

Applicant shall not refuse to comply such request without due cause and justification. In determining due cause and justification, the following factors, among others, may be considered:

- (1) the circumstances under which the rearrangements are sought (e.g., street-widening project, request by a competing provider for access);
 - (2) the timeliness of SWBT's request to Applicant;
 - (3) the nature and number of rearrangements sought;
 - (4) the impact on the ability of the parties and joint users to meet customer service needs; and
 - (5) risks of service interruption to customers of the parties and joint users.
- (c) Nothing contained in this article shall preclude Applicant from advising SWBT, within 60 days from the date of the notice, of its desire to add to or modify its existing attachment.

ARTICLE 15: EMERGENCY REPAIRS AND POLE REPLACEMENTS

15.01 Applicability. The parties acknowledge that in the event of an emergency, services provided by the parties and joint users to their respective customers may be interrupted, that it may not be possible for all service providers with facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, or rights-of-way to restore service to all customers at the same time, that disputes may arise between the parties concerning the manner in which emergency repairs shall be made, that it is essential that decisions be made quickly, and that it is highly desirable that all service providers utilizing SWBT's poles, ducts, conduits, and rights-of-way enter into appropriate arrangements relating to emergency repairs and service restoration. In the absence of prearranged agreements, it is expected that disputes will be immediately resolved at the site by the affected parties present based upon the criteria set forth in Section 15.05 of this Agreement. The provisions of this article shall apply in the absence of more comprehensive agreements relating to emergency repairs.

15.02 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such party to make such repairs.

- (a) Nothing contained in this Agreement shall be construed as requiring either party to perform any repair or service restoration work of any kind with respect to the other party's facilities or the facilities of joint users.
- (b) Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency 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 a person or entity using the maintenance duct for emergency 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. The parties agree not to exceed 30 days' use except in unusual emergencies that may require longer than 30 days to rectify.
- (c) If necessary, other unoccupied ducts or inner ducts may be used on a short-term basis when the maintenance duct is unavailable. Any such use shall be subject to the same rules applicable to the maintenance duct and shall be subject to the rights of any party or joint user to whom such duct or inner duct has been assigned.

15.03 Designation of Emergency Repair Coordinators and Other Information. For each SWBT construction district, Applicant shall provide SWBT with the emergency contact number of Applicant's designated point of contact for coordinating the handling of emergency repairs of Applicant's facilities and shall thereafter notify SWBT of changes to such information.

15.04 Reporting of Conditions Requiring Emergency Repairs. As a courtesy, each party shall endeavor to notify the other party at the earliest practicable opportunity after discovering any condition on or in any of SWBT's poles, ducts, conduits, or rights-of-way requiring emergency repairs to the other party's facilities.

15.05 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, SWBT, Applicant, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties present in accordance with the following principles.

- (a) Emergency service restoration work requirements shall take precedence over other work operations.
- (b) Except as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.
- (c) SWBT shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by SWBT on a nondiscriminatory basis in accordance with the principles set forth in this section.

15.06 Unilateral Corrective Action. When either party reasonably believes that, due to the condition of the other party's facilities placed on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, there is an immediate or imminent threat to the safety or health of employees or any other person, to the physical integrity or functioning of either party, or either party's ability to meet its service obligations, either party may unilaterally perform such limited corrective work as may be necessary to prevent or mitigate against the injury threatened. For example, if facilities of the other party have become detached or partially detached from a pole, or detached or partially detached from supporting racks or wall supports within a manhole, either party may reattach them as provided in this section but shall not be obligated to do so.

- (a) Before performing any corrective work involving facilities of the other party, SWBT or Applicant shall first attempt to notify the other party. After such notice has been given, the parties shall coordinate corrective work.
- (b) When an emergency situation exists such that advance notice and coordination are not practicable, either party may perform corrective work without first giving notice to the other party and shall promptly notify the other party of the corrective work performed and the reason why notice was not given.

15.07 Emergency Pole Replacements. Applicant will cooperate fully with SWBT when emergency pole replacements are required.

- (a) When emergency pole replacements are required, SWBT shall promptly make a good faith effort to contact Applicant to notify Applicant of the emergency and to determine whether Applicant will respond to the emergency in a timely manner.
- (b) If notified by SWBT that an emergency exists which will require the replacement of a pole, Applicant shall transfer its facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to a SWBT replacement pole, the transfer shall be in accordance with SWBT's placement instructions.
- (c) If Applicant is unable to respond to the emergency situation immediately, Applicant shall so advise SWBT and thereby authorize SWBT (or any joint user sharing the pole with SWBT) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on Applicant's behalf.

15.08 Expenses Associated with Emergency Repairs. Each party shall bear all reasonable expenses arising out of or in connection with emergency repairs of its own facilities and transfers or rearrangements of such facilities associated with emergency pole replacements made in accordance with the provisions of this article.

- (a) Each party shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such party's facilities.
- (b) Applicant shall reimburse SWBT for the costs incurred by SWBT for work performed by SWBT on Applicant's behalf in accordance with the provisions of this article; provided, however, that when the costs incurred by SWBT are for work performed in part for Applicant and in part for SWBT and third parties, Applicant shall only reimburse SWBT for Applicant's share of the costs.

ARTICLE 16: INSPECTION BY SWBT OF APPLICANT'S FACILITIES

16.01 SWBT's Right to Make Periodic or Spot Inspections. SWBT shall have the right, but not the duty, to make periodic or spot inspections at any time of any or all facilities attached to SWBT's poles or placed within SWBT's poles, ducts, conduits, or rights-of-way. Inspections of Applicant's facilities may be conducted for the purpose of

determining whether facilities attached to SWBT's poles or placed in SWBT's conduit system are in compliance with the terms of this Agreement and conform to licenses subject to this Agreement. Charges for inspections shall be allocated among all parties benefiting from the inspection in accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders. When an inspection is conducted for the specific purpose of auditing or investigating Applicant's compliance with this Agreement, SWBT may charge Applicant for inspection expenses only if the inspection reflects that Applicant is in substantial noncompliance with the terms of this Agreement. If the inspection reflects that Applicant's facilities are not in compliance with the terms of this Agreement, Applicant shall bring its facilities into compliance promptly after being notified of such noncompliance and shall notify SWBT in writing when the facilities have been brought into compliance.

16.02 Report of Inspection Results. SWBT will provide Applicant the results of any inspection of Applicant's facilities performed under Section 16.01 of this Agreement.

16.03 Post-installation Inspections. This article does not apply to post-installation inspections performed as part of a pre-license survey in those cases when Applicant has occupied space on or in SWBT's poles, ducts, conduits, or rights-of-way prior to the issuance of a license pursuant to Section 8.03 of this Agreement.

ARTICLE 17: TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

17.01 Facilities to Be Marked. Applicant shall tag or otherwise mark all of Applicant's facilities placed on or in SWBT's poles, ducts, conduits, and rights-of-way in a manner sufficient to identify the facilities as Applicant's facilities.

17.02 Removal of Untagged Facilities. Subject to the provisions of subsections (a)-(d) of this section, SWBT may, without notice to any person or entity, remove from SWBT's poles or any part of SWBT's conduit system any untagged or unmarked facilities, including any such facilities owned or used by Applicant, if SWBT determines that such facilities are not the subject of a current license authorizing their continued attachment to SWBT's poles or occupancy of SWBT's conduit system and are not otherwise lawfully present on SWBT's poles or in SWBT's conduit system.

- (a) Before removing any such untagged or unmarked facilities, SWBT shall first attempt to determine whether the facilities are being used by Applicant or any other firm, are authorized by any license subject to this Agreement, or are otherwise lawfully present on SWBT's poles or in SWBT's conduit system.
- (b) SWBT shall not remove untagged or unmarked facilities which are thought to be operational without first making reasonable efforts to (1)

determine the identity of the owner or other person or entity thought to be responsible for the facilities and (2) give advance written notice to such person or entity.

