zone 2	UENJX	\$ 1,884.49	\$ 637.00	\$ 496.00	#
272	Zone 3	UENJX	\$ 1,884.49	\$ 637.00	\$ 496.00	#
273	Zone 4	UENJX	\$ 1,884.49	\$ 637.00	\$ 496.00	#
274	OC3 Entrance Facilities	UENKX	ICB	ICB	ICB	#
275	OC12 Entrance Facilities	UENLX	ICB	ICB	ICB	#
276	Interoffice Transport					
277	DS1 Interoffice Transport - Zone 1 (1st mile)	ULNHS	\$ 57.49	\$ 184.84	\$118.14	
278	DS1 Interoffice Transport - Zone 2 (1st mile)	ULNHS	\$ 86.96	\$ 184.84	\$118.14	
279	DS1 Interoffice Transport - Zone 3 (1st mile)	ULNHS	\$ 92.07	\$ 184.84	\$118.14	
280	DS1 Interoffice Transport - Zone 4 (1st mile) Load as Zone 1	ULNHS	\$ 48.70	\$ 184.84	\$118.14	
281	DS1 Interoffice Transport - Interzone Term. (1st mile)	ULNHS	\$ 100.36	\$ 184.84	\$118.14	
282	DS1 Interoffice Transport - Zone 1 (addl mile/per mile)	ULNHS	\$ 0.62	N/A	N/A	
283	DS1 Interoffice Transport - Zone 2 (addl mile/per mile)	ULNHS	\$ 1.67	N/A	N/A	
284	DS1 Interoffice Transport - Zone 3 (addl mile/per mile)	ULNHS	\$ 1.60	N/A	N/A	
285	DS1 Interoffice Transport - Zone 4 (addl mile/per mile) Load as Zone 1	ULNHS	\$ 0.19	N/A	N/A	
286	DS1 Interoffice Transport - Interzone Term. (addl mile/per mile)	ULNHS	\$ 0.97	N/A	N/A	

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287	DS3 Interoffice Transport - Zone 1 (1st mile)	ULNJS	\$ 925.21	\$ 203.10	\$ 135.06	
288	DS3 Interoffice Transport - Zone 2 (1st mile)	ULNJS	\$ 1,824.14	\$ 203.10	\$ 135.06	
289	DS3 Interoffice Transport - Zone 3 (1st mile)	ULNJS	\$ 2,052.06	\$ 203.10	\$ 135.06	
290	DS3 Interoffice Transport - Zone 4 (1st mile) Load as Zone 1	ULNJS	\$ 789.13	\$ 203.10	\$ 135.06	
291	DS3 Interoffice Transport - Interzone Term. (1st mile)	ULNJS	\$ 2,361.66	\$ 203.10	\$ 135.06	
292	DS3 Interoffice Transport - Zone 1 (addl mile/per mile)	ULNJS	\$ 15.64	N/A	N/A	
293	DS3 Interoffice Transport - Zone 2 (addl mile/per mile)	ULNJS	\$ 56.45	N/A	N/A	
294	DS3 Interoffice Transport - Zone 3 (addl mile/per mile)	ULNJS	\$ 97.60	N/A	N/A	
295	DS3 Interoffice Transport - Zone 4 (addl mile/per mile)	ULNJS	\$ 17.32	N/A	N/A	
296	DS3 Interoffice Transport - Interzone Term. (addl mile/per mile)	ULNJS	\$ 25.87	N/A	N/A	
297	OC3 Interoffice Transport - Zone 1 (1st mile)	ULNKS	ICB	ICB	ICB	#
298	OC3 Interoffice Transport - Zone 2 (1st mile)	ULNKS	ICB	ICB	ICB	#
299	OC3 Interoffice Transport - Zone 3 (1st mile)	ULNKS	ICB	ICB	ICB	#
300	OC3 Interoffice Transport - Zone 4 (1st mile)	ULNKS	ICB	ICB	ICB	#
301	OC3 Interoffice Transport - Interzone Term. (1st mile)	ULNKS	ICB	ICB	ICB	#
302	OC3 Interoffice Transport - Zone 1 (addl mile/per mile)	ULNKS	ICB	ICB	ICB	#
303	OC3 Interoffice Transport - Zone 2 (addl mile/per mile)	ULNKS	ICB	ICB	ICB	#
304	OC3 Interoffice Transport - Zone 3 (addl mile/per mile)	ULNKS	ICB	ICB	ICB	#
305	OC3 Interoffice Transport - Zone 4 (addl mile/per mile)	ULNKS	ICB	ICB	ICB	#
306	OC3 Interoffice Transport - Interzone Term. (addl mile/per mile)	ULNKS	ICB	ICB	ICB	#
307	OC12 Interoffice Transport - Zone 1 (1st mile)	ULNLS	ICB	ICB	ICB	#

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True- up
308	OC12 Interoffice Transport - Zone 2 (1st mile)	ULNLS	ICB	ICB	ICB	#
309	OC12 Interoffice Transport - Zone 3 (1st mile)	ULNLS	ICB	ICB	ICB	#
310	OC12 Interoffice Transport - Zone 4 (1st mile)	ULNLS	ICB	ICB	ICB	#
311	OC12 Interoffice Transport - Interzone Term. (1st mile)	ULNLS	ICB	ICB	ICB	#
312	OC12 Interoffice Transport - Zone 1 (addl mile/per mile)	ULNLS	ICB	ICB	ICB	#
313	OC12 Interoffice Transport - Zone 2 (addl mile/per mile)	ULNLS	ICB	ICB	ICB	#
314	OC12 Interoffice Transport - Zone 3 (addl mile/per mile)	ULNLS	ICB	ICB	ICB	#
315	OC12 Interoffice Transport - Zone 4 (addl mile/per mile)	ULNLS	ICB	ICB	ICB	#
316	OC12 Interoffice Transport - Interzone Term. (addl mile/per mile)	ULNLS	ICB	ICB	ICB	#
317	OC48 Interoffice Transport - Zone 1 (1st mile)	ULNNS	ICB	ICB	ICB	#
318	OC48 Interoffice Transport - Zone 2 (1st mile)	ULNNS	ICB	ICB	ICB	#
319	OC48 Interoffice Transport - Zone 3 (1st mile)	ULNNS	ICB	ICB	ICB	#
320	OC48 Interoffice Transport - Zone 4 (1st mile)	ULNNS	ICB	ICB	ICB	#
321	OC48 Interoffice Transport - Interzone Term. (1st mile)	ULNNS	ICB	ICB	ICB	#
322	OC48 Interoffice Transport - Zone 1 (addl mile/per mile)	ULNNS	ICB	ICB	ICB	#
323	OC48 Interoffice Transport - Zone 2 (addl mile/per mile)	ULNNS	ICB	ICB	ICB	#
324	OC48 Interoffice Transport - Zone 3 (addl mile/per mile)	ULNNS	ICB	ICB	ICB	#
325	OC48 Interoffice Transport - Zone 4 (addl mile/per mile)	ULNNS	ICB	ICB	ICB	#
326	OC48 Interoffice Transport - Interzone Term. (addl mile/per mile)	ULNNS	ICB	ICB	ICB	#
327	Dedicated Transport Cross Connect					
328	DS1	UCXHX	\$ 12.00	\$ 99.00	\$95.00	#

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True-up
329	DS3	UCXJX	\$ 30.08	\$ 54.98	\$42.90	
330	OC3	UCXNX	ICB	ICB	ICB	#
331	OC12	UCXNX	ICB	ICB	ICB	#
332	OC48	UCXNX	ICB	ICB	ICB	#
333	Digital Cross-Connect System					
334	DS0 DCS Port	UDU5X	\$ 13.70	\$ 24.30	N/A	
335	DS1 DCS Port	UDUDX	\$ 45.14	\$ 43.00		
336	DS3 DCS Port	UDU3X	\$ 490.05	\$ 32.00		
337	DCS Establishment	SEPU3	None	\$ 1,772.00	None	
338	Database Modification	NR9U4	None	\$ 80.00	None	
339	Reconfiguration Charge	not billable	None	\$ 1.25	None	
340	Multiplexing					
341	VG to DS1	UM4BX	\$ 180.00	\$ 260.00	\$161.00	#
342	DS1 to DS3	UM4AX	\$ 815.00	\$ 1,372.00	\$813.00	#
343	SS7 Links - Cross Connect					
344	STP to Collo Cage - DS0	5-state billed in IBIS	\$ 74.20	\$ 299.80	\$202.45	#
345	STP to Collo Cage - DS1	5-state billed in IBIS	\$ 53.65	\$ 259.00	\$174.45	#
346	STP to SWBT DF - DS0	5-state billed in IBIS	\$ 74.20	\$ 299.80	\$202.45	#
347	STP to SWBT DSX Frame - DS1	5-state billed in IBIS	\$ 53.65	\$ 257.00	\$174.45	#
348	Unbundled Signaling (SS7)					
349	STP Access Connection 1.544 Mbps	IBIS billed	See Dedicated transport	Entrance Facilities - DS1	Interoffice Transport DS1 & Cross Connect	

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True- up
350	STP Access Link 56 Kbps per link	1J5FX - IBIS billed	NA	NA	NA	
351	STP Access Link 56 Kbps per mile	1J5FX - IBIS billed	NA	NA	NA	
352	STP Port per port*	PT8SX - IBIS billed	\$ 480.61	\$ 217.14	N/A	
353	SS7 Signaling Transport per call	Not Applicable	\$ 0.000119	NA	N/A	
354	SS7 Transport per octet	IBIS billed	\$ 0.00000070	NA	N/A	
355	Point Code Addition per STP pair	NRBSF - IBIS billed	included in port charge	NA	N/A	
356	GTT Addition - Simple	Under development	included in port charge	NA	N/A	
357	GTT Addition - Complex	Under development	included in port charge	NA	N/A	
358	* Includes NRC for STP port termination, signaling point code and global title termination.					
359	Toll Free Database per Message/Query					
360	Toll Free Database (800) Query - Simple	Not Applicable	\$ 0.0002540	na	na	
361	Toll Free Database (800) Query - Complex	Not Applicable	\$ 0.0002880	na	na	
362	Designated 10-Digit Translation	Not Applicable	\$ -	na	na	
363	Call Validation	Not Applicable	\$ -	na	na	
364	Call Handling and Destination (Toll-Free-800 Addition)	Not Applicable	\$ 0.0000340	na	na	
365	OSS					
366	System Access	NA	\$ 3,345.00	na	na	
367	Remote Facility per port - Direct Connection	NA	\$ 1,580.00	na	na	
368	Remote Facility per port - Dial-up Connection	NA	\$ 316.00	na	na	
369	Service Order Charges - Unbundled Elements					
370	New Simple	NRBUQ	NA	\$ 12.50	NA	#

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True- up
371	New Complex	NRBUR	NA	\$ -	NA	#
372	Change Simple	NRBUO	NA	\$ 12.50	NA	#
373	Change Complex	NRBUP	NA	\$ -	NA	#
374	Record Simple	NRBUU	NA	\$ 12.50	NA	#
375	Record Complex	NRBUV	NA	\$ -	NA	#
376	Disconnect Simple	NRBUW	NA	\$ 12.50	NA	#
377	Disconnect Complex	NRBUX	NA	\$ -	NA	#
378	Suspend Simple	NRBJZ	NA	\$ 12.50	NA	#
379	Suspend Complex	NRBJ7	NA	\$ -	NA	#
380	Restore Simple	NRBJ9	NA	\$ 12.50	NA	#
381	Restore Complex	NRBJ8	NA	\$ -	NA	#
382	Expedited Simple	NRBUO	NA	\$ -	NA	#
383	Expedited Complex	NRBUP	NA	\$ -	NA	#
384	Electronic UNE Service Order Charge					
385	Electronic - New Simple	NR9W2	None	\$5.00	None	
386	Electronic - Change Simple	NR9GG	None	\$5.00	None	
387	Electronic - Record Simple	NR9GU	None	\$5.00	None	
388	Electronic - Disconnect Simple	NR9GZ	None	\$5.00	None	
389	Electronic - Suspend Simple	NRBJ5	None	\$5.00	None	
390	Electronic - Restore Simple	NRBJ6	None	\$5.00	None	
391	Electronic - Expedited Simple	under development	None	\$0.00	None	

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True- up
392	Maintenance of Service Charges					
393	Basic Time - per half hour	not available	None	\$ 30.93	\$21.32	
394	Overtime - per half hour	not available	None	\$ 36.35	\$26.73	
395	Premium Time - per half hour	not available	None	\$ 41.77	\$32.15	
396	Time and Materials Charges					
397	Basic Time - per half hour	not available	None	\$ 30.93	\$21.32	
398	Overtime - per half hour	not available	None	\$ 36.35	\$26.73	
399	Premium Time - per half hour	not available	None	\$ 41.77	\$32.15	
400	Nonproductive Dispatch Charges					
401	Basic Time - per half hour	not available	None	\$ 30.93	\$21.32	
402	Overtime - per half hour	not available	None	\$ 36.35	\$26.73	
403	Premium Time - per half hour	not available	None	\$ 41.77	\$32.15	
404	Miscellaneous					
405	Performance Data	Not Applicable	None	None	None	
406	Special Request Processing	Not Applicable	None	None	None	
407	BCR					
408	Per local message	Not Applicable	\$ 0.08	None	None	
409	Per interstate local message	Not Applicable	\$ 0.05	None	None	
410	Clearinghouse					
411	Per originating message	Not Applicable	\$ 0.02	None	None	
412	Per end user message billed	Not Applicable	\$ 0.05	None	None	