- (c) If the facilities appear to be facilities of Applicant described in a current license or application subject to this Agreement, or if the facilities appear to be facilities of Applicant otherwise lawfully present on SWBT's poles or in SWBT's conduit system, SWBT shall give written notice to Applicant requesting Applicant to tag or mark the facilities within 60 days and Applicant shall either tag the facilities within the 60-day period, advise SWBT in writing of its schedule for tagging the facilities, or notify SWBT in writing that it disclaims ownership of or responsibility for the facilities. If Applicant disclaims ownership of or responsibility for the facilities, Applicant shall disclose to SWBT the identity of the owner or other person or entity, if any, thought by Applicant to be responsible for the facilities.
- (d) If the facilities appear to be facilities used by Applicant but not subject to a current license granted under this Agreement, the provisions of Sections 17.05-17.12 shall apply.

17.03 Verification That Presently Attached Facilities Are Subject to Existing Licenses. Applicant warrants and represents that, to the best of its information and belief, all facilities presently owned or used by Applicant and attached to SWBT's poles or occupying space within any part of SWBT's conduit system in this State have been disclosed to SWBT and are subject to current licenses or are otherwise lawfully present on or in SWBT's poles, ducts, and conduits. If Applicant determines that any such facilities are not the subject of current licenses, Applicant shall so advise SWBT and promptly apply for licenses for such facilities or remove the facilities from SWBT's poles or conduits. Nothing contained in this section shall be construed as requiring Applicant to make a field audit of its existing facilities to confirm the licensing status of its facilities as a prerequisite to entering into this Agreement.

17.04 Updating of Plant Location Records. Applicant shall furnish SWBT, upon request, with such information as may from time to time be necessary for SWBT to correct and update SWBT's pole and conduit maps and records, cable plat maps, and other plant location records recording or logging assignments of pole, duct, and conduit space.

17.05 Notice to Applicant. If any of Applicant's facilities for which no license is presently in effect are found attached to SWBT's poles or anchors or within any part of SWBT's conduit system, SWBT, without prejudice to other rights or remedies available to SWBT under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Applicant

advising Applicant that no license is presently in effect with respect to the facilities and that Applicant must, within 60 days, respond to the notice as provided in Section 17.06 of this Agreement.

17.06 Applicant's Response. Within 60 days after receiving a notice under Section 17.05 of this Agreement, Applicant shall acknowledge receipt of the notice and submit to SWBT, in writing, either:

- (a) a denial or disclaimer of ownership or other interest in the facilities, together with an explanation of the factual and claimed legal basis for such denial or disclaimer;
- (b) a statement that the facilities are the subject of a current license, together with an explanation of the factual and claimed legal basis for Applicant's assertion that the facilities are currently licensed, or a statement that no license is required, and an explanation of the factual and claimed legal basis for that assertion; or
- (c) an application for a new or amended license with respect to such facilities, together with a full and complete explanation of the circumstances under which such facilities were attached to, placed within, or allowed to remain on or in SWBT's poles or any part of SWBT's conduit system. Such explanation shall include, at a minimum, the following:
 - (1) the date (or estimated date) when such facilities were attached to SWBT's poles or placed in SWBT's conduit system, and the factual basis supporting Applicant's selection of such date (or estimated date); and
 - (2) the factual basis for Applicant's assertion, if any, that decisions to attach, place or allow the facilities to remain on or in SWBT's poles or conduit system were made in good faith and without intent to circumvent SWBT's pole attachment or conduit occupancy licensing requirements.

17.07 Denial or Disclaimer of Ownership or Other Interest. Applicant's submission to SWBT of a denial or disclaimer of ownership or other interest in the facilities shall constitute Applicant's waiver of any objection Applicant may have to SWBT's removal of the facilities. Submission of such a denial or disclaimer shall not be construed as an agreement by Applicant to pay any charges associated with removal of the facilities and shall be deemed to be a denial of any such responsibility; provided, however, that nothing contained in this section shall prohibit SWBT from invoking the dispute resolution process or filing suit, in a court of competent jurisdiction, to establish

that Applicant is liable to SWBT for the costs of removal notwithstanding its denial or disclaimer.

17.08 Review by SWBT of Licensing Status. Within 15 business days after receiving Applicant's statement that the facilities are the subject of a current license or that no license is required, SWBT shall review Applicant's explanation of the factual and claimed legal basis for Applicant's assertions and shall advise Applicant, in writing, whether it agrees or disagrees with Applicant's assertions. If SWBT agrees with Applicant's assertions, the parties may amend the applicable license and no further action shall be required of Applicant. If SWBT does not accept Applicant's position, Applicant shall, within 15 business days, apply for a new or amended license as provided by Section 17.06(c) of this Agreement.

17.09 Approval of License and Retroactive Charges. If SWBT approves Applicant's application for a new or amended license, Applicant shall be liable to SWBT for all fees and charges associated with the unauthorized attachments as specified in Section 17.10 of this Agreement. The issuance of a new or amended license as provided by this article shall not operate retroactively or constitute a waiver by SWBT of any of its rights or privileges under this Agreement or otherwise.

17.10 Fees and Charges. This section applies to fees and charges with respect to Applicant's facilities placed on or in SWBT pole, duct, or conduit space which has not been assigned to Applicant. Applicant shall be liable to SWBT for all fees and charges associated with any such unauthorized pole attachments or conduit occupancy for which it is responsible. Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from SWBT's poles or conduit system and shall include, but not be limited to, all fees and charges which would have been due and payable if Applicant and its predecessors had continuously complied with all applicable SWBT licensing requirements. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. The parties shall engage in good faith discussions to reach a mutually agreed determination as to the amount due and owing. In some cases, it may be impractical, unduly difficult, or uneconomical to determine the actual amount of fees which would have been due and payable if all licensing requirements had been met. Therefore, if the parties, through good faith discussions fail to reach agreement on the amount due and owing, and if the amount due and owing cannot be determined due to Applicant's inability to provide the information required to determine the correct amount, the amount owing with respect to each unauthorized attachment or occupancy shall be equal to three times the annual attachment and occupancy fees in effect on the date Applicant is notified by SWBT of the unauthorized attachment or occupancy. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Applicant shall rearrange or remove its unauthorized facilities at SWBT's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to SWBT or another joint user, and shall pay SWBT for all costs incurred by SWBT in connection

with any facilities rearrangements, modifications, or replacements necessitated as a result of the presence of Applicant's unauthorized facilities.

17.11 Removal of Unauthorized Attachments. If Applicant does not apply for a new or amended pole attachment license with respect to unauthorized facilities within the specified period of time, or if such application is received and specifically disapproved, SWBT shall by written notice request to Applicant to remove its unauthorized facilities not less than 60 days from the date of notice and Applicant shall remove the facilities within the time specified in the notice; provided, however, that SWBT may request Applicant to remove such facilities at an earlier date if such earlier removal is necessary for reasons beyond SWBT's control. If the facilities have not been removed within the time specified in the notice, SWBT may, at SWBT's option, remove Applicant's facilities at Applicant's expense.

17.12 No Ratification of Unlicensed Attachments or Unauthorized Use of SWBT's Facilities. No act or failure to act by SWBT with regard to any unlicensed attachment or occupancy or unauthorized use of SWBT's facilities shall be deemed to constitute a ratification by SWBT of the unlicensed attachment or occupancy or unauthorized use, nor shall the payment by Applicant of fees and charges for unauthorized pole attachments or conduit occupancy exonerate Applicant from civil or criminal liability for any deliberate trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities.

ARTICLE 18: REMOVAL OF APPLICANT'S FACILITIES

18.01 Responsibility for Removing Facilities. Applicant shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from SWBT's poles, ducts, conduits, and rights-of-way. Such removals shall be performed in accordance with the provisions of this article.

- (a) When practicable, Applicant shall give SWBT at least 30 days' advance notice in writing of its intent to remove facilities from any part of SWBT's conduit system and the proposed method of removal. The notice shall include the locations of the facilities to be removed, the name and telephone number of the manager responsible for removal of the facilities, and the estimated dates when removal of the facilities will begin and end.
- (b) Applicant shall, if requested by SWBT to do so, place a pull mandrel (slug) through all or any specified part of the duct which was occupied by Applicant.
- (c) Except as otherwise agreed upon in writing by the parties, Applicant must, after removing its facilities, plug all previously occupied ducts at

the entrances to SWBT's manholes (if SWBT would itself plug the ducts under the same circumstances) in accordance with the standards set by SWBT for its own operations, provided that such standards have been communicated in writing to Applicant at least 60 days in advance of the removal of Applicant's facilities.

- (d) Applicant shall be solely responsible for the removal of its own facilities from SWBT's poles, ducts, conduits, and rights-of-way and for (1) paying all persons and entities which provide materials, labor, access to real or personal property, or other goods or services in connection with the removal of Applicant's facilities from SWBT's poles, ducts, conduits, or rights-of-way and (2) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.
- (e) When Applicant no longer intends to occupy space on a SWBT pole or in a SWBT duct or conduit, Applicant will provide written notification to SWBT that it wishes to terminate the license with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Applicant's facilities, the license shall terminate and the space shall be available for reassignment.

18.02 Removal of Facilities Not in Active Use. At SWBT's request, Applicant shall remove from SWBT's poles, ducts, conduits, and rights-of-way any of Applicant's facilities which are no longer in active use; provided, however, that Applicant shall not be required to remove such facilities when due cause and justification exists for allowing them to remain in place. Applicant shall not be required to remove retired or inactive (dead) cables that have been overlashed by other facilities which remain in active use unless removal expenses are paid by the person or entity requesting removal of such facilities. Applicant shall not be required to remove cables that would require excavation to remove unless the person or entity requesting removal of such cables bears the expenses of such excavation in a manner analogous to the provisions of Section 10.02(c) of this Agreement. Applicant shall not abandon any of its facilities by leaving them on SWBT's poles, in SWBT's ducts, conduits, or rights-of-way, at any location where they may block or obstruct access to SWBT's poles or any part of SWBT's conduit system, or on any public or private property (other than property owned or controlled by Applicant) in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

18.03 Removal Following Termination of License. Applicant shall remove its facilities from SWBT's poles, ducts, conduits, or rights-of-way within 60 days, or within such other period of time as shall be mutually agreeable to the parties, after termination of the license authorizing the attachment of such facilities to SWBT's poles or the placement of such facilities in SWBT's ducts, conduits, or rights-of-way.

18.04 Removal Following Replacement of Facilities. Applicant shall remove facilities no longer in service from SWBT's poles or conduit system within 60 days, or within such other period of time as shall be mutually agreeable to the parties, after the date Applicant replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit; provided, however, that removal of facilities from the maintenance duct shall be governed by Sections 12.04, 13.03, and 15.02 of this Agreement and not by this section.

18.05 Removal to Avoid Forfeiture. If the presence of Applicant's facilities on SWBT's poles or in SWBT's ducts, conduits, or rights-of-way would cause a forfeiture of the rights of SWBT to occupy the property where such pole, duct, conduit, or right-of-way is located, SWBT will promptly notify Applicant in writing and Applicant shall not, without due cause and justification, refuse to remove its facilities within such time as may be required to prevent such forfeiture. SWBT will give Applicant not less than 60 days from the date of notice to remove Applicant's facilities unless prior removal is required to prevent the forfeiture of SWBT's rights. At Applicant's request, the parties will engage in good faith negotiations with each other, with joint users, and with third-party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of Applicant's facilities in the face of a threatened forfeiture.

18.06 Notice of Completion of Removal Activities. Applicant shall give written notice to SWBT stating the date on which the removal of its facilities from SWBT's poles, ducts, conduits, and rights-of-way has been completed. Charges shall continue to accrue with respect to such facilities until Applicant's facilities have been removed, pull mandrels (slugs) have been pulled if required by Section 18.01(b) of this Agreement, Applicant has plugged all previously occupied ducts at the entrances to SWBT's manholes as required by Section 18.01(c) of this Agreement, and the notice required by this section has been given.

18.07 Removal of Facilities by SWBT; Notice of Intent to Remove. If Applicant fails to remove its facilities from SWBT's poles, ducts, or conduits in accordance with the provisions of Sections 18.01-18.06 of this Agreement, SWBT may remove such facilities and store them at Applicant's expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to Applicant for any injury, loss, or damage resulting from such actions. SWBT shall give Applicant not less than 60 days prior written notice of its intent to remove Applicant's facilities pursuant to this section. The notice shall state:

- (a) the date when SWBT plans to commence removal of Applicant's facilities, and that Applicant may remove the facilities at Applicant's sole cost and expense at any time before the date specified;
- (b) SWBT's plans with respect to disposition of the facilities removed; and

- (c) that Applicant's failure to remove the facilities or make alternative arrangements with SWBT for removal and disposition of the facilities shall constitute an abandonment of the facilities and of any interest therein.

18.08 Removal of Facilities by SWBT. If SWBT removes any of Applicant's facilities pursuant to this article, Applicant shall reimburse SWBT for SWBT's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.

18.09 Reattachment or Subsequent Attachment Following Removal. After Applicant's facilities have been properly removed pursuant to the provisions of this article, neither the removed facilities nor replacement facilities shall be attached to SWBT's poles or placed in SWBT's conduit system until Applicant has first submitted new applications for the facilities and complied with the provisions of this Agreement.

ARTICLE 19: RATES, FEES, CHARGES, AND BILLING

19.01 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees set forth in this Agreement, including rates, charges and fees set forth in APPENDIX I (Schedule of Rates, Fees, and Charges), shall be subject to all applicable federal and state laws, rules, regulations, and commission orders, including but not limited to (a) the Pole Attachment Act and rules, regulations, and commission orders issued thereunder and (b) applicable orders of the State Commission in interconnection arbitration proceedings.

19.02 Schedule of Rates, Fees, and Charges. SWBT's current schedule of rates, fees, and charges is attached to this Agreement as APPENDIX I and incorporated herein as an integral part of this Agreement.

19.03 Pole Attachment and Conduit Occupancy Fees. Until such time as the FCC authorizes the charging of different rates to cable television systems and telecommunications carriers, SWBT's annual rates for access to poles, ducts, conduits, and rights-of-way shall be the same for cable television systems and telecommunications carriers. For all attachments to SWBT's poles and occupancy of SWBT's ducts and conduits, Applicant will pay SWBT's semiannual pole attachment and conduit occupancy fees as specified in APPENDIX I. Pole attachment and conduit occupancy fees shall be assessed and billed with respect to (a) occupied space whether or not subject to a current license and (b) assigned space as well as occupied space. Fees for pole attachments shall be based on the number of Applicant's pole attachments as of the date of billing by SWBT and shall be calculated in accordance with applicable FCC rules, regulations, and orders. Fees for conduit occupancy shall be based on the number of duct feet occupied by or assigned to Applicant as of the date of billing by SWBT and shall be calculated in accordance with applicable FCC rules, regulations, and orders.

19.04 Billing for and Payment of Pole Attachment and Conduit Occupancy Fees. Pole Attachment and conduit occupancy fees under this Agreement and licenses subject to this Agreement shall be payable semiannually in advance.

- (a) Bills shall be submitted to Applicant for two semiannual billing periods, the first period including charges for the months of January through June and the second including charges for the months of July through December.
- (b) Charges associated with newly licensed pole attachments and conduit occupancy shall be prorated on a daily basis and billed with the next semiannual bill.
- (c) Charges shall be adjusted and retroactively prorated on a daily basis following the removal of Applicant's facilities (in accordance with Article 18) and shall be retroactively adjusted as a credit on the next semiannual bill.