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True- up
413	Recording					
414	Recording/Access Usage Record	Not Applicable	\$ 0.010	None	None	
415	Assembly and Editing per Message	Not Applicable	\$ 0.005	None	None	
416	Rating per Message	Not Applicable	\$ 0.005	None	None	
417	Message Processing per Message	Not Applicable	\$ 0.005	None	None	
418	Provision of Message Detail per record	Not Applicable	\$ 0.003	None	None	
419	Source Info Provided per record furnished - meet point billing applicable	Not Applicable	None	None	None	
420	Source Info Provided per record furnished - meet point billing not applicable	Not Applicable	None	None	None	
421	Hosting					
422	Full Status RAO Company - Hosting Company Network per billable msg	Not Applicable	\$ 0.002	None	None	
423	Full Status RAO Company - Nat'l CMDS Network per billable msg	Not Applicable	\$ 0.005	None	None	
424	Non-Full Status RAO Company - Hosting Company Network per billable msg	Not Applicable	\$ 0.007	None	None	
425	Non-Full Status RAO Company - Nat'l CMDS Network per billable msg	Not Applicable	\$ 0.010	None	None	
426	Non-Full Status RAO Company - Delivery per record charge per billable msg.	Not Applicable	\$ 0.003	None	None	
427	E911					
428	Feature per 1000 lines - ANI to SWBT PSAP	Not Applicable	\$ 10.00	\$ 80.00	None	
429	Feature per 1000 lines - ANI to Non-SWBT PSAP	Not Applicable	\$ 10.00	\$ 80.00	None	
430	Feature per 1000 lines - ANI and Selective Routing to SWBT PSAP	Not Applicable	\$ 51.60	\$ 85.00	None	
431	Feature per 1000 lines - ANI and Selective Routing to Non-SWBT PSAP	Not Applicable	\$ 51.60	\$ 85.00	None	
432	Feature per 1000 lines - ANI and ALI to SWBT PSAP	Not Applicable	\$ 83.60	\$ 85.00	None	

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True- up
433	Feature per 1000 lines - ANI and ALI to Non-SWBT PSAP	Not Applicable	\$ 83.60	\$ 85.00	None	
434	Feature per 1000 lines - ANI, SR and ALI to SWBT PSAP	Not Applicable	\$ 83.60	\$ 85.00	None	
435	Feature per 1000 lines - ANI, SR and ALI to Non-SWBT PSAP	Not Applicable	\$ 83.60	\$ 85.00	None	
436	Trunk Charge per channel	Not Applicable	\$ 85.00	\$ 170.00	None	
437	Intercompany Terminating Compensation for Local Traffic					
438	Tandem Switching per MOU	Not Applicable	\$ 0.001510	N/A	N/A	
439	Local End Office Switching - Local Traffic - Zone 1	Not Applicable	\$ 0.001988	N/A	N/A	
440	Local End Office Switching - Local Traffic - Zone 2	Not Applicable	\$ 0.002391	N/A	N/A	
441	Local End Office Switching - Local Traffic Zone 3	Not Applicable	\$ 0.003444	N/A	N/A	
442	Local End Office Switching - Local Traffic Zone 4	Not Applicable	\$ 0.002934	N/A	N/A	
443	Common Transport - Local Traffic Termination MOU Zone 1	Not Applicable	\$ 0.000190	N/A	N/A	
444	Common Transport - Tandem Routed Local Traffic Termination MOU Zone 2	Not Applicable	\$ 0.000285	N/A	N/A	
445	Common Transport - Tandem Routed Local Traffic Termination MOU Zone 3	Not Applicable	\$ 0.000302	N/A	N/A	
446	Common Transport - Tandem Routed Local Traffic Termination MOU Zone 4	Not Applicable	\$ 0.000162	N/A	N/A	
447	Common Transport - Tandem Routed Local Traffic Termination MOU Interzone	Not Applicable	\$ 0.000332	N/A	N/A	
448	Tandem Common Transport Facility Cost Per minute Per Mile Zone 1	Not Applicable	\$ 0.000002	N/A	N/A	
449	Tandem Common Transport Facility Cost Per minute Per Mile Zone 2	Not Applicable	\$ 0.000007	N/A	N/A	

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True- up
450	Tandem Common Transport Facility Cost Per minute Per Mile Zone 3	Not Applicable	\$ 0.000015	N/A	N/A	
451	Tandem Common Transport Facility Cost Per minute Per Mile Zone 4	Not Applicable	\$ 0.000001	N/A	N/A	
452	Tandem Common Transport Facility Cost Per minute Per Mile Zone Interzone	Not Applicable	\$ 0.000003	N/A	N/A	
453	Optional Area Transit					
454	Optional EAS Transit Cost per MOU	Not Applicable	\$ 0.004	None	None	
455	Optional Transit Traffic to ILEC Exchange per MOU	Not Applicable	\$ 0.006	None	None	
456	Transit Compensation					
457	Tandem Switching per MOU	Not Applicable	\$ 0.001510	None	None	
458	Common Transport - Local Traffic Termination MOU Zone 1	Not Applicable	\$ 0.000190	None	None	
459	Common Transport - Tandem Routed Local Traffic Termination MOU Zone 2	Not Applicable	\$ 0.000285	None	None	
460	Common Transport - Tandem Routed Local Traffic Termination MOU Zone 3	Not Applicable	\$ 0.000302	None	None	
461	Common Transport - Tandem Routed Local Traffic Termination MOU Zone 4	Not Applicable	\$ 0.000162	None	None	
462	Common Transport - Tandem Routed Local Traffic Termination MOU Interzone	Not Applicable	\$ 0.000332	None	None	
463	Tandem Common Transport Facility Cost Per minute Per Mile Zone 1	Not Applicable	\$ 0.0000020	None	None	
464	Tandem Common Transport Facility Cost Per minute Per Mile Zone 2	Not Applicable	\$ 0.0000070	None	None	
465	Tandem Common Transport Facility Cost Per minute Per Mile Zone 3	Not Applicable	\$ 0.0000150	None	None	
466	Tandem Common Transport Facility Cost Per minute Per Mile Zone 4	Not Applicable	\$ 0.0000010	None	None	

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True-up
467	Tandem Common Transport Facility Cost Per minute Per Mile Zone Interzone	Not Applicable	\$ 0.0000030	None	None	
468	CMRS Transit Compensation					
469	Transit Rate	Not Applicable	na	na	na	
470	Tandem Switching	Not Applicable	na	na	na	
471	Common Transport Termination MOU Zone A and B	Not Applicable	na	na	na	
472	Common Transport Termination MOU Zone C	Not Applicable	na	na	na	
473	Optional Area Compensation per MOU	Not Applicable	na	na	na	
474	Poles, Ducts, and Conduit					
475	Pole Attachment per pole per year	Not Applicable	\$ 2.35	NA	NA	
476	Conduit Space, per duct foot per year (conduit occupancy fee)	Not Applicable	\$ 0.40	NA	NA	
477	Inner Duct, per duct foot semiannual	Not Applicable	NA	NA	NA	
478	Fee for Admin. Approval of requests for pole attachment and conduit space	Not Applicable	NA	\$ 250.00	NA	
479	Semiannual Per Foot Conduit Occupancy Fees					
480	Full duct/duct foot	Not Applicable	\$ 0.205	NA	NA	
481	Half duct/duct foot	Not Applicable	\$ 0.205	NA	NA	

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True-up
482	1/3 duct/duct foot	Not Applicable	NA	NA	NA	
483	INP Remote					
484	Per line	Not Applicable	None	None	None	
485	Add'l Path	Not Applicable	None	None	None	
486	INP Direct					
487	Number	Not Applicable	None	None	None	
488	Trunk Termination	Not Applicable	None	None	None	
489	DID Nonrecurring per #	Not Applicable	None	None	None	
490	DID Nonrecurring Transport per MOU	Not Applicable	None	None	None	
491	INP Optional Additive	Not Applicable	None	\$ 12.40	None	
492	Conversion Order Charges for Resold Services					
493	Mechanized Simple	NR9W2	None	\$ 5.00	None	#
494	Simple Manual	NR9WA	None	\$ 5.00	None	
495	Complex Manual	NR9WM	None	\$ 125.00	None	
496	NXX Migration per NXX	Not Applicable	None	\$ 12,940.00	None	
497	Local Disconnect Report	Not Applicable	\$ 0.08	None	None	
498	Customized Routing Resale AIN	Not a UNE	ICB	ICB	ICB	
499	Resale Call Branding (DA/OS)					
500	Per branded call	Not Applicable	\$ 0.02	None	None	
501	Per initial load per TOPS switch per brand	Not Applicable	None	\$ 2,325.00	None	

Line	Elements/Service	USOCs	MONTHLY RATE	Nonrecurring Rate First	Nonrecurring Rate Additional	Interim Rates Subject to True- up
502	Per subsequent load per TOPS switch per brand	Not Applicable	None	None	\$ 2,325.00	
503	Resale Rate/Reference Info					
504	Per load/change/TOPS switch	Not UNE		\$ -		#
505	Billing Usage	Not UNE	None	\$ 0.003	None	
	<p>The Parties acknowledge and agree that the provision of these DSL-Capable Loops and the associated rates, terms and conditions set forth above are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). Any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory body or court of competent jurisdiction which stays, modifies, or otherwise affects any of the rates, terms and conditions herein, specifically including those arising with respect to the Petition of Broadspan Communications, Inc. for Arbitration of Unresolved Interconnection Issues Regarding ADSL with Southwestern Bell Telephone Company before the Missouri Public Service Commission, Case No. TO-99-370, or any other proceeding, the Parties shall expend diligent efforts to arrive at an agreement on conforming modifications to this Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or the provisions affected shall be handled under the Dispute Resolution procedures set forth in this Agreement.</p>					

APPENDIX RECORDING

APPENDIX RECORDING**RECORDING, MESSAGE PROCESSING AND
PROVISION OF INTEREXCHANGE CARRIER TRANSPORTED
MESSAGE DETAIL APPENDIX**

This Appendix sets forth the terms and conditions under which SWBT will provide recording, message processing and message detail services as described in total in Exhibit I, Explanation Of Service Options, and those services specifically selected by ASI as described in Exhibit II, Selected Service Options and Method of Provision, at the rates set forth in Appendix Pricing. Exhibits I, II and III are attached hereto and made a part of this Appendix by reference.

I. RESPONSIBILITIES OF THE PARTIES

- A. SWBT will record all IXC transported messages for ASI carried over all Feature Group Switched Access Services that are available to SWBT-provided recording equipment or operators. Unavailable messages (i.e., certain operator messages which are not accessible by SWBT-provided equipment or operators) will not be recorded. The recording equipment will be provided at locations selected by SWBT.
- B. SWBT will perform assembly and editing, message processing and provision of applicable access usage record detail for IXC transported messages if the messages are recorded by SWBT.
- C. SWBT will provide access usage records that are generated by SWBT.
- D. Assembly and editing will be performed on all IXC transported messages recorded by SWBT, during the billing period established by SWBT and selected by ASI from Exhibit III.
- E. Standard EMR record formats for the provision of billable message detail and access usage record detail will be established by SWBT and provided to ASI.
- F. Recorded access usage record detail will not be sorted to furnish detail by specific end users, by specific groups of end users, by office, by feature group or by location.
- G. SWBT will provide message detail to ASI either on magnetic tapes or in data files, depending on the option contracted for by ASI in Exhibit III. Only one method may be selected by ASI.

1. Magnetic Tapes

- a. SWBT will supply the magnetic tapes, which will be provided without the return of previously supplied tapes.
- b. ASI will specify one of the following options for provision of tapes:
 - 1) SWBT may send the tapes to ASI via first class U.S. Mail Service or an equivalent service of SWBT's choice, or
 - 2) ASI may pick up the magnetic tapes at a location designated by SWBT.
 - 3) If, at the request of ASI, overnight delivery other than those provided in 1 & 2 above is requested, the cost of this delivery will be at the expense of ASI.

2. Data Files

The message detail may be transmitted to ASI in data files via data lines using software and hardware acceptable to both parties.

- H. In Exhibit III, ASI will identify separately the location where the tapes and any data transmissions should be sent (as applicable) and the number of times each month the information should be provided. SWBT reserves the right to limit the frequency of transmission to existing SWBT processing and work schedules, holidays, etc.
- I. SWBT will determine the number of magnetic tapes or data files required to provide the access usage record detail to ASI.
- J. Recorded access usage record detail previously provided ASI and lost or destroyed through no fault of SWBT will not be recovered and made available to ASI except on an individual case basis at a cost determined by SWBT.
- K. When SWBT receives rated billable messages from an IXC or another Local Exchange Carrier (LEC) that are to be billed by ASI, SWBT will forward those messages to ASI.
- L. When SWBT has rated billable message detail originating from ASI's end users requiring billing by another LEC or CLEC, SWBT will forward such messages to the appropriate Billing Company.
- M. SWBT will record the applicable detail necessary to generate access usage records and forward them to ASI for its use in billing access to the IXC.

II. BASIS OF COMPENSATION

- A. Compensation for recording, assembly and editing, rating, message processing and provision of messages provided hereunder by SWBT for ASI shall be based upon the rates and charges set forth in Appendix Pricing.
- B. When message detail is entered on a magnetic tape or data file for provision of message detail to ASI, a per record charge will apply for each record processed. SWBT will determine the charges based on its count of the records processed.

III. LIABILITY

- A. Except as otherwise provided herein, neither Party shall be liable to the other for any special, indirect, or consequential damage of any kind whatsoever. A Party shall not be liable for its inability to meet the terms of this Agreement where such inability is caused by failure of the first Party to comply with the obligations stated herein. Each Party is obliged to use its best efforts to mitigate damages.
- B. When SWBT is notified that, due to error or omission, incomplete data has been provided to ASI, SWBT will make reasonable efforts to locate and/or recover the data and provide it to ASI at no additional charge. Such requests to recover the data must be made within thirty (30) days from the date the details initially were made available to ASI. If written notification is not received within thirty (30) days, SWBT shall have no further obligation to recover the data and shall have no further liability to ASI.
- C. If, despite timely notification by ASI, message detail is lost and unrecoverable as a direct result of SWBT having lost or damaged tapes or incurred system outages while performing recording, assembly and editing, rating, message processing, and/or transmission of message detail, SWBT will estimate the volume of lost messages and associated revenue based on information available to it concerning the average revenue per minute for the average interstate and/or intrastate call. In such events, SWBT's liability to ASI shall be limited to the granting of a credit adjusting amounts otherwise due from it equal to the estimated net lost revenue associated with the lost message detail.
- D. SWBT will not be liable for any costs incurred by ASI when ASI is transmitting data files via data lines and a transmission failure results in the non-receipt of data by SWBT.
- E. ASI agrees to defend, indemnify, and hold harmless SWBT from any and all losses, damages, or other liability, including attorney fees, that it may incur as a result of claims, demands, or other suits brought by any party that arise out of the

use of this service by ASI, its customers or end users. ASI shall defend against all end users' claims just as if ASI had provided such service to its end users with its own employees.