19.05 Application Fees. SWBT does not currently charge application fees for individual license applications or assignment requests under this Agreement. SWBT does, however, impose charges, on a case-by case basis, for work performed in processing applications for access and preparing SWBT's poles, ducts, conduits, and rights-of-way to accommodate the facilities of parties seeking access.

19.06 Charges for Pre-license Survey Work. Subject to applicable commission orders, Applicant will pay SWBT's charges for pre-license survey work associated with the processing of Applicant's request for access. SWBT's pre-license survey charges are not set on a fixed fee basis and will vary from case-to-case depending on such factors as the number and location of the poles, ducts, conduits, and rights-of-way subject to Applicant's access request, the completeness and quality of information submitted by the Applicant in its application, the nature of the facilities to be placed by Applicant, and the nature and extent of facilities modification, capacity expansion, and make-ready work proposed by Applicant.

19.07 Charges for Facilities Modifications, Capacity Expansions, and Make-ready Work. Subject to applicable commission orders, Applicant will pay SWBT's charges for facilities modification, capacity expansion, and make-ready work performed by SWBT, or by persons acting on SWBT's behalf, as provided in other provisions of this Agreement and APPENDIX I.

19.08 Contract Administration Fee. Subject to applicable commission orders, SWBT may charge Applicant a one-time contract administration fee as provided in APPENDIX I. This fee, if applicable, shall be assessed for work performed in the initial

processing of this Agreement and shall be non-refundable upon acceptance of this Agreement by SWBT.

19.09 Administrative Record-keeping Fees. Subject to applicable commission orders, SWBT may charge Applicant cost-based administrative record-keeping fees (e.g., fees associated with records and billing changes resulting from the sale, consolidation, or other transfer of Applicant's business or facilities, name changes, and the like) as provided in APPENDIX I.

19.10 Charges for Work Performed by SWBT Employees. Except as otherwise specifically required by applicable commission orders, SWBT's charges to Applicant for work performed by SWBT employees pursuant to this Agreement shall be computed by multiplying the fully loaded hourly rates for such employees times the number of hours required to perform the work. Disputes over SWBT's charges for work performed by SWBT employees, including disputes between the parties concerning the number of hours required to perform the work, shall be subject to the dispute resolution procedures of Article 30. Notwithstanding the execution of this Agreement, Applicant shall have the right to challenge the methodology utilized by SWBT to determine hourly rates for SWBT employees at any time in any forum having jurisdiction over the subject matter.

19.11 Due Date for Payment, Interest on Past Due Invoices, Remedies for Non-payment, and Procedures for Disputing Charges. For fees and charges other than charges for facilities modification, capacity expansion, and make-ready work, each bill or invoice submitted by SWBT to Applicant shall state the date that payment is due, which date shall be not less than 60 days after the date of the bill or invoice. Applicant will pay each such bill or invoice on or before the stated due date. For facilities modification, capacity expansion, and make-ready work, the payment due date shall be not less than 30 days after the date of the bill or invoice.

- (a) Interest on past due bills and invoices shall accrue at the rate of 12% per annum, or the maximum rate allowed by law, whichever is less.
- (b) Applicant's failure to pay SWBT's fees and charges shall be grounds for terminating this Agreement and licenses subject to this Agreement.
- (c) If Applicant fails to pay, when due, any fees or charges billed to Applicant under this Agreement, and any portion of such fees or charges remains unpaid more than 15 calendar days after the due date, SWBT may send Applicant a written notice advising Applicant that this Agreement, or specified licenses subject to this Agreement, may be terminated if such fees or charges are not paid within 15 calendar days after the date of the notice. Applicant must remit to SWBT all such unpaid fees or charges, whether disputed or undisputed, within 15 days after the date of the notice. If Applicant pays disputed fees under

protest, and it is later determined that such fees or any portion thereof should be refunded, the portion of fees to be refunded shall be refunded with interest at the rate of 12% per annum or the maximum rate allowed by law, whichever is less.

- (d) Applicant may dispute any fees or charges billed by SWBT to Applicant under this Agreement by invoking the dispute resolution procedures set forth in Article 30 of this Agreement.
- (e) If Applicant does not dispute such fees or charges and any portion of such undisputed fees or charges remains unpaid 30 calendar days after the date of the notice, SWBT may, to the extent permitted by the Pole Attachment Act and applicable rules, regulations, and commission orders, terminate this Agreement and licenses subject to this Agreement, suspend the processing of pending applications for access to SWBT's poles, ducts, conduits, and rights-of-way located in this State, and refuse to accept further applications for access until such undisputed fees or charges, together with accrued interest thereon, have been paid in full.

19.12 Modification of Rates, Fees and Charges. Subject to applicable federal and state laws, rules, regulations, and commission orders, SWBT shall have the right to modify all rates, charges and fees set forth in this Agreement, including but not limited to those listed in APPENDIX I, as provided in this section.

- (a) Upon written notice to Applicant, SWBT may change, on a going-forward basis, the amounts of any rates, fees or charges assessed under this Agreement. Pole attachment and conduit occupancy rates shall not be increased more than once annually.
 - (1) The notice shall state the effective date of the changes, which, in the event of a rate increase, shall be no earlier than the 60th day after the notice is given.
 - (2) The changes shall be effective on the effective date stated in the notice unless stayed or prohibited by a court or agency of competent jurisdiction.
 - (3) The changes shall be reflected on the first semiannual bill issued on or after the effective date specified in the notice.
- (b) If the rates, fees and charges set forth in the notice are not acceptable to Applicant, Applicant may, notwithstanding any other provisions of this Agreement, at Applicant's option (1) seek the renegotiation of this Agreement, (2) terminate this Agreement, or (3) seek relief through the

dispute resolution process or before a court or agency of competent jurisdiction.

19.13 Disputes Over Charging Methodologies. The parties acknowledge that the Pole Attachment Act grants the FCC regulatory authority over the rates, terms, and conditions of access to poles, ducts, conduits, and rights-of-way. The parties further acknowledge that, as of the date of this Agreement, this State has not elected to assume reverse preemptive regulatory authority over such rates, terms, and conditions by certifying to the FCC that it has made such election. Accordingly, complaints concerning and challenges to SWBT's charging methodologies shall be brought, in the first instance, before the FCC in accordance with FCC procedural rules unless this State elects to preempt FCC regulation of pole attachment rates, terms, and conditions of access; provided, however, that nothing contained in this section shall be construed as affecting the right of either party to seek relief from any court or agency of competent jurisdiction in connection with the negotiation, arbitration, and approval of interconnection agreements under 47 U.S.C. § 252.

ARTICLE 20: PERFORMANCE AND PAYMENT BONDS

20.01 Bond May Be Required. SWBT may require Applicant, authorized contractors, and other persons acting on Applicant's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of their respective obligations arising out of or in connection with this Agreement only as provided in subsections (a)-(b) of this section and Section 20.02. Bonds shall not be required for entities meeting all self-insurance requirements of Section 23.02 of this Agreement.

- (a) If Applicant elects to perform make-ready or facilities modification work under Section 6.08(c) or Sections 10.02-10.05 of this Agreement, SWBT may require Applicant, authorized contractors, and other persons acting on Applicant's behalf to execute bonds equivalent to those which would be required by SWBT if the work had been performed by contractors, subcontractors, or other persons selected directly by SWBT. No bonds shall be required of Applicant, authorized contractors, or other persons acting on Applicant's behalf except in those situations where a bond would be required if the work were being performed on SWBT's behalf.
- (b) No other bond shall be required of Applicant to secure obligations arising under this Agreement in the absence of due cause and justification.
- (c) If a bond or similar form of assurance is required of Applicant, an authorized contractor, or other person acting on Applicant's behalf, Applicant shall promptly submit to SWBT, upon request, adequate proof

that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing SWBT 60 days written notice.

- (d) SWBT may communicate directly with the issuer of any bond required by SWBT pursuant to this section to verify the terms of the bond, to confirm that the bond remains in force, and to make demand on the issuer for payment or performance of any obligations secured by the bond.

20.02 Payment and Performance Bonds in Favor of Contractors and Subcontractors. Applicant shall be responsible for paying all employees, contractors, subcontractors, mechanics, materialmen and other persons or entities performing work or providing materials in connection with (a) the performance of facilities modification, capacity expansion, or make-ready work by Applicant, authorized contractors, or other persons acting on Applicant's behalf under Sections 6.08(c) and 10.02-10.05 of this Agreement or (b) the construction, attachment, use, inspection, maintenance, repair, rearrangement, modification, and removal of any of Applicant's facilities attached or to be attached to SWBT's poles or placed or to be placed within SWBT's ducts, conduits, or rights-of-way. In the event any claim or demand is made on SWBT by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, SWBT may require, in addition to any security provided under Section 20.01 of this Agreement, that Applicant execute payment or performance bonds, or provide such other security, as SWBT may deem reasonable or necessary to protect SWBT from any such claim or demand.

ARTICLE 21: INDEMNIFICATION

21.01 Risks Associated with Outside Plant Operations. The parties acknowledge that SWBT's outside plant facilities include thousands of miles of pole lines, conduits, and rights-of-way located on public and private property throughout SWBT's service area, that SWBT cannot control or continuously monitor activities that occur at these sites, and that the risks associated with outside plant operations and facilities are not similar to the risks associated with operations occurring inside SWBT's central offices and other secure SWBT buildings and structures. The parties further acknowledge that the presence of multiple firms on or in poles, ducts, conduits, and rights-of-way owned or controlled by SWBT requires that liability risks be fairly allocated between the parties and that it is the parties' intent to allocate such risks in a just, reasonable, and nondiscriminatory manner which addresses known risks associated with the outside plant environment and activities and conditions at outside plant locations.

21.02 Control of Premises. Applicant acknowledges that its employees and other persons acting on Applicant's behalf, and employees of joint users and other persons

acting on behalf of joint users, will be present, without supervision or control by SWBT, and in many cases without SWBT's knowledge, on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. During those times when Applicant's employees and personnel are present at such sites, Applicant shall be deemed, for the purpose of allocating liabilities between the parties, to be an independent contractor in control of the premises except as otherwise provided in this section. Although SWBT inspectors may be present at the site of work being performed by Applicant or persons acting on Applicant's behalf, such inspectors shall have no authority to direct Applicant or personnel acting on Applicant's behalf concerning the method or manner by which the work is to be performed, and the presence of a SWBT inspector shall not result in SWBT's being deemed to be in control of the premises. When both parties are present and performing work operations at a site subject to this section, SWBT and Applicant shall be deemed to be jointly in control of the premises. When poles, ducts, conduits, or rights-of-way occupy property owned by third parties, neither party shall be deemed to be in control of the premises, except as otherwise provided by law, at times when such party's work operations are not in progress. Work operations shall be considered to be in progress from the time work commences until such work is completed whether or not employees of a party or persons acting on such party's behalf are actually present at the site.

21.03 INDEMNITY AGAINST AND LIMITATIONS OF LIABILITY WITH RESPECT TO CERTAIN NEGLIGENT ACTS AND OMISSIONS. THIS ARTICLE INCLUDES PROVISIONS INDEMNIFYING EACH PARTY FROM LIABILITIES ARISING OUT OF OR IN CONNECTION WITH CERTAIN NEGLIGENT ACTS AND OMISSIONS OF SUCH PARTY. THIS ARTICLE ALSO INCLUDES PROVISIONS LIMITING THE LIABILITIES OF EACH PARTY ARISING OUT OF OR IN CONNECTION WITH CERTAIN NEGLIGENT ACTS AND OMISSIONS OF SUCH PARTY.

21.04 Indemnities Excluded. Except as otherwise specifically provided in this article, neither party (as an "indemnifying party") shall be required to indemnify or defend the other party (as an "indemnified party") against, or hold the indemnified party harmless from, any suit, claim, demand, loss, damage, liability, fine, penalty, or expense arising out of:

- (a) any breach by the indemnified party of any provision of this Agreement or any breach by the indemnified party of the parties' interconnection agreement, if any;
- (b) the violation of any law by any employee of the indemnified party or other person acting on the indemnified party's behalf;

- (c) willful or intentional misconduct or gross negligence committed by any employee of the indemnified party or by any other person acting on the indemnified party's behalf; or
- (d) any negligent act or acts committed by any employee of the indemnified party or other person acting on the indemnified party's behalf, if such negligent act or acts are the sole producing cause of the injury, loss, or damage giving rise to the suit, claim, demand, loss, damage, liability, fine, penalty, or expense for which indemnity is requested.

21.05 Workplace Injuries. The parties acknowledge that injuries may occur at sites where work is being performed by or for either party and that primary responsibility for preventing workplace injuries shall be placed on the party controlling work operations at the site. Workplace injuries may result from any of variety of causes, including but not limited to electrocution associated with contact with electric power lines on poles or use of defective equipment, falls from poles resulting from the negligence of the injured person or co-workers or due to the existence of unsafe conditions on or in the vicinity of the pole, cave-ins and other accidents at excavation sites, explosion of combustible gases within or in the vicinity of a conduit system, exposure to hazardous substances or noxious gases at the site, acts of God, and acts and omissions of third parties over whom neither party has control. Except as expressly provided in this Agreement to the contrary, each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses of every kind and character, on account of or in connection with any injury, loss, or damage suffered by any person, which arises out of or in connection with the personal injury or death of any employee of the indemnifying party (or other person acting on the indemnifying party's behalf) if such injury or death results, in whole or in part, from any occurrence or condition on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way; provided, however, that Applicant's indemnification duties under this section shall arise only if the person injured is present at such site in connection with the performance or anticipated performance of any act required or permitted to be performed by Applicant or by persons acting on Applicant's behalf pursuant to this Agreement. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not limited to indemnities arising out of or in connection with claims arising from or in any way connected with any injury, sickness, disease, or death of any employee of the indemnifying party or any person acting on the indemnifying party's behalf attributable or allegedly attributable to occurrences or conditions on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. EXCEPT AS PROVIDED ABOVE IN SUBSECTIONS 21.04(c)-(d), THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL ARISE EVEN IF THE INJURY, SICKNESS, DISEASE, OR DEATH WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.

21.06 Other Claims Brought Against Either Party by Employees and Other Persons Acting on the Other Party's Behalf. Nothing contained in this Agreement shall create any contractual liability or other liability on the part of either party to any employee, contractor, or subcontractor of the other party or any other person acting on the other party's behalf. Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, or expenses of every kind and character (other than workplace injury claims subject to Section 21.05 above) made, brought, or sought against the indemnified party by any employee, contractor, or subcontractor of the indemnifying party or by any other person acting on the indemnifying party's behalf; provided, however, that this section shall apply only to suits, claims, demands, losses, damages, liabilities, or expenses related to the subject matter of this Agreement. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not limited to indemnities arising out of or in connection with claims arising from or in any way connected with the employment relationship or other claimed relationship between the indemnifying party and the employee, contractor, subcontractor, or other person acting on the indemnifying party's behalf; claims arising out of disputes over payments due or allegedly due to any employee, contractor, subcontractor, or other person acting on the indemnifying party's behalf; and claims arising out of other contract disputes between the indemnifying party and the employee, contractor, subcontractor, or other person acting on the indemnifying party's behalf. EXCEPT AS PROVIDED ABOVE IN SUBSECTIONS 21.04(c)-(d), THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL ARISE EVEN IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.