- F. ASI also agrees to release, defend, indemnify and hold harmless SWBT from any claim, demand or suit that asserts any infringement or invasion of privacy or confidentiality of any person(s), caused or claimed to be caused, directly or indirectly, by SWBT employees and equipment associated with provision of this service. This includes, but is not limited to suits arising from disclosure of any customer specific information associated with either the originating or terminating numbers used to provision this service.

SWBT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER. ADDITIONALLY, SWBT ASSUMES NO RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF THE DATA SUPPLIED BY ASI WHEN THIS DATA IS ACCESSED AND USED BY A THIRD PARTY.

IV. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

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

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EXHIBIT 1

EXPLANATION OF SERVICE OPTIONS

The attached pages of this Exhibit I show the service options that are offered under this Appendix and the charges that are associated with each option. Rates and charges set forth in Appendix Pricing .

ORIGINATING 1+ DDD RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL AND ACCESS USAGE RECORDS

- Option #1:** SWBT performs recording, assembly and editing, rating of billable message detail and creates an Access Usage Record (AUR) for all 1+ Interexchange Carrier (IXC) transported messages originating from ASI end office telephone network and forwards both billable message detail records and AUR records to ASI.
- Option #2:** SWBT performs recording, assembly and editing of the billable message detail and extracts that detail to the IXC for all 1+ IXC transported messages originating from ASI end office. SWBT creates Access Usage Records for this traffic and forwards those AUR records to ASI.
- Option #3:** The IXCs do their own billable message recording for their 1+ IXC transported messages originating from ASI end office. SWBT performs recording for Access purposes only, assembles and edits this data, creates AURs and forwards the AUR records to ASI.

ORIGINATING OPERATOR RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL AND ACCESS USAGE RECORDS

- Option #4:** ASI Non-Equal Access End Office - The IXCs do their own billable message recording. SWBT performs local and intraLATA operator services for ASI. SWBT performs recording at the operator switch for all 0+, 0-, Coin Sent Paid, CAMA and International IXC transported messages. SWBT assembles and edits this data, creates AURs and forwards the AUR records to ASI.
- Option #5:** ASI Equal Access End Office - The IXCs do their own billable message recording. SWBT performs local and intraLATA operator services for ASI. SWBT performs recording at the operator switch for 0- only IXC transported messages. SWBT assembles and edits this data, creates AURs and forwards the AUR records to ASI.

- Option #6:** ASI Equal or Non-Equal Access End Office - The IXCs do their own billable message recording. ASI chooses to have SWBT purchase source information from IXC in order to have information required to create Access Usage Records. SWBT assembles and edits this data, creates AURs and forwards the AUR records to ASI.
- Option #7:** The IXCs do their own billable message recording and forward to SWBT the billable message detail for assembly and editing and rating of these operator service IXC transported messages. SWBT forwards the rated billable message detail to the appropriate billing company, creates an AUR and forwards the AUR records to ASI. This situation occurs when ASI has not signed a rating takeback waiver with the IXC.

800 RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL

- Option #8:** SWBT performs SSP function for ASI end office and bills query charge to the appropriate IXC. SWBT performs recording for Access purposes only, assembles and edits this data, creates AURs and forwards AUR records to ASI.
- Option #9:** SWBT performs SSP function for ASI end office. ASI performs billing of query charge to the appropriate IXC. SWBT performs recording at the SSP for Access purposes only, assembles and edits this data, creates AURs and forwards AUR records to ASI. SWBT performs recording at the SCP for query billing purposes only, assembles and edits this data, creates SCP records and forwards SCP records to ASI.
- Option #10:** SWBT performs SCP function for ASI. SWBT performs recording at the SCP, assembles and edits this data, creates SCP records and forwards SCP records to ASI.

TERMINATING RECORDINGS - IXC TRANSPORTED ACCESS USAGE RECORDS

- Option #11:** SWBT provides tandem function for ASI. ASI requests SWBT to provide all Feature Group B, Feature Group C and Feature Group D terminating usage recordings including Feature Group B over D and Feature Group C over D. SWBT creates terminating AURs for this data and forwards AUR records to ASI.
- Option #12:** SWBT provides tandem function for ASI. ASI requests SWBT to provide all Feature Group B terminating usage recordings excluding B over D. SWBT creates terminating AURs for this data and forwards AUR records to ASI.
- Option #13:** SWBT provides tandem function for ASI. ASI requests SWBT to provide all Feature Group B terminating usage recordings including Feature Group B over D. SWBT creates terminating AURs for this data and forwards AUR records to ASI.

- Option #14:** SWBT provides tandem function for ASI. ASI requests SWBT to provide all Feature Group D terminating usage recordings including B over D and C over D. SWBT creates terminating AURs for this data and forwards AUR records to ASI.
- Option #15:** SWBT provides tandem function for ASI. ASI requests SWBT to provide all Feature Group D terminating usage recordings including B over D. SWBT creates terminating AURs for this data and forwards AUR records to ASI.

MESSAGE PROVISIONING:

- Option #16:** SWBT will forward all IXC transported message detail records or access usage records to ASI generated internally within SWBT system or received via CMDS from an IXC or another Local Exchange Carrier or ASI. ASI forwards rated IXC transported message detail or access usage detail to SWBT for distribution to the appropriate billing company through SWBT's internal network or using the CMDS network.

There is no charge for this option under this Appendix if ASI has also executed, as part of an agreement executed pursuant to this Statement, an Appendix for SWBT to provide "Hosting" services to ASI, or if ASI has executed a separate agreement with SWBT for "Hosting" services to be provided from SWBT to ASI.

APPENDIX RECORDING

EXHIBIT II

**SELECTED SERVICE OPTIONS
AND
METHOD OF PROVISION**

The service options and method of provision selected by ASI under this Appendix are as indicated on page two, attached, of this Exhibit II. Numerical references are to service options shown in Exhibit I.

APPENDIX RECORDING

EXHIBIT II

SELECTED SERVICE OPTIONS AND METHOD OF PROVISION

EFFECTIVE DATE:[illegible]

Numerical references are to specific service options listed in Exhibit I.

APPENDIX RECORDING

EXHIBIT III

Page 1 of 2

INVOICE DESIGNATION

COMPANY NAME: _____

EXCHANGE COMPANY I.D. NUMBER (OCN): _____

BILLABLE INVOICE INTERVAL:

Check ☒ One:

☐ Daily (Full Status RAO Companies will receive billable messages daily.)

☐ Bill period (A maximum of five dates may be chosen.) A file is created five workdays from each bill period date, and three additional days should be allowed for distribution. Circle a maximum of five bill period dates:

1 3 5 7 9 11 13 15 17 19 21 23 25 27 29

TAPE MAILING ADDRESS:

(Full RAO Companies will receive AURs at the same address as billable message toll.)

APPENDIX RECORDING

EXHIBIT III

Page 2 of 2

AUR INVOICE INTERVAL:

Check One:

☐

Daily (Full Status RAO Companies will receive AURs daily.)

☐

Bill period (A maximum of five dates may be chosen.) A file is created five workdays from each bill period date, and three additional days should be allowed for distribution. Circle a maximum of five bill period dates:

1 3 5 7 9 11 13 15 17 19 21 23 25 27 29

TAPE MAILING ADDRESS:

(Full RAO Companies will receive AURs at the same address as billable message toll.)

Agreement No. _____

**MASTER AGREEMENT FOR ACCESS
TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY (MISSOURI)**

This Agreement dated _____, 1999, is made by and between Southwestern Bell Telephone Company ("SWBT") and the undersigned Applicant. As provided in this Agreement, SWBT will provide Applicant 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 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 Applicant. Applicant is a telecommunications carrier or cable television system doing business or operating in this State under the following name(s):

SBC Advanced Solutions, Inc. ("ASI")

Applicant maintains offices in this State at the following address:

1010 N. St. Mary's, Room 1400, San Antonio, Texas 78215

Applicant is more fully described in APPENDIX II ("Identification of Applicant").

ARTICLE 2: PURPOSE OF AGREEMENT

2.01 Primary Purpose of Agreement. The primary purpose of this Agreement is to set forth the rates, terms, conditions, and procedures under which SWBT will provide Applicant access to SWBT's poles, ducts, conduits, and rights-of-way located in this State.

2.02 Applicability. This Agreement applies to all poles, ducts, conduits, and rights-of-way subject to the Pole Attachment Act, 47 U.S.C. § 224, as amended by the Telecommunications Act of 1996, and further amendments.

2.03 Construction in Accordance with Purpose. All provisions of this Agreement shall be construed and applied consistently with the requirements of the Pole Attachment Act and those provisions of the Telecommunications Act of 1996, including but not

limited to 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii), which mandate access to SWBT's poles, ducts, conduits, and rights-of-way.

2.04 Uniform Application and Nondiscriminatory Access. In Paragraph 1156 of the First Interconnection Order in CC Docket No. 96-98, the FCC has ordered that "[W]here access is mandated, the rates, terms, and conditions of access must be uniformly applied to all telecommunications carriers and cable operators that have or seek access." In Paragraph 1157 of the First Interconnection Order, the FCC has further stated that except as specifically noted elsewhere in that order, "a utility may not favor itself over other parties with respect to the provision of telecommunications or video programming services." This Agreement has been drafted and shall be construed to effectuate these nondiscriminatory access requirements.

2.05 Effect on Rights and Remedies under Law. This Agreement is intended by the parties to implement, rather than abridge, their respective rights under federal and state law. In the event of an irreconcilable conflict between any provision of this Agreement and any applicable federal or state laws, rules, regulations, or commission orders, the parties' rights and remedies under such laws, rules, regulations, and orders shall take precedence over the terms of this Agreement.

2.06 Additional Negotiations. This Agreement is one of many agreements between SWBT and parties seeking access to SWBT's poles, ducts, conduits, and rights-of-way in this State. Nothing contained in this Agreement shall preclude SWBT from negotiating additional or different terms of access with third parties. Applicant may, at any time, seek amendments to this Agreement to conform to the terms of agreements between SWBT and third parties. In addition, the parties acknowledge that it may be necessary to amend or supersede this Agreement to conform to changes in the law, streamline procedures for granting access, address issues not addressed in this Agreement, and resolve operational concerns arising by virtue of the presence of competing providers of telecommunications and cable television services on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. Each party shall, therefore, at the request of the other party, engage in good faith negotiations to supplement, amend or replace this Agreement.

2.07 Relationship to Interconnection Agreement. SWBT has provided Applicant the option of executing this Agreement either as a standalone agreement or as part of the interconnection agreement, if any, between the parties. Applicant's election is reflected in this section, and this Agreement shall be construed in accordance with Applicant's election. If this Agreement has been executed as part of an interconnection agreement, Applicant shall have the additional option of replacing this Agreement at any time with SWBT's then-current Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way.

[] This Agreement has been entered into as a standalone Agreement.

- [X] This Agreement has been entered into, at Applicant's request, as an appendix, attachment, or exhibit to an interconnection agreement between the parties. Except as otherwise specifically stated in this Agreement, the terms of this Agreement, which are specific to poles, ducts, conduits, and rights-of-way, shall apply in the event of conflict between the terms of this Agreement and the general terms and conditions set forth in the interconnection agreement.

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

ARTICLE 3: DEFINITIONS

3.01 Definitions in general. As used in this Agreement, 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 Agreement. The term "Agreement" refers to this Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way. The term "Agreement" includes all appendices, attachments, and addenda to this Agreement, including but not limited to addenda, if any, reflecting state-specific requirements or Applicant-specific requirements imposed by interconnection arbitration orders.

3.03 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.

3.04 Appendix. The capitalized term "APPENDIX" refers to one of the following appendices to this Agreement.

APPENDIX I: Schedule of Rates, Fees, and Charges

APPENDIX II: Identification of Applicant

APPENDIX III: Administrative Forms and Notices

- SW-9433: Pole Attachments
- SW-9434: Access Application and Make-Ready Authorization
- 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 Applicant
- SW-9436C: Notification of Unauthorized Attachments by Applicant

APPENDIX IV: Insurance Requirements

APPENDIX V: Nondisclosure Agreement

APPENDIX VI: Notices to Applicant

APPENDIX VII: Notices to SWBT

APPENDIX VIII: Identification of Utility Liaison Supervisor (ULS)

3.05 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 a third party. Except as otherwise specifically provided in this Agreement, 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 as provided in Section 15.02 of this Agreement) until the assignment has been released or lapsed. Assignment procedures are described in Section 8.02 of this Agreement.

3.06 Authorized contractor. “Authorized contractors” are contractors selected by Applicant who may, subject to Applicant’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 Agreement, the term “authorized contractor” does not refer to contractors performing routine installation, maintenance, or repair work on Applicant’s behalf or other contractors who may be selected by Applicant to perform work on Applicant’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 Applicant and SWBT to perform one or more of the following tasks within a specified SWBT construction district: (a) installation of those

sections of Applicant'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. If, by agreement of the parties or commission order, Applicant has been approved as an authorized contractor, such approval shall be noted by an addendum to this Agreement.

3.07 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 will 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 will be deemed available for assignment.

3.08 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 our placed in poles, ducts, conduits, and rights-of-way but are not themselves poles, ducts, conduits, or rights-of-way. Nothing contained in this Agreement 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.

3.09 Conduit. The term "conduit" refers to all SWBT 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-enterable manholes and handholes used to connect ducts and provide access to cables, wires, and other facilities within the ducts. As used in this Agreement, 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 or are connected to SWBT's conduit.

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

3.11 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 Agreement, 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 or are connected to SWBT's conduit.

3.12 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.

3.13 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.

3.14 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 equipment. As used in this Agreement, 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.

3.15 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 Agreement, 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 Agreement, 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 Agreement, including but not limited to the Occupational Safety and Health Act (“OSHA”). In general, the term “hazardous substances” refers to any substance the presence, use, transport, abandonment or disposal of which (a) requires investigation, remediation, compensation, fine, or penalty under health, safety, and environmental laws, ordinances, statutes, rules, and regulations applicable to sites subject to this Agreement or (b) poses risks to human health, safety, or the environment and is regulated under any such laws, ordinances, statutes, rules, and regulations. For the purposes of this Agreement, the term “hazardous substances” shall also include petroleum, natural gas, and other combustible or noxious liquids, gases, or solids which may accumulate at sites subject to this Agreement.

3.20 Interconnection Agreement. The term “interconnection agreement” refers to the interconnection agreement, if any, to which this Agreement 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 Agreement, 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 place its facilities in SWBT’s ducts, conduits, or rights-of-way.

3.23 License. The term “license” refers to a written instrument confirming that SWBT has granted the application of Applicant or a third party for access to pole, duct, conduit, or right-of-way space and that, based on Applicant’s or such third party’s representations (and SWBT’s field inspection, if any), it appears that no further facilities modification, capacity expansion or make-ready work by SWBT is required before facilities described in the application are installed in the space requested. The term “license” refers to licenses issued by SWBT pursuant to this Agreement and may, if the context requires, refer to licenses issued by SWBT before the date of this Agreement. The parties’ use of the term “license” in this Agreement shall not be construed as conferring authority or discretion on SWBT’s part to deny access to Applicant in any manner inconsistent with the requirements of the Pole Attachment Act, the Telecommunications Act of 1996, and applicable rules, regulations, and commission orders.

3.24 Local service provider (“LSP”). The terms “local service provider” and “LSP” refer only to telecommunications carriers authorized by applicable federal and state laws and regulations to provide local exchange service. As used in this Agreement, 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, 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, Applicant, 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 Agreement and (b) short-term non-emergency maintenance or repair activities as provided in Articles 12 and 13 of this Agreement. No more than one full-sized duct within any given conduit section will be designated by SWBT as the maintenance duct. In those locations where, on the effective date of this Agreement, 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 will not be considered “available” (as defined in Section 3.07) for assignment to SWBT, Applicant, or joint users for purposes other than short-term uses 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, rights-of-way, and related facilities for the requested occupancy or attachment of Applicant's facilities. Make-ready work does not include the actual installation of Applicant's facilities. "Make-ready work" includes, but is not limited to, clearing obstructions (e.g., by "rodding" ducts to ensure clear passage), and rearranging, transferring, replacing, and removing existing facilities on a pole or in a conduit system where such work is required to accommodate Applicant's facilities (as contrasted with 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, poles, ducts, conduits, 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 Applicant's facilities. As used in this Agreement, the term "make-ready work" also includes associated planning and engineering work required to confirm or determine the extent of make-ready work required and to plan make-ready projects.

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 ducts or conduits which are parts of SWBT's conduit system. As used in this Agreement, 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 presence of cables or other facilities on a pole, in a duct or conduit, 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 an existing cable and strand.

3.30 Person acting on Applicant's behalf. The terms "person acting on Applicant's behalf," "personnel performing work on Applicant'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 Applicant's behalf," "personnel performing work on Applicant's behalf," and similar terms specifically include, but are not limited to, Applicant, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by Applicant and their respective officers, directors, employees, agents, and representatives. An authorized contractor

selected by Applicant to perform make-ready work shall be deemed to be a person acting on Applicant's behalf while performing such work at Applicant'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 of or as directed by SWBT and their 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 poles (and associated anchors) which are 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 Agreement, 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, Applicant'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 Applicant’s application;
- (b) confirming or determining the extent, if any, to which modifications to SWBT’s poles, ducts, conduits, or right-of-ways are required to accommodate Applicant’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 Applicant’s facilities; and
- (d) estimating the costs, if any, that Applicant will be required to pay for any such facilities modification, capacity expansion, or make-ready work.

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

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

3.37 Primary point of contact. The term “primary point of contact” refers to the persons designated by Applicant and SWBT, respectively, to coordinate arrangements for Applicant’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 Applicant 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 through property of another party 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 which SWBT may occupy as permitted by law for the placement of its facilities (e.g., rights-of-way on, under, or over streets, highways, and other public roads) and (b) easements or servitudes granted by property owners or obtained through the exercise of eminent domain authority authorizing SWBT to pass over, place facilities on, and have rights of ingress and egress to the property of such property owners. Rights-of-way may 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” as used in this Agreement refers only to rights-of-way owned or controlled by SWBT and does not include (a) cables and other telecommunications equipment buried or located on such rights-of-way, (b) public rights of way (which are owned by and subject to the control of governmental entities), or (c) any space which is owned and controlled by a third-party property owner and occupied by SWBT with permission from such owner rather than as a matter of legal right. As used in this Agreement, the term “right-of-way” may also include certain fee-owned or leased property acquired by SWBT for the specific purpose of installing poles, ducts, or conduits or burying underground cables which are part of SWBT’s network distribution facilities.

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

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

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

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

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

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

3.45 Third party. The terms “third party” and “third parties” refer to persons and entities other than the parties to this Agreement (that is, persons and entities other than Applicant 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 Agreement or in the parties’ interconnection agreement, if any, the ULS shall serve as Applicant’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 APPENDIX 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 Agreement.

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 Agreement establishes the rates, terms, conditions, and procedures for access to SWBT’s poles, ducts, conduits, and rights-of-way located within this State, without regard to whether such poles, ducts, conduits, or rights-of-way are located on public or private property; provided, however, that nothing contained in this Agreement shall be construed as a grant of access to any facilities which are not poles, ducts, conduits, or rights-of-way subject to the Pole Attachment Act or to any poles, ducts, conduits, rights-of-way, facilities, or property owned and controlled by parties other than SWBT. Separate tariffs or agreements, including other portions of the parties’ interconnection agreement, and not this Agreement, shall govern Applicant’s

access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Agreement:

- (a) SWBT's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from SWBT's central offices;
- (b) controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
- (c) ducts and conduits located within buildings owned by SWBT; and
- (d) ducts, conduits, equipment rooms, and similar spaces located in space leased by SWBT from third-party property owners for purposes other than to house cables and other equipment in active service as part of SWBT's network distribution operations.

4.02 No Transfer of Property Rights to Applicant. Nothing contained in this Agreement or any license subject to this Agreement 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 Agreement and licenses subject to this Agreement 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 Applicant any right, title, or interest in or to any real or personal property owned by SWBT, and the placement of Applicant'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 Right to Abandon, Convey or Transfer Poles, Ducts, Conduits, or Rights-of-Way. Except as provided in subsections (a)-(d) of this section, nothing contained in this Agreement or any license subject to this Agreement shall in any way affect SWBT's right to abandon, convey, or transfer to any other person or entity SWBT's interest in any of SWBT's poles, ducts, conduits, or rights-of-way.

- (a) SWBT shall give Applicant no less than 60 days written notice prior to abandoning, conveying, or transferring any pole, duct, conduit, or right-of-way (1) to or in which Applicant has attached or placed facilities pursuant to this Agreement or (2) with respect to which Applicant has been assigned pole attachment or conduit occupancy space. The notice

shall identify the transferee, if any, to whom any such pole, duct, conduit, or right-of-way is to be conveyed or transferred.

- (b) SWBT represents that prior to the effective date of this Agreement, and prior to enactment of the Telecommunications Act of 1996, SWBT entered into one or more "joint use pole agreements" with electric utilities located in this State and that such agreements may require SWBT to transfer or convey poles to such electric utilities from time to time. Nothing contained in this Agreement shall abridge the rights of SWBT or any electric utility under any contract executed prior to the effective date of this Agreement. In the event of any transfer or conveyance of poles to an electric utility pursuant to such a joint pole agreement, SWBT will, at Applicant's request, provide Applicant and the transferee utility with such information as may be necessary to minimize any burdens to Applicant which may arise out of or in connection with the transfer or conveyance.
- (c) Transfers of SWBT's poles, ducts, conduits, and rights-of-way shall be subject to Applicant's rights at the time of transfer. Applicant shall, at the request of SWBT or the transferee, provide SWBT or the transferee with all information required to assess Applicant's rights, post-transfer intentions with respect to continued occupancy, and willingness to negotiate new rates, terms, and conditions of access. Applicant shall not unreasonably refuse to negotiate with the transferee. If the transferee itself is a local exchange carrier or other utility subject to the Pole Attachment Act, Applicant shall, at the request of the transferee, negotiate in good faith new rates, terms, and conditions of access.
- (d) Transfers or conveyances of poles, ducts, conduits, or rights-of-way to any entity controlling, controlled by, or under common control with SWBT or to any entity which acquires or succeeds to ownership of substantially all of SWBT's assets shall be subject to Applicant's rights under this Agreement and licenses subject to this Agreement.

4.04 No Effect on SWBT's Rights to Manage its Poles, Ducts, Conduits, and Rights-of-Way. Subject to Applicant's rights under this Agreement and applicable federal and state laws, rules, regulations, and commission orders, including, but not limited to, 47 C.F.R. §1.1403 (requiring 60 days' notice of contemplated modifications), SWBT may (a) locate, relocate, move, replace, modify, maintain, and remove all poles, ducts, conduits, and rights-of-way subject to this Agreement 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.

4.05 No Right to Interfere. Except to the extent expressly provided by the provisions of this Agreement, the provisions of this Agreement shall not be construed as authorizing either party to this Agreement, or persons acting on their behalf, to rearrange or interfere in any way with (a) the facilities of the other party or joint users, (b) the use of or access to such facilities by the other party or joint users, or (c) the ability of either party or joint users to conduct normal business operations, serve their respective customers, or avail themselves of new business opportunities.

4.06 Required Franchises, Permits, Certificates, and Licenses. This Agreement shall not be construed as relieving either party from any obligations it may have to obtain legal authority to construct, operate, maintain, repair, and remove its facilities on public or private property (including but not limited to any required franchises, permits, certificates, licenses, easements, or the like) from all appropriate public authorities and private persons or entities.

4.07 DISCLAIMER OF WARRANTIES. SWBT MAKES NO REPRESENTATIONS THAT SWBT'S POLES, DUCTS, CONDUITS, OR RIGHTS-OF-WAY ARE SUITABLE FOR APPLICANT'S INTENDED USES. SWBT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN THIS AGREEMENT, SWBT MAKES NO IMPLIED WARRANTIES OF ANY KIND.

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

ARTICLE 5: ACCESS TO RIGHTS-OF-WAY

5.01 Public Rights-of-Way. SWBT and Applicant agree that neither party has the right to restrict or interfere with the other party's lawful access to and use of public rights-of-way, including public rights-of-way which pass over property owned by either party. Except as otherwise specifically provided in this Agreement, SWBT and Applicant 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 Either Party. SWBT and Applicant agree that neither party shall restrict or interfere with the other party's access to or right to occupy property owned by third-parties which is not subject to the other party's control, including property as to which either party has access subject to non-exclusive rights-of-way. Subject to the procedures set forth in Section 5.04 below, each party shall make its own, independent legal assessment of its right to enter upon or use the property of third-party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.

5.03 Access to Rights-of-Way Generally. Each pole attachment and conduit occupancy assignment or license made, issued, or subject to this Agreement shall include access to and use of all associated rights-of-way including, but not limited to, rights-of-way required by Applicant for ingress, egress, or other access to any sites where SWBT's poles or any part of SWBT's conduit system are located, but only to the extent, if any, that SWBT has the legal authority to grant such access and use. At locations where SWBT has access to third-party property pursuant to non-exclusive rights-of-way, SWBT shall not interfere with Applicant's negotiations with third-party property owners for similar access or with Applicant's access to such property pursuant to easements or other rights-of-ways obtained by Applicant from the property owner; provided, however, that neither party shall conduct activities on such right-of-way which interfere with the facilities of the other party or with the other party's access to and use of its own facilities. 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, sublicense, sub-easement, or other mutually acceptable writing. Except as otherwise agreed to by the parties, SWBT's charges for such access (obtained from SWBT rather than from the third-party property owner) shall include (a) a pro rata portion of the charges (including but not limited to one-time charges and recurring charges), if any, paid by SWBT to obtain the right-of-way plus (b) 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 case-by-case basis and shall take into account the size of the area used by Applicant and the number of users occupying the right-of-way.

5.04 Special Procedures for Obtaining Access to Third-party Property. Although SWBT will afford access to rights-of-way owned or controlled by it and permit Applicant to utilize SWBT's rights-of-way to the extent that SWBT has legal authority to do so, Applicant acknowledges that SWBT may not own or control certain rights-of-way to the extent necessary to permit Applicant 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 property in those situations in which SWBT does not have authority to permit Applicant access or either party has a good faith belief that SWBT does not have such authority:

- (a) Applicant will first attempt to obtain right-of-way directly from the property owner.

- (b) If Applicant has the right of eminent domain under state law, Applicant will independently attempt to obtain the right-of-way it seeks through the exercise of that right.
- (c) If Applicant is unable to obtain access to a right-of-way under subsections (a) or (b) above, Applicant may request in writing that SWBT exercise its right of eminent domain to condemn the right-of-way for Applicant's use and SWBT will respond to Applicant's written request within 45 days. SWBT will exercise its right of eminent domain on Applicant's behalf only if permitted to do so under applicable state law, and only if Applicant agrees to bear all costs and expenses, including but not limited to legal fees, arising out of or in connection with the condemnation proceedings.

5.05 Access to Rights-of-Way Incident to the Use of CEVs and Similar Structures. SWBT will provide Applicant nondiscriminatory access, consistent with the requirements of the Pole Attachment Act and Telecommunications Act of 1996, and as provided in Sections 5.03 and 5.04 above, to rights-of-way containing Controlled Environment Vaults (CEVs), huts, cabinets, and other similar structures. SWBT will place no restrictions on access to such rights-of-way that are more restrictive than those SWBT places on itself; provided, however, that neither party shall conduct activities on such rights-of-way which interfere with the facilities of the other party, with the privacy of communications carried over the other party's network, or with the other party's access to and use of its own facilities. This section relates only to access to rights-of-way and shall not be construed as granting access to the CEVs, huts, cabinets, and similar structures located on such rights-of-way. Access, if any, to CEVs, huts, cabinets, and similar structures, and to ducts, conduits, and risers which serve no purpose other than to provide a means of entering or exiting such structures, shall be governed by the tariff, agreement, or order, if any, granting Applicant access to such structures.