21.07 Claims Brought Against Either Party by Vendors, Suppliers, Customers, and other Persons in Privity of Contract with the Other Party. The parties acknowledge that neither party controls the contractual relationships between the other party and vendors, suppliers, customers, and other persons in privity of contract with the other party and that nothing contained in this Agreement shall create any contractual or other liability of either party to any vendor, supplier, customer, or other person or entity in privity of contract with the other party. Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, or expenses of every kind and character, made, brought, or sought against the indemnified party by any vendor, supplier, or customer of the indemnifying party or by any other person or entity in privity with the indemnifying party; provided, however, that this section shall apply only to suits, claims, demands, losses, damages, liabilities, or expenses related to the subject matter of this Agreement or Applicant's use of SWBT's poles, ducts, conduits, or rights-of-way. The indemnifying party may not, as a defense to any obligations of the indemnifying party under this section, assert that the indemnified party's claims against the indemnifying party are barred by any tariff or contract limitation of liability applicable to the indemnifying party's vendor, supplier, or customer or to such other person in privity of contract with the indemnifying party. Indemnities

provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not limited to indemnities for claims against either party arising out of or in connection with the failure by the other party to meet its obligations (including but not limited to contract and tariff obligations) to such other party's customers and suppliers. EXCEPT AS PROVIDED ABOVE IN SUBSECTIONS 21.04(c)-(d), THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL ARISE EVEN IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.

21.08 Claims Brought Against Either Party by Such Party's Own Employees, Contractors, Subcontractors, or Other Persons Acting on Such Party's Behalf, and Claims Brought Against Either Party by Such Party's Own Vendors, Suppliers, Customers, or Other Persons in Privity of Contract with Such Party. Neither party shall be entitled to indemnity, contribution, or subrogation from or by the other party with respect to any suits, claims, demands, losses, damages, liabilities, or expenses, of any kind or character, made, brought, or sought against such party by any employee, contractor, or subcontractor of such party, by any other person acting on behalf of such party, by any vendor, supplier, or customer of such party, or by any other person or entity in privity of contract with such party, if such suit, claim, demand, loss, damage, liability, or expense arises directly out of or in connection with the subject matter of this Agreement or the use by Applicant of SWBT's poles, ducts, conduits, or rights-of-way. Indemnities excluded by this section include, but are not limited to, indemnities for claims against either party arising out of or in connection with employment-related disputes between either party and its employees; claims against either party by contractors, subcontractors, and suppliers performing work or supplying materials to SWBT sites at the request of such party; and other failures by either party to meet its obligations (including but not limited to contract and tariff obligations) to such party's own customers and suppliers. THE INDEMNIFICATION EXCLUSIONS OF THIS SECTION SHALL APPLY EVEN IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM WAS ATTRIBUTABLE IN PART TO THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY BUT SHALL NOT APPLY IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM AROSE FROM WILLFUL OR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE COMMITTED BY ANY EMPLOYEE OF THE INDEMNIFYING PARTY OR ANY OTHER PERSON ACTING ON THE INDEMNIFYING PARTY'S BEHALF OR AROSE FROM ANY NEGLIGENT ACT OR ACTS COMMITTED BY ANY EMPLOYEE OF THE INDEMNIFYING PARTY OR OTHER PERSON ACTING ON THE INDEMNIFYING PARTY'S BEHALF, IF SUCH NEGLIGENT ACT OR ACTS ARE THE SOLE PRODUCING CAUSE OF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE SUIT, CLAIM, DEMAND, LOSS, DAMAGE, LIABILITY, FINE, PENALTY, OR EXPENSE FOR WHICH INDEMNITY IS REQUESTED.

21.09 Injuries to Third Parties and Third-party Property Owners Resulting from the Parties' Conduct. Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with the personal injury or death of any third party or physical damage to real or personal property owned by a third party, arising, in whole or in part, out of or in connection with the conduct of employees of the indemnifying party or other persons acting on the indemnifying party's behalf while such employees or other persons are present on, within, or in the vicinity of any SWBT pole, duct, conduit, or right-of-way in connection with the performance or anticipated performance of any act required or authorized to be performed pursuant to this Agreement. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not limited to indemnities arising out of or in connection with personal injury, death, and property damage claims by third parties based on willful or intentional misconduct and negligent acts and omissions of the indemnifying party.

21.10 Indemnification for Environmental Claims. The parties acknowledge that hazardous substances may be present on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way; that employees and other persons acting on the parties' behalf working on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way should be familiar with environmental laws and environmental concerns which arise in outside plant contexts; that all such employees and other persons should be prepared to recognize and deal with environmental contingencies existing at specific sites; and that liabilities associated with environmental claims arising out of or in connection with the subject matter of this Agreement shall be allocated between the parties as set forth in this section.

- (a) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the violation or breach, by any employee of the indemnifying party or other person acting on the indemnifying party's behalf, of (1) any federal, state, or local environmental statute, rule, regulation, ordinance, or other law or (2) any provision or requirement of this Agreement dealing with hazardous substances or protection of the environment.
- (b) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the release or discharge, onto any public or private property, of any

hazardous substances, regardless of the source of such hazardous substances, by any employee of the indemnifying party, or by any person acting on the indemnifying party's behalf, while present on, within, or in the vicinity of any SWBT pole, duct, conduit, or right-of-way. Indemnities provided by this subsection include but are not limited to indemnities arising out of or in connection with the release or discharge of water and other substances from SWBT's manholes or other conduit facilities.

- (c) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the removal or disposal of any hazardous substances by the indemnifying party or by any person acting on the indemnifying party's behalf, or arising out of or in connection with the subsequent storage, processing or other handling of such hazardous substances by any person or entity after they have been removed by the indemnifying party or persons acting on the indemnifying party's behalf from the site of any SWBT pole, duct, conduit, or right-of-way. For the purposes of this subsection, any person or entity removing or disposing of hazardous substances at the request of the indemnifying party or at the request of any person acting on the indemnifying party's behalf, and any person or entity subsequently receiving, storing, processing, or otherwise handling such hazardous substances shall be considered to be a person acting on the indemnifying party's behalf.
- (d) Except as otherwise specifically provided in this section, neither party shall be required to indemnify or defend the other party against, or hold the other party harmless from any loss, damage, claim, demand, suit, liability, fine, penalty or expense for which the other party may be liable under any federal, state, or local environmental statute, rule, regulation, ordinance, or other law.

21.11 Miscellaneous Claims. Applicant shall indemnify, on request defend, and hold SWBT harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, and expenses, of every kind and character, made, brought, or sought against SWBT by any person or entity, arising out of or in connection with the subject matter of this Agreement and based on either:

- (a) claims for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on SWBT due to the placement or

presence of Applicant's facilities on or within SWBT's poles, ducts, conduits, or rights-of-way; or

- (b) claims based on the violation by Applicant of any third party's intellectual property rights, including but not limited to claims for copyright infringement, patent infringement, or unauthorized use or transmission of television or radio broadcast programs or other program material.

21.12 Applicant's General Indemnity Obligations to SWBT. This section applies only in those situations not expressly covered by Sections 21.05-21.11 and does not apply to any suit, claim, demand, loss, damage, or expense resulting from Applicant's enforcement of its rights against SWBT pursuant to this Agreement or other provisions in the parties' interconnection agreement, if any. Except as otherwise expressly provided in this Agreement to the contrary, and subject to the exclusions set forth in Section 21.04, Applicant shall indemnify, on request defend, and hold SWBT harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, and expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with Applicant's access to or use of SWBT's poles, ducts, conduits, or rights-of-way, Applicant's performance of any acts authorized under this Agreement, or the presence or activities of Applicant's employees or other personnel acting on Applicant's behalf on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

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

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

21.15 Assertion of Limitation of Liability Defenses. Each party shall diligently assert the limitation of liability provisions of any applicable tariff or contract in any case

involving injury, loss, or damage to any customer of such party for which the other party is not exempt from indemnification liabilities to the indemnified party under this Agreement.