5.06 Access to Building Entrance Facilities, Building Distribution Facilities, and Equipment Rooms. The parties acknowledge that ownership and control of building entrance and distribution ducts, building entrance and distribution conduits, building entrance and building distribution space, equipment rooms, equipment closets, mechanical rooms, telephone communications rooms, and similar spaces will vary from location to location and that the respective rights of third-party property owners, tenants in buildings owned by third-party property owners, telecommunications carriers, cable television systems, and other providers of telecommunications services with respect to such ducts, conduits, and spaces must be determined on a case-by-case basis. Each party shall, when feasible, directly obtain from third-party property owners such access to building entrance and building distribution ducts, building entrance and building distribution conduits, building entrance and building distribution space, equipment rooms, equipment closets, mechanical rooms, telephone communications rooms, and other similar areas as may be needed by such party to serve the building owner and tenants

located within buildings owned by third parties or to access other space in the building occupied or to be occupied by such party. In those situations in which Applicant cannot obtain from the building owner access on terms satisfactory to Applicant, Applicant may request access from SWBT as provided in Sections 5.03-5.04 of this Agreement; provided, however, that a separate, building-specific notice of intent to occupy under Section 8.02(b) or license application under Section 9.02, including such additional information as may be necessary to identify the space to be occupied and the facilities to be placed in such space, shall be required for access to the facilities and space subject to this section. Any such notice or application shall conspicuously note on its face that access to building entrance or building distribution facilities or space is being sought. Applicant acknowledges that SWBT must, before providing access to building space and facilities located on or within third-party property, review applicable legal documents and physical arrangements relating to the property, including physical arrangements within the building. Upon completion of that review, SWBT will notify Applicant whether Applicant's request can be granted under this Agreement, will require access arrangements under a tariff or other applicable agreement, or will require other special handling (e.g., direct negotiations with the third-party property owner). Pending such notice, Applicant may not occupy any duct, conduit, or space subject to this section pursuant to Section 8.03 without SWBT's express written consent but may exercise occupancy rights obtained directly from the building owner. If SWBT has lawful authority to provide such access and is required by the Pole Attachment Act to do so, SWBT shall provide Applicant access under this Agreement. Such access shall be negotiated on a case-by-case basis taking into account any special legal, technical, security, or construction considerations applicable to the ducts, conduits, or space which Applicant seeks to access. Such access, when provided, shall only include access to ducts, conduits, and available space (as distinguished from access to cables and other equipment not subject to the Pole Attachment Act). Such access shall be subject to such reasonable terms and conditions as may be appropriate to protect the equipment and other property of the parties and third parties, the reliability of the parties' networks and the networks of third parties, and the privacy of communications carried over the parties' networks and networks of third parties.

- (a) Applicant's access, if any, to building entrance ducts and building entrance conduits entering SWBT-owned buildings (including but not limited to central offices) and access, if any, to other building entrance and building distribution facilities and space located within such buildings shall be arranged under and shall be subject to tariffs, agreements, and, if applicable, commission or court orders establishing such access rights rather than this Agreement.
- (b) Applicant's access to and use of building entrance ducts, building entrance conduits, building entrance space, and other building entrance facilities owned and controlled by third-parties shall be obtained by Applicant through direct negotiations between Applicant and the third-

party property owners who own and control access to such facilities. If SWBT owns a building entrance duct, building entrance conduit, or other building entrance space, or if SWBT has sufficient control over a building entrance duct, building entrance conduit, or other building entrance space to permit other telecommunications carriers or cable television systems to have access to such ducts, conduits, or space without approval or consent from the third-party property owner, SWBT shall, if adequate capacity is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Applicant and other telecommunications carriers and cable television systems on a nondiscriminatory, first-come, first-served basis; provided, however, 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 Applicant's access to or use of such building entrance ducts, building entrance conduits, or other building entrance space. Such access shall be granted, on a case-by-case basis, in the form of a license, sublicense, easement, sub-easement, or other mutually acceptable writing and shall not include access to or the right to use SWBT's cables or other SWBT telecommunications equipment occupying such ducts, conduits, or space. Except as otherwise agreed to by the parties, SWBT's charge for such access (obtained from SWBT rather than from the third-party property owner) shall include (1) a pro rata portion of all charges (including but not limited to one-time charges and recurring charges), if any, paid by SWBT to obtain the building entrance duct, building entrance conduit, or building entrance space and (2) any other documented legal, administrative, engineering and construction costs incurred by SWBT to obtain such duct, conduit, or space, process Applicant's request for access, or prepare the facilities for Applicant's occupancy or use. SWBT's charges to Applicant under this subsection shall be calculated and negotiated on a case-by-case basis.

- (c) Applicant's access to and use of building distribution ducts, building distribution conduits, building distribution space, and other building distribution facilities owned and controlled by third-parties shall be obtained by Applicant through direct negotiations between Applicant and the third-party property owners who own and control access to such facilities. If SWBT owns a building distribution duct, building distribution conduit, or other building distribution space, or if SWBT has sufficient control over a building distribution duct, building distribution conduit, or other building distribution space to permit other telecommunications carriers or cable television systems to have access to such duct, conduit, or space without approval or consent from the third-party property owner, SWBT shall, if adequate capacity is available, and subject to reasonable safety, reliability, and engineering conditions,

provide access to Applicant and other telecommunications carriers and cable television systems on a nondiscriminatory, first-come, first-served basis; provided, however, 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 Applicant's access to or use of such building distribution ducts, building distribution conduits, or other building distribution space. Such access shall be granted, on a case-by-case basis, in the form of a license, sublicense, easement, sub-easement, or other mutually acceptable writing and shall not include access to or the right to use SWBT's cables or other SWBT telecommunications equipment occupying such ducts, conduits, or space. Except as otherwise agreed to by the parties, SWBT's charges for such access (obtained from SWBT rather than from the third-party property owner) shall include (1) a pro rata portion of all charges (including but not limited to one-time charges and recurring charges) paid by SWBT to obtain the building distribution duct, building distribution conduit, or building distribution space and (2) any other documented legal, administrative, engineering costs and construction costs incurred by SWBT to obtain such duct, conduit, or space, process Applicant's request for access, or prepare the facilities for Applicant's occupancy or use. SWBT's charges to Applicant under this subsection shall be calculated and negotiated on a case-by-case basis.

- (d) Access to equipment rooms, equipment closets, mechanical rooms, telephone communications rooms, and similar areas located in buildings owned and controlled by third-parties shall be subject to access as provided in subsection (c); provided, however, that when any such room or space is leased to SWBT on an exclusive basis (as may be the case if the room or space will be used to house remote switching equipment, pair gain equipment, or other network equipment used to provide or support telecommunications services to customers at locations outside the building in which such room is located), access, if any, shall be also subject to facilities collocation tariffs, agreements, or arrangements.
- (e) Nothing contained in this section shall be construed as authorizing Applicant to occupy space owned or controlled by third parties or to utilize third-party facilities or property without permission or authority from the owner of such property, where such permission or authority is required. Neither this section nor any license or permission granted under or subject to this section shall be construed as a representation by SWBT to Applicant that Applicant has the right to have access to or occupy any duct, conduit, or space owned and controlled by a third-party property owner or to utilize any telecommunications equipment owned or controlled by SWBT or any third party (including but not limited to

owner- or tenant-owned cables, wires, and equipment located on the customer side of any network interface device).

- (f) If Applicant has been granted access to a building entrance or building distribution duct, conduit, or space pursuant to this section, Applicant shall, at SWBT's request, relinquish such access to SWBT if it is subsequently determined that Applicant's use of such space will preclude SWBT from meeting carrier- or provider-of-last-resort obligations to customers on the premises affected.

ARTICLE 6: SPECIFICATIONS

6.01 Compliance with Requirements, Specifications, and Standards. Applicant agrees that Applicant'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 Agreement.

6.02 Design to Minimize the Need for Access to SWBT's Poles, Ducts, and Conduits. The parties shall each design their facilities to minimize the need for the parties to access SWBT's poles, ducts, and 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, and consistent with considerations of safety, reliability, and sound engineering practice, SWBT will permit Applicant 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. Applicant acknowledges that use of the above techniques will be rare, 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, the safety of personnel working on or in SWBT's poles, ducts, or conduits, and does not render unusable other available space on the pole or in the duct or conduit. 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 Applicant'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.

6.04 Published Standards. SWBT and Applicant 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 Agreement 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) 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 transmission facilities such as the facilities of a power utility.

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

- (a) Except as otherwise specifically agreed in this Agreement or licenses subject to this Agreement, Applicant'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 (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) Neither party shall circumvent the corrosion mitigation measures of the other party or joint users.
- (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 three or four inner ducts in a full four-inch duct) as needed for SWBT's own business purposes and to accommodate Applicant and other joint users; provided, however, that SWBT will not be required to install inner duct in advance of need or in anticipation of potential future requests for access by Applicant 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 Agreement or licenses subject to this Agreement, or as mutually agreed upon by the parties in writing, the following specifications apply to connections of Applicant's ducts and conduits to SWBT's conduit system:

- (a) Applicant 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 Agreement, in licenses subject to this Agreement, or as mutually agreed upon by the parties in writing.
- (b) Nothing contained in subsection (a) shall be construed as precluding Applicant or qualified personnel acting on Applicant's behalf from reattaching cable racks or performing similar routine work which is minor in nature and associated with the placement and splicing of Applicant's cable.
- (c) Where Applicant's duct or facility physically connects with SWBT's conduit system, the section of Applicant's duct or facility which connects to SWBT's conduit system shall be installed by SWBT or its contractor at Applicant's expense (which will be SWBT's actual costs or the price charged SWBT by the contractor performing such work). 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 Applicant's needs, Applicant may arrange for the work to be performed by an authorized contractor selected by Applicant from a list, jointly developed by Applicant and SWBT, of mutually agreed contractors qualified to perform such work. Work performed by an authorized contractor selected by Applicant to perform work under this subsection shall be performed in accordance with both parties' specifications and in accordance with both parties' standards and practices. Each party shall indemnify, on request defend, and hold the other party harmless from any injuries, losses, damages, claims, or liabilities resulting from the performance of work by the indemnifying party or by persons acting on the indemnifying party's behalf under this subsection.
- (d) SWBT will have the option to monitor the entrance and exit of Applicant's facilities into SWBT's conduit system and the physical placement of Applicant's facilities in and removal of such facilities from any part of SWBT's conduit system. Notice requirements for such monitoring are addressed in Section 6.11 of this Agreement.

- (e) If Applicant constructs or utilizes a duct (other than a duct owned or controlled by SWBT) which is 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 Applicant'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 into SWBT's conduit system.

6.09 General Requirements Relating to Personnel, Equipment, Materials, and Public Safety. Except as otherwise specifically provided in this Agreement, Applicant shall be responsible for selecting the employees and contractors who will perform work on Applicant's behalf on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. Applicant, its contractors, subcontractors, and other vendors acting on Applicant's behalf shall also be responsible for selecting the personnel who perform work on Applicant's behalf at such sites, directing the work performed by such personnel, compensating their respective employees, and complying with all applicable laws, rules, regulations, and agency orders relating to withholding taxes, social security taxes, and other employment-related taxes. The provisions of this section are intended to protect the integrity of the networks, facilities and operations of SWBT, Applicant 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, to assure the financial responsibility of all persons and entities performing work on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, and to protect the public at large. The requirements of this section (other than the provisions of subsection (h)) shall be reciprocal and shall apply to SWBT and personnel acting on SWBT's behalf to the same extent they apply to Applicant.

- (a) Contractors, subcontractors, and other vendors, including authorized contractors, performing work on Applicant's behalf on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way shall meet the same financial responsibility (insurance and bonding) requirements generally applicable to contractors, subcontractors, and vendors performing work on SWBT's behalf on, within, or in the vicinity of such poles, ducts, conduits, or rights-of-way. SWBT shall advise Applicant of SWBT's requirements and any changes in such requirements. Applicant shall be solely responsible for assuring compliance with such requirements by contractors, subcontractors, and other vendors acting on Applicant's behalf and shall be liable to SWBT for any injury, loss, or damage suffered by SWBT as a result of its failure to do so.
- (b) Only properly trained persons shall work on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. Applicant shall be

responsible for determining that all such persons acting on Applicant's behalf have proper training.

- (c) Neither Applicant nor any person acting on Applicant'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.
- (d) Neither Applicant nor any person acting on Applicant's behalf shall permit any person acting on Applicant's 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 sufficiently safe for the work to be performed. If Applicant or any person acting on Applicant's behalf determines that the condition of any pole, duct, conduit, conduit system, or right-of-way is not safe enough for the work to be performed, Applicant shall notify SWBT of conditions at the site and shall not proceed with the work until Applicant is satisfied that the work can be safely performed.
- (e) Neither Applicant nor any person acting on Applicant'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.
- (f) When Applicant or personnel performing work on Applicant's 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, such personnel shall follow procedures which Applicant deems appropriate for the protection of persons and property. Applicant and its contractors shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. Applicant and its contractors shall provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers, and property from danger. Applicant and its contractors shall have sole responsibility for the safety of all personnel performing work on Applicant's behalf, for the safety of bystanders, and for insuring that all operations performed by persons acting on Applicant's behalf conform

to current OSHA regulations and all other governmental rules, ordinances or statutes.

- (g) Neither Applicant nor any persons acting on Applicant'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, interferes with the use or enjoyment of such public or private property except as expressly permitted by the owner of such property, or creates a hazard or nuisance on such property (including but not limited to a hazard or nuisance resulting from any abandonment of Applicant's facilities, failure to remove such 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 Applicant's behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).
- (h) Applicant 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 Applicant) if notified by SWBT that such activities create an unreasonable risk of injury to persons or property (including unreasonable risks of service interruptions). Applicant shall not resume such activities on or in the vicinity of SWBT's poles or rights-of-way until Applicant 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 Applicant and SWBT are satisfied that the work may safely proceed and that hazardous conditions at the site have been rectified. In the event that SWBT requires Applicant to suspend work activities and it is later determined that there was no reasonable basis for the work suspension, SWBT shall reimburse Applicant for actual costs resulting from the delay.
- (i) All personnel acting on Applicant'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.
- (j) Applicant and persons acting on Applicant's behalf are encouraged to report unsafe conditions on, within, or in the vicinity of SWBT's poles or conduit system to SWBT.
- (k) Applicant shall establish sufficient controls and safeguards to assure compliance with all provisions of this section.

6.10 Specific Requirements Relating to Personnel, Equipment, Materials, and Construction Practices Within or in the Vicinity of SWBT's Conduit Systems. When Applicant, its contractors, and other persons acting on Applicant's behalf perform work for Applicant 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, Applicant shall not "rod" or clear any duct or inner duct in SWBT's conduit system other than a duct or inner duct assigned to Applicant. Following the assignment of a specific duct or inner duct to Applicant, Applicant may request that SWBT rod or clear the duct or inner duct. If the duct or inner duct cannot be cleared, SWBT will assign the next available duct or inner duct to Applicant. Applicant'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 Applicant'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) Applicant's facilities shall be plainly identified with Applicant'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 Applicant's work operations to proceed shall be performed by Applicant or its contractor in accordance with the requirements of Sections 6.14 and 6.15 of this Agreement.

- (g) Planks or other types of platforms shall be supported only by cable racks.
- (h) Any leak detection liquid or device used by Applicant or personnel performing work on Applicant'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 Applicant may use any type of leak detection liquid or device which meets Bellcore's published standards if SWBT has not provided Applicant SWBT's list of approved types of leak detection liquids or devices at least 60 days in advance of Applicant's work.
- (i) Applicant and its contractors shall be responsible for providing proper ventilation while work is being performed in SWBT's conduit system on Applicant'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 Applicant, will be provided by Applicant. Only explosion-proof lighting fixtures shall be used.
- (l) Neither Applicant nor personnel performing work on Applicant'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) Applicant 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 Applicant at least 60 days in advance of the construction, installation, or placement of Applicant's facilities within SWBT's conduit system.
- (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 Applicant

may use any type of cable lubricant which meets Bellcore's published standards if SWBT has not provided Applicant SWBT's list of approved types of cable lubricants at least 60 days in advance of Applicant'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) Applicant 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, Applicant shall, when feasible, provide SWBT with 10 working days advance notice before entering SWBT's conduit system. SWBT shall, within 10 working days after the effective date of this Agreement, advise Applicant of the manner in which notices required by this section shall be given.
- (b) An authorized employee or representative of SWBT may be present as a construction inspector at any time when Applicant or personnel acting on Applicant's behalf enter or perform work within SWBT's conduit system. Such inspectors may inspect the performance and quality of the work and monitor the work for compliance with the terms, conditions, and specifications of this Agreement or, in the case of facilities modification, capacity expansion or make-ready work, the plans and specifications of the facilities modification, capacity expansion, or make-ready project. When SWBT inspectors are present, Applicant and its contractors shall have sole authority, responsibility, and control over the method or manner by which the work is to be performed. SWBT's inspectors may call violations to Applicant's attention but shall have no authority to direct or advise Applicant or personnel acting on Applicant's behalf concerning the method or manner by which the work is to be performed; provided, however, that nothing contained in this subsection shall relieve Applicant from complying with any requirements of this Agreement.
- (c) The parties contemplate that Applicant may need to perform operations in SWBT's conduit system other than during normal business hours and may on occasion require access to manholes on shorter notice than contemplated in subsection (a) above. Under these circumstances, Applicant 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 scheduling requirements of subsection (a). SWBT will establish

procedures enabling SWBT to receive notices from Applicant 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) Applicant shall reimburse SWBT for costs associated with the presence of construction inspectors only as specified in APPENDIX I and only as permitted by applicable laws, rules, regulations, and commission orders. SWBT shall not charge Applicant for more than one such construction inspector per site at any given time.
- (f) If the presence of SWBT personnel at the site is requested by Applicant or, in Applicant's opinion, is integral to successful completion of the work, Applicant shall pay the costs of having such personnel present.

6.12 OSHA Compliance. The parties agree that:

- (a) 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;
- (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, comply with OSHA and all rules and regulations thereunder; and
- (c) Applicant shall establish appropriate procedures and controls to assure compliance with all requirements of this section.

6.13 Hazardous Substances. Applicant acknowledges that, from time to time, hazardous substances (as defined in Section 3.19 of this Agreement) 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) Applicant 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 Applicant as Applicant may deem necessary to determine the presence at such sites of hazardous substances. SWBT will assist Applicant, at Applicant's request and expense, in the performance of such inspections and tests.

- (b) SWBT makes no representations to Applicant or personnel performing work on Applicant'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 Agreement, Applicant or personnel acting on Applicant'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 Applicant pursuant to this Agreement 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 Agreement (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 Agreement shall be construed as relieving SWBT of liability for hazardous substances present at any site subject to this Agreement 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. Failure to comply with the requirements of this section may, however, be considered in determining issues relating to negligence, causation of injury, and comparative responsibility for injuries to persons, property, and the environment.

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

- (a) Facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way following the effective date of this Agreement shall be constructed, placed, maintained, repaired, and removed in accordance with all applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws.

- (b) All persons acting on Applicant's or SWBT's behalf, including but not limited to the parties' 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. Applicant and personnel acting on Applicant's behalf are expected to be familiar with their obligations under environmental laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Toxic Substance Control Act (15 U.S.C. §§ 2601-2629), the Clean Water Act (33 U.S.C. §§ 1251 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j).
- (c) The parties shall each establish appropriate procedures and controls to assure compliance with all requirements of this section.
- (d) From and after the effective date of this Agreement, 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 Applicant 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. Applicant will be expected to test such water or substance for hazardous substances in accordance with then-applicable SWBT standards and practices.
- (e) Applicant and SWBT and all personnel performing work on Applicant's or SWBT's behalf shall, when working on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, comply with such additional standards, practices, and requirements as SWBT may from time to time adopt to comply with environmental laws, provided that such standards are communicated in writing to Applicant at least 60 days in advance of Applicant's work.

6.15 Compliance with Other Governmental Requirements (Including Aeronautical Navigation Safeguards). 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). Applicant 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 Differences in Specifications. To the extent that there may be differences in the specifications, the most stringent specification will apply except as otherwise specifically provided by SWBT in writing. Applicant will consult with SWBT when Applicant is uncertain as to which specification is to be followed.

6.17 Responsibility for the 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 Applicant'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 APPENDIX VIII. Designation of primary points of contact pursuant to this section will not affect notice requirements or other legal requirements set forth in other provisions of this Agreement.

7.02 Determinations by Applicant of Suitability and Availability. Applicant shall make its own, independent assessment of the suitability of SWBT's poles, ducts, conduits, and rights-of-way for Applicant'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 Applicant for planning and other purposes. Access to such records and information will be conditioned on Applicant's execution of a nondisclosure agreement equivalent in substance to the Nondisclosure Agreement attached to this Agreement as APPENDIX V or such other nondisclosure agreement as shall be mutually acceptable to the parties, and no person acting on Applicant's behalf will be granted access to such records and information without first signing such a nondisclosure agreement. Applicant

will reimburse SWBT for all reasonable costs incurred by SWBT in granting Applicant's requests for access to records and information under this section.

- (a) Applicant may, at any time after the effective date of this Agreement, request permission to inspect SWBT's pole and conduit maps and records, cable plat maps, and other plant location records, if any, recording or logging assignments of pole, duct, and conduit space. Applicant will 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 will be by appointment only, and SWBT will make such maps and records available for inspection by Applicant on two business days advance notice; provided, however, that Applicant will, as a courtesy, when feasible, provide SWBT with 10 business days advance notice of its intent to examine such records.
- (b) The access described in subsection (a) shall include the right to make copies, at Applicant'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, Applicant's copies, notes, or drawings may include only such information as needed for bona fide engineering and construction purposes (e.g., proposing cable consolidations and identifying plant discrepancies) and not for sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities. Applicant'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 Applicant's intended uses.
- (c) SWBT will provide Applicant 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 Applicant's facilities or that the poles, ducts, or conduits depicted are suitable for Applicant's intended use.

7.04 Pre-occupancy Inspection of Poles, Ducts, Conduits, and Rights-of-Way.

Applicant shall be permitted to view and inspect specified poles, ducts, conduits, and rights-of-way on a pre-occupancy basis as provided in this section.

- (a) After the effective date of this Agreement, Applicant may view specified poles, ducts, conduits, and rights-of-way on a pre-occupancy basis. Nothing contained in this section shall preclude Applicant from visually inspecting SWBT's poles, ducts, conduits, or rights-of-way from any vantage point lawfully accessible to Applicant without SWBT's permission.
- (b) Applicant 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 Agreement, including but not limited to the provisions of Section 6.1.1 relating to the opening of manholes.

ARTICLE 8: POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

8.01 Selection of Space. Applicant will select the space Applicant will occupy on SWBT's poles or in SWBT's conduit systems. Applicant's selections will be based on the same criteria SWBT applies to itself. To enable Applicant to make such selections in accordance with SWBT's criteria, SWBT will provide Applicant information about the network guidelines and engineering protocols used by SWBT in determining the placement of facilities on SWBT's poles and in SWBT's conduit systems. In conduit systems owned or controlled by SWBT, maintenance ducts (as defined in Section 3.25) shall not be considered available for Applicant's use except as specifically provided elsewhere in this Agreement. All other ducts, inner ducts, sub-ducts, and partitioned

conduits which are not assigned or occupied shall be deemed available for use by SWBT, Applicant, 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 Applicant will be assigned to Applicant 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 Agreement (Confidentiality of Information).

- (a) After Applicant's application for a pole attachment or conduit occupancy license has been received by SWBT, the pole, duct, and conduit space selected by Applicant in such application will be assigned to Applicant for a pre-occupancy period not to exceed 12 months. The assignment (and date and time of assignment) will be logged and recorded in the appropriate SWBT records. If such space has been provisionally assigned to Applicant 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 Applicant'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 Agreement, adopt interim procedures which will enable pole, duct, and conduit space to be provisionally assigned to Applicant and other applicants prior to the submission of formal applications required pursuant to Section 9.02 of this Agreement. Where indicated below, the interim procedures will apply to the assignment of space to SWBT as well as to Applicant and other applicants. SWBT may, on 60 days advance notice to Applicant, revise such interim procedures if such procedures prove to be unworkable, in which event Applicant may challenge SWBT's decision in accordance with procedures available to Applicant under applicable federal and state laws and regulations. The procedures will enable Applicant 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 Applicant 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 Agreement. Space provisionally assigned to Applicant or such other applicant will not be available for assignment to any other person or entity, including SWBT. Notwithstanding such provisional assignment, Applicant shall not occupy such space without first obtaining a license, except as provided in Section 8.03. The following additional requirements shall apply.

- (1) Before giving SWBT notice of its intent to occupy unassigned space, Applicant 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 Applicant desires to occupy. The notice must, therefore, include, at a minimum, the following information:
 - (i) the specific conduit sections, and each manhole, to be occupied;
 - (ii) the number of ducts, and number of inner ducts, to be occupied by Applicant 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 Applicant of any infrequent construction techniques and connectivity solutions authorized under Section 6.03 to avoid high or unusual expenditures;
 - (v) Applicant's best estimates of the dates when Applicant plans to begin and complete construction at the sites specified in the notice;
 - (vi) if applicable, a conspicuous statement that Applicant intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement; and
 - (vii) if applicable, a conspicuous statement, as required by Section 5.06 of this Agreement, 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 Applicant desires to occupy. The notice must, therefore, include, at a minimum, the following information:
- (i) the specific poles to be occupied;
 - (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 facilities modification, capacity expansion, or make-ready work may be required of subsequent applicants as a result of the provisional assignment of space to Applicant;
 - (iv) the anticipated use by Applicant of any infrequent construction techniques and connectivity solutions authorized under Section 6.03 to avoid high or unusual expenditures;
 - (v) Applicant's best estimates of the dates when Applicant plans to begin and complete construction at the sites specified in the notice; and
 - (vi) if applicable, a conspicuous statement that Applicant intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement.
- (4) No later than 30 days after giving such notice, Applicant shall file an application under Section 9.02 or the provisional assignment will lapse.
- (5) As stated in Section 7.03(c), SWBT does not represent that its records accurately reflect the information necessary to enable Applicant 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 will be provisional assignments and will be subject to modification if it is subsequently determined that the space selected by or assigned to Applicant 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) Applicant's obligation to pay semiannual pole attachment or conduit occupancy fees will commence from the date of assignment or provisional assignment, as logged and recorded in the appropriate SWBT records.
- (e) During the 12-month assignment period following the date space is assigned to Applicant and entered into the appropriate SWBT record, SWBT shall not occupy or use such space without Applicant's permission, shall not assign such space to any party other than Applicant, and shall not knowingly permit any party other than Applicant to occupy or use such space without Applicant's permission except as otherwise specifically provided in this Agreement. The assignment to Applicant will automatically lapse 12 months after the date the assignment has been entered into the appropriate SWBT record if Applicant has not occupied such assigned space within such 12-month period; provided, however, that if Applicant'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 Applicant 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 Applicant's behalf, or from acts of God, the assignment may be extended for a period no longer than three months from the date Applicant is first able to commence construction activities at the site involved. Assignments to third parties shall be subject to the same rules applicable to Applicant 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 Applicant and third parties. If SWBT assigns pole, duct, or conduit space to itself, such assignment will 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 Applicant 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 either party under this section, the party to whom such space has been assigned will 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 subsections (e)-(f) above, assignments shall not be extended, renewed, or sequentially repeated in any manner (other than by actual occupancy) that enables Applicant, SWBT, or any joint user to preclude access by others to unused pole attachment or conduit occupancy space for any period greater than 12 months after the date of initial assignment.
- (i) At Applicant's election, Applicant may file an application for access which specifically requests that the space sought by Applicant not be assigned to Applicant 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 Agreement. In that event, the space sought by Applicant will not be assigned to Applicant and will remain available for assignment to others without restriction until such time as such space is formally assigned to Applicant in accordance with Applicant'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 Applicant of a license confirming that Applicant has the right to occupy the space described in the license. In the event that Applicant elects to proceed under this subsection, Applicant'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 Applicant shall bear the risks that (1) the space sought by Applicant will