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

21.17 Defense of Suits. Upon request by the indemnified party, the indemnifying party shall defend any suit brought against the indemnified party for any injury, loss, or damage subject to indemnification under this Agreement. The indemnified party shall notify the indemnifying party promptly in writing of any written claims, lawsuits, or demands for which the indemnifying party may be responsible under this Agreement. The indemnified party shall cooperate in every reasonable way to facilitate defense or settlement. The indemnifying party shall have the right to control and conduct the defense and settlement of any action or claim subject to consultation of the indemnified party. The indemnifying party shall not be responsible for any settlement unless the indemnifying party approved such settlement in advance and agrees to be bound by the settlement agreement.

ARTICLE 22: LIABILITIES AND LIMITATIONS OF LIABILITY

22.01 LIMITATIONS OF LIABILITY WITH RESPECT TO NEGLIGENT ACTS AND OMISSIONS. THIS ARTICLE INCLUDES PROVISIONS LIMITING THE LIABILITIES OF EACH PARTY ARISING OUT OF OR IN CONNECTION WITH CERTAIN NEGLIGENT ACTS AND OMISSIONS OF SUCH PARTY.

22.02 LIMITATIONS OF LIABILITY IN GENERAL. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTIONS 21.16 AND 22.05, NEITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DAMAGES ATTRIBUTABLE, IN WHOLE OR IN PART, TO ANY NEGLIGENT ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT, WHETHER ARISING IN CONTRACT OR TORT, SHALL EXCEED IN THE AGGREGATE FOR ANY CALENDAR YEAR THE GREATER OF \$250,000, OR THE TOTAL AMOUNT CHARGED BY SWBT TO APPLICANT UNDER THIS AGREEMENT FOR THE CALENDAR YEARS WHEN THE ACTS OR OMISSIONS GIVING RISE TO LIABILITY OCCURRED. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED AS LIMITING EITHER PARTY'S LIABILITY FOR ACTS OR OMISSIONS CONSTITUTING WILLFUL OR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE BY SUCH PARTY.

22.03 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO

LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION LIMITS EACH PARTY'S LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH NEGLIGENT (INCLUDING GROSSLY NEGLIGENT) ACTS OR OMISSIONS OF SUCH PARTY BUT DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR INTENTIONAL MISCONDUCT.

22.04 SWBT Not Liable to Applicant for Acts of Third Parties or Acts of God. By affording Applicant access to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT, SWBT does not warrant, guarantee, or insure the uninterrupted use of such facilities by Applicant. Except as specifically provided in Section 22.05 of this Agreement, Applicant assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to Applicant's facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, or rights-of-way, and SWBT shall not be liable to Applicant for any damages to Applicant's facilities other than as provided in Section 22.05. In no event shall SWBT be liable to Applicant under this Agreement for any injury, loss, or damage resulting from the acts or omissions of (1) any joint user or any person acting on a joint user's behalf, (2) any governmental body or governmental employee, (3) any third-party property owner or persons acting on behalf of such property owner, or (4) any licensee, invitee, trespasser, or other person present at the site or in the vicinity of any SWBT pole, duct, conduit, or right-of-way in any capacity other than as a SWBT employee or person acting on SWBT's behalf. In no event shall SWBT be liable to Applicant under this Agreement for injuries, losses, or damages resulting from acts of God (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on SWBT's behalf, cable cuts by persons other than SWBT's employees or persons acting on SWBT's behalf, or other causes beyond SWBT's control which occur at sites subject to this Agreement.

22.05 Damage to Facilities. Except as otherwise specifically provided in this section, neither party shall be liable to the other party for any injury, loss, or damage (or for the direct or indirect consequences of any such injury, loss, or damage) to such other party's facilities attached to SWBT's poles or placed within or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

- (a) Each party (the "responsible party"), and persons acting on behalf of the responsible party, shall exercise due care to avoid damaging the facilities of the other party (the "injured party"). In the event such damage occurs, the responsible party or persons acting on behalf of the responsible party shall immediately report such damages to the injured party, and the

injured party shall promptly make such arrangements as may be necessary to restore service to its customers using the facilities affected.

- (b) The responsible party shall reimburse the injured party for the actual costs incurred by the injured party for repair of facilities damaged by the willful misconduct, grossly negligent acts, grossly negligent omissions, and negligent acts (but not negligent omissions other than grossly negligent omissions) of employees of the responsible party.
- (c) The responsible party shall reimburse the injured party for the actual costs incurred by the injured party for repair of facilities damaged by the willful misconduct, grossly negligent acts or omissions, and negligent acts (but not negligent omissions other than grossly negligent omissions) of independent contractors acting on the responsible party's behalf; provided, however, that the injured party shall be limited to recovery of those costs which cannot be recovered from the independent contractor causing the damage. The responsible party shall not be liable to the injured party under this section until the injured party's claims against the independent contractor causing the damage have been adjudicated or settled and the amount of the injured party's claim against the responsible party is determinable.
- (d) NEITHER PARTY SHALL BE REQUIRED BY THIS SECTION TO REIMBURSE THE OTHER PARTY FOR COSTS INCURRED AS A RESULT OF NEGLIGENT OMISSIONS OTHER THAN GROSSLY NEGLIGENT OMISSIONS COVERED BY SUBSECTIONS (c)-(d) OF THIS SECTION.
- (e) THIS SECTION LIMITS, BUT DOES NOT EXCLUDE, THE RESPONSIBLE PARTY'S LIABILITY TO THE INJURED PARTY FOR DAMAGES CAUSED BY NEGLIGENT (INCLUDING GROSSLY NEGLIGENT) ACTS OF THE RESPONSIBLE PARTY AND PERSONS ACTING ON THE RESPONSIBLE PARTY'S BEHALF.

22.06 No Limitations of Liability in Contravention of Federal or State Law. Nothing contained in this article shall be construed as exempting either party from any liability, or limiting such party's liability, in contravention of federal law or in contravention of the laws of this State.

22.07 Claims Against Third Parties. Nothing contained in this article shall be construed as requiring either party to forego any claims that such party may have against third parties, including but not limited to contractors, subcontractors, or persons (other than the other party's employees) acting on the other party's behalf.

ARTICLE 23: INSURANCE

23.01 Insurance Required. Applicant shall comply with the insurance requirements specified in this section.

- (a) Unless Applicant has provided proof of self-insurance as permitted in Section 23.02 below, Applicant shall obtain and maintain in full force and effect, for so long as this Agreement remains in effect, insurance policies specified in APPENDIX IV of this Agreement. Each policy shall name SWBT as an additional insured and shall include provisions requiring the insurer to give SWBT notice of any lapse, cancellation, or termination of the policy or any modification to the policy affecting SWBT's rights under the policy, including but not limited to any decrease in coverage or increase in deductibles.
- (b) Except as provided in this subsection, exclusions from coverage or deductibles, other than those expressly permitted in APPENDIX IV, must be approved in writing by SWBT. For authorized contractors and other contractors performing work on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way on Applicant's behalf, exclusions from coverage or deductibles, other than those expressly permitted in APPENDIX IV, must be approved in writing by Applicant.
- (c) Authorized contractors and other contractors performing work on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way on Applicant's behalf shall be required to meet the same insurance requirements applicable to contractors performing similar work on SWBT's behalf. Applicant shall be responsible for securing compliance by its contractors with this requirement and shall be liable to SWBT for any damages resulting from its failure to do so.
- (d) Self-insurance shall be permitted for persons and entities (including but not limited to Applicant and authorized contractors) meeting the self-insurance requirements set forth in Section 23.02.

23.02 Proof of Insurance or Self-insurance. Proof of insurance or self-insurance shall be made pursuant to the provisions of this section.