be assigned to and occupied by another person or entity or (2) circumstances will occur which may require that SWBT reevaluate Applicant's application and repeat the field inspection portion of the pre-license survey at Applicant'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. Although SWBT's clerical personnel will promptly process assignment requests included in applications and notices transmitted to SWBT by mail, courier, fax, or other transmission media, SWBT shall not be liable for any failure by Applicant to obtain the space desired by Applicant due to delay in logging assignment requests. Applicant acknowledges that, to maximize the probability that Applicant will be assigned the space Applicant desires, Applicant 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 Agreement, adopt interim procedures which will provide Applicant 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 Applicant's use and no make-ready work or infrequent construction techniques or connectivity solutions are required. SWBT may, on 60 days advance notice to Applicant, revise or terminate such interim procedures if they prove to be unworkable, in which event Applicant may seek renegotiation of this Agreement or challenge SWBT's decision in accordance with procedures available to Applicant 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 Agreement, 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, Applicant may immediately occupy space assigned or provisionally assigned to Applicant pursuant to Section 8.02 of this Agreement. 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. Applicant 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) Applicant shall not occupy space which has not been assigned or provisionally assigned to Applicant. The assignment must be recorded on the appropriate SWBT records, as provided in Section 8.02, prior to Applicant's occupancy. If Applicant subsequently determines that the records are inaccurate and that the space assigned to Applicant is not available, or that the space assigned is not suitable for Applicant's intended use, Applicant 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, Applicant 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 Applicant will occupy. To avoid high or unusual expenditures resulting from unanticipated conditions at the site, Applicant may occupy space not assigned to Applicant subject to the following terms and conditions.
 - (1) Applicant may occupy the next available space shown on SWBT's records as available at the time of Applicant's last review of the records. Applicant 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, Applicant shall submit to SWBT a written notice of intent to occupy or an application for the space occupied showing the reason for Applicant's use of the space occupied.
 - (3) Applicant shall bear the risk that space occupied by Applicant pursuant to this section was assigned to SWBT or a third party during the period between Applicant's last review of the records and Applicant's occupancy of such space. After occupying space not previously assigned to Applicant, Applicant shall review the records and promptly notify the affected party if Applicant determines that it has occupied space assigned to such party. At the request of the party to whom such space has been assigned, Applicant 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 Applicant 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 Applicant actual costs, if any, directly incurred by SWBT as a result of Applicant's decision under this subsection to occupy space subject to a valid prior assignment to SWBT. Applicant 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 Applicant's decision under this subsection to occupy space assigned to such third party.
- (c) Nothing in this section authorizes Applicant 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 Applicant, 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 Applicant) or (2) utilize any infrequent construction technique or connectivity solution described in Section 6.03.
- (e) If Applicant has not done so already, within 24 hours after occupying space pursuant to this section, Applicant will submit to SWBT an application for the space occupied as provided in Section 9.02 of this Agreement. The application may be submitted by fax.
- (f) Applicant 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 Applicant 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 Applicant'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 Agreement, Applicant shall apply in writing for and receive a license before attaching facilities to specified SWBT poles or placing facilities within specified SWBT ducts, conduits, manholes, or handholes. License applications and information received by SWBT in connection with such applications shall be subject to the provisions of Article 28 of this Agreement (Confidentiality of Information).

9.02 Application Form. To apply for a pole attachment or conduit occupancy license under this Agreement, Applicant shall submit to SWBT two signed copies of the appropriate application forms. SWBT represents that the forms specified in subsections (a)-(b) are forms in use prior to the effective date of this Agreement and that SWBT is in the process of revising such forms to conform to the provisions of this Agreement and to streamline the application process. The parties therefore agree that the forms specified in subsections (a) and (b) will be interim forms only. SWBT reserves the right to change the format and content of these forms upon 60 days written notice to Applicant.

- (a) To apply for a pole attachment license, Applicant 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 will not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that such forms will be deemed to be substantially complete if they contain the information specified in subsections (c)-(h) below, as applicable. Copies of Forms SW-9433 and SW-9434 are attached to this Agreement as parts of APPENDIX III.
- (b) To apply for a conduit occupancy license, Applicant 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 will not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that such forms will be deemed to be substantially complete if they contain the information specified in subsections (c)-(h) below, as applicable. Copies of Forms SW-9434 and SW-9435 are attached to this Agreement as parts of APPENDIX III.
- (c) Each application for a license under this Agreement shall include, at a minimum, the following information:
 - (1) the poles, ducts, and conduits (including all manholes) along Applicant's proposed route to or within which Applicant 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;
 - (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, as required by Section 5.06 of this Agreement, that the application pertains to a building entrance or 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 Applicant until SWBT has received Applicant's written instruction to make such assignment or issued a license authorizing Applicant to occupy the space requested; and
 - (6) if applicable, a conspicuous statement that Applicant intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement.
- (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 Applicant that facilities modification, capacity expansion, or make-ready work may be required to accommodate Applicant's access requests, Applicant shall describe the facilities modification, capacity expansion, or make-ready work which Applicant proposes. Applicant shall also describe its plans, if any, to use any infrequent construction technique or connectivity solution authorized under Section 6.03 to avoid high or unusual expenditures and state its reasons for the use of such technique or solution.
- (f) Applicant 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 Applicant's request for access to SWBT's poles and that, at the time an application is submitted, it may be difficult for Applicant 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 Applicant's proposed route.

- (g) Each application for a license under this Agreement shall be accompanied by a construction schedule showing Applicant'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 Applicant's applications and scheduling such capacity expansions, make-ready work, and facilities modifications, if any, as may be necessary to accommodate Applicant's facilities.
- (h) Applicant may include multiple cables in a single license application and may provide multiple services (e.g., CATV and non-CATV services) under the same cable sheath or jacket. When both CATV and non-CATV services are provided under the same cable sheath or jacket, or CATV and non-CATV services are provided using different cables attached or lashed to the same strand or otherwise occupying the same space on a pole or the same duct or inner duct within a conduit, Applicant will so advise SWBT and SWBT shall, if permitted by law, adjust its charges to enable SWBT to charge Applicant the rate applicable to telecommunications carriers rather than the rate applicable to cable television systems solely to provide cable service.

9.03 Cooperation in the Application Process. The orderly processing of applications submitted by Applicant 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 Applicant and other firms seeking access. The parties therefore agree to the following transitional procedures which will remain in effect during the term of this Agreement 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 or cable television services from using such poles, ducts, conduits, or rights-of-way.

- (b) Applicant 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 shall use its best efforts to submit applications in an orderly manner in accordance with Applicant's needs. If Applicant 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, Applicant 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 Applicant's Priorities. When Applicant has multiple applications on file within a single SWBT construction district, Applicant shall, at SWBT's request, designate its desired priority of completion of pre-license surveys, facilities modifications, capacity expansions, and make-ready work 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 Applicant has submitted its written license application as specified in Section 9.02 of this Agreement. SWBT shall not, without due cause and justification, repeat pre-occupancy survey work performed by Applicant.

- (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 Applicant'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 Applicant'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 Applicant's license

application is already available from existing sources, including the application forms and such other information as may be available to SWBT. If Applicant, pursuant to Section 8.03, has occupied the space requested before the issuance of a license, a post-installation inspection of Applicant'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 Agreement. In performing such inspection, SWBT will not, without due cause and justification, repeat pre-occupancy survey work performed by Applicant.

- (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 Applicant'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 Applicant'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 Applicant's submission of a license application pursuant to Section 9.02 of this Agreement, 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 Applicant's request for access become aware of hazardous substances at the site requested by Applicant, SWBT shall promptly advise Applicant and shall, at Applicant's request, discuss alternatives to denial and issues associated with the presence of such hazardous substances. Additional state-specific response and notice requirements, if any, shall be addressed by an addendum to this Agreement.

- (a) If access is granted, SWBT shall, no later than 45 days after Applicant's submission of the license application, further advise Applicant in writing (1) what facilities modifications, capacity expansions, or make-ready work, if any, will be required to prepare SWBT's pole or conduit facilities, (2) provide Applicant an estimate of charges for such facilities modifications, capacity expansions, or make-ready work and (3) disclose

to Applicant any hazardous substances known by SWBT to be present at the site.

- (b) SWBT may take into account issues of capacity, safety, reliability, and engineering when considering requests for access, provided the assessment of such factors is done in a nondiscriminatory manner. If access is denied, SWBT shall confirm the denial in writing by the 45th day after the receipt by SWBT of Applicant's completed application. A 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 Applicant in its completed application sets forth in writing specific proposals for expanding capacity, the denial statement shall specifically address such proposals.
- (c) Applicant 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, Applicant shall promptly withdraw or amend its application, thereby minimizing the administrative burdens on SWBT of processing and responding to the application.
- (d) Notwithstanding the 45-day deadline, SWBT will, pursuant to Section 8.03 of this Agreement, make available to Applicant 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.
- (e) If SWBT fails to respond in writing within 30 days of SWBT's documented receipt of a license application pursuant to Section 9.02 of this Agreement, or within such other period of time as may be mutually agreed upon in writing by the parties, Applicant may by written notice inquire whether SWBT intends to deny Applicant's request for access. After such notice has been given and receipt by SWBT of a properly submitted license application has been confirmed, SWBT's failure to respond in writing within 15 days after receipt of the notice shall be deemed to constitute approval of the request for access. In such event, Applicant shall be entitled to occupy the space requested without the formality of a license; provided, however, that nothing contained in this subsection shall authorize Applicant to occupy space already occupied or subject to a prior valid space assignment to SWBT or any third-party; and provided further that nothing in this subsection authorizes Applicant, 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 Applicant) or (2) utilize any infrequent construction technique or connectivity solution described in Section 6.03.

10.02 Obligation to Construct or Modify Facilities; Capacity Expansions. SWBT may grant access subject to Applicant's approval of such make-ready work (including facilities modifications) as may be required to expand capacity to accommodate Applicant's request, in which event Applicant 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 Applicant's request for access, SWBT shall promptly notify Applicant of such determination. SWBT shall not deny Applicant's request for access on lack of capacity grounds when capacity can be expanded as provided in this section and in Section 6.03 (infrequent construction techniques and connectivity solutions).

- (a) At Applicant's request, SWBT will replace, expand, or modify its poles and conduit system, or otherwise expand the capacity of such facilities to accommodate the placement of Applicant's facilities; provided, however, that such modifications shall be consistent with the capacity, safety, reliability, and engineering considerations which SWBT would apply to itself if the work were performed for SWBT's own benefit. Outside plant facilities modifications and capacity expansions contemplated by this subsection include, but are not limited to, installation of inner duct, cable consolidations and the removal of cables that are retired or inactive (dead). Except as otherwise specifically provided in this section, SWBT may recover from Applicant the costs of facilities modifications and capacity expansions to make space available for Applicant's facilities and charges for such modifications and expansions shall be determined and billed as provided in APPENDIX I of this Agreement.
- (b) SWBT will, at its own expense, install inner duct in SWBT's conduit system as necessary to make space available for Applicant's facilities. Inner duct installations to accommodate Applicant's facilities will be performed by SWBT within the same time intervals which would apply if SWBT were performing such installations for itself. If SWBT's intervals for beginning or completing inner duct installation do not meet Applicant's needs, Applicant may arrange for the inner duct installation to be performed by an authorized contractor selected by Applicant from a list, jointly developed and maintained by the parties, of contractors mutually approved as qualified to perform inner duct installations. Applicant may install the inner duct itself if Applicant is on the list of mutually approved contractors at the time the work is performed. When inner duct is installed in SWBT's conduit system by Applicant or an

authorized contractor selected by Applicant, SWBT will provide the inner-ducting materials to be installed and Applicant shall bear all other installation expenses. Applicant shall give SWBT sufficient advance notice of the materials needed to enable SWBT to provide such materials to Applicant on a timely basis. Applicant shall return all unused materials, including unused inner duct and reels, to SWBT or purchase them from SWBT. Inner duct installed by Applicant or an authorized contractor selected by Applicant shall be installed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if the inner duct were being installed by SWBT or SWBT's contractors. Applicant shall indemnify, on request defend, and hold SWBT harmless for any injuries, losses, damages, claims, or liabilities directly resulting from the installation of inner duct by Applicant or any authorized contractor selected by Applicant under this subsection. Applicant shall not, without SWBT's prior written approval, arrange for inner duct installation to be performed 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, Applicant may, at its option, request that SWBT excavate the obstruction or, in the alternative, arrange for excavation of the obstruction to be performed by an authorized contractor selected by Applicant from a list, jointly developed and maintained by the parties, of contractors mutually approved as qualified to perform such excavations. Applicant may excavate the obstruction itself if Applicant is on the list of mutually approved contractors at the time the work is performed. Such excavations will be at Applicant's expense. Removal of the remainder of the cable will be at SWBT's expense. Excavation work performed by Applicant or an authorized contractor selected by Applicant shall be performed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if such excavation work were being performed by SWBT or SWBT's contractors. Neither Applicant nor any authorized contractor selected by Applicant to perform excavation work under this subsection shall conduct facility excavation activities in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of the facilities. Applicant shall indemnify, on request defend, and hold SWBT harmless for any injuries, losses, damages, claims, or liabilities directly resulting from the performance of excavation work by Applicant or any authorized contractor selected by Applicant under this subsection. Applicant shall not, without SWBT's

prior written approval, arrange for excavation work to be performed under this subsection by subcontractors who are not qualified contractors.

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

10.04 Make-ready Work. If SWBT determines that make-ready work will be necessary to accommodate Applicant's facilities, SWBT shall promptly notify Applicant of the make-ready work proposed to enable the accommodation of Applicant's facilities.

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

(e) If Applicant does not sign and return the estimate within the 20-day acceptance period, or within such other period of time as may be mutually agreed upon in writing by the parties, Applicant shall notify SWBT in writing by the 20th day whether Applicant is withdrawing its application, electing to perform the make-ready work itself as provided in subsection (c) or electing to treat SWBT's make-ready requirements as a denial of access.

(1) If no such notice is given by the 20th day, or such later date as may be mutually agreed upon by the parties, SWBT shall contact Applicant to determine whether Applicant intends to withdraw its application. Applicant shall be deemed to have withdrawn its application if, in response to SWBT's inquiry, Applicant does not immediately sign and return the estimate to SWBT.

(2) If Applicant timely notifies SWBT that it is electing to treat SWBT's make-ready requirements as a denial of access, SWBT shall, within 20 days after receiving the notice, provide Applicant with a written statement explaining its decision to grant access only if the specified make-ready work is performed. The statement shall be specific, shall include all relevant evidence and information supporting SWBT's decision to grant access only if the specified make-ready work is performed, and shall explain how such evidence and information relates to SWBT's decision for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. The statement shall also set forth the basis for SWBT's make-ready proposals and specifically address SWBT's rationale for rejecting Applicant's alternative written proposals, if any.

10.05 Performance of Make-ready Work. Except as otherwise specifically provided in Section 10.02 and in this section, make-ready work shall be performed by 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) Applicant and SWBT will mutually establish and maintain for each SWBT construction district lists of authorized contractors which may be selected by Applicant to perform make-ready work when SWBT's interval for beginning or completing such make-ready work does not meet Applicant's needs. At Applicant's request, Applicant will be included on such lists upon Applicant's demonstrating that (1) its personnel are qualified to perform such work in accordance with SWBT's specifications and (2) Applicant meets the financial

responsibility (insurance and bonding) requirements generally applicable to contractors, subcontractors, and other vendors performing the same or similar work on SWBT's behalf or the self-insurance requirements of Section 23.02.

- (b) If SWBT's interval for beginning or completing make-ready work does not meet Applicant's needs, Applicant may (1) perform the make-ready work itself, if Applicant is on the applicable list of authorized contractors at the time the work is to be performed or (2) arrange for the work to be performed by an authorized contractor selected by Applicant from the applicable list of authorized contractors. Subject to the availability of personnel, Applicant 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 Applicant 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 jointly approved by Applicant and SWBT to perform specific make-ready work in the event that the work load exceeds the capacity of the authorized contractors on the approved list to perform the make-ready work in a timely manner.
- (d) Make-ready work performed by Applicant, by an authorized contractor selected by Applicant, or by a contractor, subcontractor, or other vendor jointly approved by the parties under subsection (c) shall be performed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if such excavation work were being performed by SWBT or SWBT's contractors. Neither Applicant nor authorized contractors selected by Applicant to perform make-ready work under this section shall conduct such work in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of SWBT's facilities. Applicant and any authorized contractor selected by Applicant to perform make-ready work shall indemnify, on request defend, and hold SWBT harmless from any and all injuries, losses, damages, claims, or liabilities directly resulting from their activities under this section.
- (e) Nothing contained in this section authorizes Applicant, any authorized contractor selected by Applicant, or any other person acting on Applicant's behalf to consolidate SWBT's cables.

10.06 Multiple Applications. Applications shall be processed on a first-come, first-served basis. Applications filed on the same date shall be treated as having been filed simultaneously and shall be processed accordingly.

10.07 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. Applicant shall make arrangements with the owners of other facilities attached to SWBT's poles or occupying space in SWBT's conduit system regarding reimbursement for any expenses incurred by them in transferring or rearranging their facilities to accommodate the attachment or placement of Applicant's facilities to or in SWBT's poles, ducts, and conduits.

10.08 Reimbursement for the Creation or Use of Additional Capacity. As a result of facilities modification, capacity expansion, or other make-ready work performed to accommodate Applicant's facilities, additional capacity may become available on SWBT's poles or in its conduit system. In such event, Applicant shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any pole attachment or conduit occupancy fees subsequently paid to SWBT for the use of such additional capacity. SWBT shall, however, establish procedures for giving Applicant notice of the subsequent use by SWBT or third parties of additional space or capacity created at Applicant's expense. If SWBT utilizes additional space or capacity created at Applicant's expense, SWBT will reimburse Applicant on a pro-rata basis for SWBT's share, if any, of Applicant's capacity expansion costs, to the extent reimbursement is required by the Pole Attachment Act and applicable rules, regulations, and commission orders. If any third party later utilizes any such additional space or capacity, SWBT shall, at the request of Applicant or such third party, provide such information as may be available to SWBT to assist Applicant and such third party in determining the amount, if any, which such third party may owe Applicant as its pro-rata share of Applicant's capacity expansion costs. Nothing contained in this section shall be construed as conferring or imposing on SWBT any right or duty to determine the amounts owing by a third party to Applicant, to collect or remit any such amounts to Applicant, to resolve or adjudicate disputes over reimbursement between Applicant and third parties, to deny a third party access to SWBT's poles, ducts, conduits, or rights-of-way due to such third party's failure to satisfy Applicant's reimbursement demands, or to take any other action to enforce Applicant's reimbursement rights against any third party. In like manner, for additional capacity created by SWBT from and after the date of enactment of the Telecommunications Act of 1996, SWBT shall be entitled to recover from Applicant and third parties, to the full extent permitted by law, their pro-rata shares of such capacity expansion costs incurred by SWBT. To the extent that either party seeks to avail itself of this cost-saving mechanism, such party shall be responsible for maintaining adequate records documenting the costs subject to reimbursement, including but not limited to costs incurred for facilities modification and capacity expansion work performed directly by such party or contractors performing work on such party's behalf.

10.09 License and Attachment. After all required make-ready work is completed, SWBT will issue a license confirming that Applicant may attach specified facilities to SWBT's poles or place specified facilities in SWBT's conduit system. Applicant shall have access to attach or place only those facilities specifically described in licenses subject to this Agreement, and no others, except as otherwise specifically provided in (a) Sections 8.03 and 12.03 or other provisions of this Agreement, (b) any other written agreement between the parties providing for such access, or (c) the provisions of any applicable tariffs or commission orders.

ARTICLE 11: CONSTRUCTION OF APPLICANT'S FACILITIES

11.01 Responsibility for Attaching and Placing Facilities. Each party shall be responsible for the actual attachment of its own facilities to SWBT's poles and the placement of such facilities in SWBT's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities. In this regard, each party and its contractors shall be solely responsible for (a) paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and attachment of its facilities and (b) directing the activities of all personnel acting on such party's behalf while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

11.02 Construction Schedule. After the issuance of a license, Applicant shall provide SWBT with an updated construction schedule and thereafter keep SWBT informed of anticipated changes in the construction schedule. Construction schedules received by SWBT shall be subject to the provisions of Article 28 of this Agreement (Confidentiality of Information). Construction schedules required by this section shall include, at a minimum, the following information:

- (a) the name, title, business address, and business telephone number of the manager responsible for construction of the facilities;
- (b) the names of each contractor and subcontractor which will be involved in the construction activities;
- (c) the estimated dates when construction will begin and end; and
- (d) the approximate dates when Applicant or personnel working on Applicant's behalf will be performing construction work in connection with the attachment of Applicant's facilities to SWBT's poles or the placement of Applicant's facilities in any part of SWBT's conduit system.

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

12.01 Use of Applicant's Facilities. Each license subject to this Agreement authorizes Applicant to have access to Applicant's facilities on or within SWBT's poles, ducts, and conduits as needed for the purpose of serving Applicant's customers.

12.02 Routine Maintenance of Applicant's Facilities. Each license subject to this Agreement authorizes Applicant to engage in routine maintenance of facilities located on or within SWBT's poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Applicant's facilities in any manner which results in Applicant's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Applicant's license.

12.03 Installation of Drive Rings and J-Hooks. Applicant may install drive rings and J-hooks on SWBT's poles for the attachment of drop wires as specified in this section.

- (a) Drive rings and J-hooks may be installed as specified in pole attachment licenses issued to Applicant.
- (b) If attachment space has already been licensed to Applicant on a given SWBT pole, Applicant may install drive rings and J-hooks within the space assigned to Applicant (typically six inches above and six inches below Applicant's point of attachment on the pole if the point of attachment is in the center of the space assigned to Applicant) without applying for or obtaining a new or amended license. No additional attachment charges shall apply with respect to drive rings and J-hooks installed in Applicant's licensed attachment space.
- (c) Applicant's first choice for placement of drive rings and J-hooks shall be the licensed attachment space assigned to Applicant as provided in subsection (b) above; provided, however, that if attachment space already licensed to Applicant on a given SWBT pole is not adequate for Applicant's drive rings or J-hooks, Applicant may, when necessary, and without applying for or obtaining a new or amended license, install such drive rings and J-hooks above or below Applicant's licensed attachment space as described in subsection (b) above. No additional attachment charges shall apply with respect to drive rings and J-hooks installed outside Applicant's licensed attachment space as permitted in this subsection.
- (d) If Applicant has not already been licensed attachment space on a given SWBT pole, Applicant may, when necessary, install drive rings and J-

hooks to unassigned space on such pole without first obtaining a license for such attachment and shall, promptly following such installation, notify SWBT of the attachment. Such notification shall be made on a form to be developed by SWBT for this purpose and shall constitute an application for a license. Such application may be conditionally granted without a pre-license survey or other inquiry by SWBT, and SWBT shall not be required to process the application, log the attachment as an assignment in its outside plant records, or issue a permanent license for the attachment unless specifically requested by Applicant to do so; provided, however, that a conditionally granted application under this subsection shall be subject to revocation if it is subsequently determined that such attachment has been made in violation of subsection (e) of this section or other provisions of this Agreement. Drive-rings and J-hooks installed pursuant to this subsection are pole attachments and charges for such attachments shall be determined in accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders.

- (e) Notwithstanding the provisions of subsections (c)-(d) above, Applicant may not install drive rings and J-hooks in space assigned to SWBT or another joint user without the approval of SWBT or such other joint user and may not install drive rings and J-hooks in unassigned space in any manner which will block or preclude the subsequent occupancy or use of space by SWBT or other joint users. If the presence of Applicant's facilities in space not assigned to Applicant will block or preclude the use of assigned or otherwise assignable space by SWBT or other joint users, Applicant shall, on SWBT's request, promptly relocate the facilities in order to accommodate the facilities of other users and shall bear all expenses associated with such relocation.
- (f) SWBT may not install drive rings or J-hooks in space assigned to Applicant without Applicant's approval and shall, at Applicant's request, and at SWBT's expense, promptly relocate or, if necessary, remove, any drive rings or J-hooks installed in violation of this subsection. If SWBT drive rings or J-hooks have been installed in space subsequently assigned to Applicant, or if the presence of SWBT drive rings or J-hooks blocks or precludes the use of otherwise assignable space on SWBT's poles, SWBT shall, at Applicant's request, relocate such facilities, if it is feasible to do so, as make-ready work.
- (g) Applicant shall, at the request of SWBT or another joint user, at Applicant's expense, promptly relocate or, if necessary, remove any drive rings and J-hooks placed on SWBT's poles other than as permitted in this section.

12.04 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed 30 days) non-emergency maintenance or repair activities by any person or entity (including but not limited to SWBT, Applicant, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by SWBT. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify SWBT of such use and must either vacate the maintenance duct within 30 days or, with SWBT's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies which may occur while the maintenance duct is occupied.

12.05 Responsibility for Maintenance of Facilities. Each party shall be solely responsible for maintaining its own facilities and (a) paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the maintenance of such party's facilities and (b) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

12.06 Information Concerning the Maintenance of Applicant's Facilities. Promptly after the issuance of a license, Applicant shall provide SWBT with the name, title, business address, and business telephone number of the manager responsible for routine maintenance of Applicant's facilities and shall thereafter notify SWBT of changes to such information. The manager responsible for routine maintenance of Applicant's facilities shall, on SWBT's request, identify any contractor, subcontractor, or other person performing maintenance activities on Applicant's behalf at a specified site.

ARTICLE 13: MODIFICATION OF APPLICANT'S FACILITIES

13.01 Notification of Planned Modifications. Applicant shall notify SWBT in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities already attached to a SWBT pole or located in any SWBT duct or conduit. The notice shall contain sufficient information to enable SWBT to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Applicant's present license or requires a new or amended license. No notice shall be required for such routine modifications as the installation or placement of drive rings or J-hooks, terminals, and other ancillary apparatus routinely used in providing service to

customers, having no effect on the structural integrity of SWBT's poles, ducts, or conduits, and having no effect on the ability of SWBT or joint users to use or have access to SWBT's poles, ducts, conduits, or rights-of-way.

13.02 New or Amended License Required. A new or amended license will be required if the proposed addition, relocation, replacement, or modification:

- (a) requires that Applicant occupy additional space on SWBT's poles (except on a temporary basis in the event of an emergency);
- (b) requires that Applicant occupy additional space (other than space in the maintenance duct in accordance with Sections 12.04, 13.03, and 15.02 of this Agreement) in any SWBT duct or conduit except on a temporary basis in the event of an emergency;
- (c) results in the facilities attached to SWBT's poles or placed in SWBT's ducts or conduits being different from those described as authorized attachments in Applicant's present application, current license, notice of intent to occupy, or license application and supplemental documentation submitted to SWBT (e.g., different duct or size increase causing a need to recalculate storm loadings, guying, or pole class); or
- (d) requires additional holding capacity on a permanent basis.

13.03 Use of Maintenance Duct in Connection with Facility Modifications and Replacements. Non-emergency access to the maintenance duct in connection with facilities modifications and replacements shall be subject to the provisions of Section 12.04 of this Agreement.

13.04 Replacement of Facilities and Spinning/Overlashing Additional Cables. Applicant may replace existing facilities with new facilities occupying the same pole, duct, or conduit space, and may spin or overlash additional cables to its own existing facilities; provided, however, that such activities shall not be considered to be routine maintenance and shall be subject to the requirements of this article.

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

ARTICLE 14: REQUIRED REARRANGEMENTS OF APPLICANT'S FACILITIES

14.01 Notice of Planned Modifications. The parties acknowledge that the Pole Attachment Act recites in part that "Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment." The parties further acknowledge that the FCC, in the First Interconnection Order in CC Docket No. 96-98, recites that "... absent a private agreement establishing notification procedures, written notification of a modification must be provided to parties holding attachments on the facility to be modified at least 60 days prior to the commencement of the physical modification itself." This article is intended by the parties to alter the above-described notification requirements only as provided in Section 14.02(b) below.

14.02 Required Rearrangement of Applicant's Facilities. Applicant acknowledges that, from time to time, it may be necessary or desirable for SWBT to rearrange facilities on or within its poles or conduit systems, change out poles, add poles to a pole line, relocate or reconstruct poles, pole lines, conduit segments, or conduit runs, enlarge manholes, reinforce conduit, or otherwise modify poles, pole lines, or portions of its conduit system and that such changes may be necessitated by SWBT's own business needs or by factors outside of SWBT's control, such as the decision by a municipality to widen streets or the decision by a third party to seek access to SWBT's poles, ducts, conduits, or rights-of-way.

- (a) Applicant agrees that Applicant will cooperate with SWBT and joint users in making such rearrangements as may be necessary to enable such changes to be made and that costs incurred by Applicant in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the parties in accordance with then applicable statutes, rules, regulations, and commission orders, including the Pole Attachment Act, rules, regulations, and commission orders thereunder.
- (b) Whenever feasible, SWBT shall give Applicant not less than 60 days prior written notice of the need for Applicant to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Applicant shall complete such rearrangements within the time prescribed in the notice; provided, however, that the date of removal may be extended upon request by Applicant, which request will not be unreasonably refused by SWBT, if Applicant advises SWBT of the reason for the need for the extension and proposes a reasonable completion date. SWBT may request that such modification be made within a shorter period of time, in which event