- (a) Applicant shall submit to SWBT adequate proof (as determined by SWBT) that the companies insuring Applicant are providing all coverages required by this Agreement. Applicant's insurers shall provide SWBT with certifications that required coverages will not be cancelled, changed or materially altered (e.g., by increasing deductibles

or altering exclusions from coverage) except after 30 days written notice to SWBT.

- (b) SWBT will accept certified proof of a person or entity's qualification as a self-insurer for Workers' Compensation and Employers Liability, where self-insurance is permitted, upon receipt of a current copy of a Certificate of Authority to Self-insure issued by the Workers' Compensation Commission of this State. SWBT will accept self-insurance by a person or entity in lieu of other Commercial General Liability and Automobile Liability Coverage if such person or entity warrants that its net worth, as shown by its most recent audited financial statement with no negative notes, is at least 10 times the minimum liability limits set forth in APPENDIX IV and SWBT is satisfied that such entity will be able to meet its liability obligations under this Agreement.
- (c) Applicant shall be responsible for determining whether contractors and other persons present on Applicant's behalf on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way meet the self-insurance requirements of this subsection. Applicant may accept certified proof of any such person's or entity's qualification as a self-insurer for Workers' Compensation and Employers Liability, where self-insurance is permitted, upon receipt of a current copy of a Certificate of Authority to Self-insure issued by the Workers' Compensation Commission of this State. Applicant may accept proof of self-insurance by a person or entity in lieu of other Commercial General Liability and Automobile Liability Coverage if such person or entity warrants that its net worth, as shown by its most recent audited financial statement with no negative notes, is at least 10 times the minimum liability limits set forth in APPENDIX IV and Applicant is satisfied that such entity will be able to meet its liability obligations with respect to activities performed on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

23.03 Licensing Contingent on Proof of Insurance. All insurance required in accordance with APPENDIX IV, or self-insurance as permitted in Section 23.02, must be in effect before SWBT will issue pole attachment or conduit occupancy licenses under this Agreement and shall remain in force until all of Applicant's facilities have been removed from SWBT's poles, ducts, conduits, and rights-of-way.

23.04 Failure to Obtain or Maintain Coverage. Applicant's failure to obtain and maintain the required levels and types of insurance coverage required under this Agreement shall be grounds for termination of this Agreement and licenses subject to this Agreement. If an insurance carrier shall at any time notify Applicant or SWBT that any

policy or policies of insurance required under this Agreement will be cancelled or changed in any manner which will result in Applicant's failure to meet the requirements of this Agreement, SWBT may terminate this Agreement and all licenses subject to this Agreement not less than 60 days after giving Applicant written notice of its intention to do so, and such termination shall be effective on the termination date specified in the notice unless Applicant has obtained (or made arrangements satisfactory to SWBT to obtain) the required coverage from another source. In the alternative, SWBT may, in its sole discretion, elect to take such action as may be necessary to keep such policy in effect with the required coverages.

ARTICLE 24: ASSIGNMENT OF RIGHTS

24.01 Assignment Permitted. Neither party may assign or otherwise transfer its rights or obligations under this Agreement except as provided in this section.

- (a) SWBT may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Applicant's consent, to any entity controlling, controlled by, or under common control with SWBT or which acquires or succeeds to ownership of substantially all of SWBT's assets.
- (b) Applicant may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without SWBT's consent, to: any telecommunications carrier or cable system operator which (1) is entitled to access to SWBT's poles, ducts, conduits, and rights-of-way under the Pole Attachment Act and (2) controls, is controlled by, or is under common control with Applicant or acquires and succeeds to ownership of substantially all of Applicant's assets; provided, however, that such assignment shall not be effective until Applicant has given SWBT written notice of the assignment pursuant to Section 24.03 and guaranteed the performance of Applicant's assignee or successor. Applicant's assignee or successor shall assume all outstanding obligations of Applicant under this Agreement, including but not limited to all liabilities and contingent liabilities of Applicant arising out of or in connection with this Agreement.
- (c) Applicant may, ancillary to a bona fide loan transaction between Applicant and any lender, and without SWBT's consent, grant security interests or make collateral assignments in substantially all of Applicant's assets, including Applicant's rights under this Agreement, subject to the express terms of this Agreement. In the event Applicant's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire Applicant's assets through public or private sale or through an

Agreement with Applicant, Applicant's lender or the third party acquiring Applicant's rights under this Agreement shall assume all outstanding obligations of Applicant under the agreement and provide proof satisfactory to SWBT that such lender or third party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by Applicant's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Applicant's lender or such third party shall succeed to all rights and remedies of Applicant under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Applicant is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Applicant under the Agreement, including liability to SWBT for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third party succeeds to the rights of Applicant under the Agreement, as applicable.

- (1) In the event Applicant or Applicant's lender requests that SWBT, in connection with a bona fide loan transaction between Applicant and Applicant's lender, sign any additional consents, or make other accommodations to protect such lender's interest, Applicant or Applicant's lender shall reimburse SWBT for all expenses incurred by SWBT in connection with such requests and accommodations, including but not limited to in-house or outside legal expenses incurred by SWBT in processing the request.
- (2) In the event Applicant or Applicant's lender desires that SWBT provide notices to Applicant's lender or permit Applicant's lender, in the event of a breach, to cure any default or termination event if Applicant fails to do so, Applicant shall notify SWBT's authorized agent, as designated in Article 29 of this Agreement, that such notices may be sent to Applicant's lender as well to Applicant. Nothing contained in this subsection shall be construed as imposing any duty on SWBT in favor of Applicant's lender, and this section shall not be construed to provide Applicant's lender or any other third parties with any rights, claims, causes of action of any kind. Applicant waives any and all claims or causes of action, of every kind and character, past, present, or future, arising out of or in connection with the giving of any notice to Applicant's lender pursuant to this section or any failure to give such notice.

- (d) Either party may assign or transfer rights or obligations under this Agreement on such terms and conditions as are mutually acceptable to the other party and with such other party's prior written consent, which consent may be withheld only for due cause and justification.
- (e) No assignment or transfer by Applicant of rights under this Agreement, licenses subject to this Agreement, or authorizations granted under this Agreement shall be effective until Applicant, its successors, and assigns have complied with the provisions of this article, secured SWBT's prior written consent to the assignment or transfer, if necessary, and given SWBT notice of the assignment or transfer pursuant to Section 24.03.
- (f) Except as otherwise expressly provided in this article, neither this Agreement, nor any licenses or authorizations subject to this Agreement, shall inure to the benefit of Applicant's successors or assigns without SWBT's prior written consent.

24.02 Incorporations, Mergers, Acquisitions, and Other Changes in Applicant's Legal Identity. When the legal identity or status of Applicant changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article.

24.03 Notice of Assignment. Applicant shall provide SWBT with 60 days advance notice in writing of any assignment.

24.04 Assignment Shall Not Relieve Applicant of Prior Obligations. Except as otherwise expressly agreed by SWBT in writing, no assignment permitted by SWBT under this Agreement shall relieve Applicant of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Article 21 of this Agreement or the interconnection agreement, if any.

24.05 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. SWBT may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Applicant under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Applicant arising out of or in connection with this Agreement.

24.06 Satisfaction of All Other Licensing Requirements. Applicant's assignee or successor must, within 60 days following the assignment, provide proof satisfactory to SWBT that such assignee or successor has complied or will comply with all licensing requirements established under this Agreement, including but not limited to requirements that such assignee or successor verify, to the best of its information and belief, as provided in Section 17.03, that all facilities owned or used by such assignee or successor

and presently attached to SWBT's poles or placed within any portion of SWBT's conduit system within this State have been disclosed to SWBT and are subject to existing licenses and that such assignee or successor has complied with the insurance requirements set forth in Article 23 of this Agreement.

24.07 Additional Post-Assignment Requirements. Applicant's assignee or successor shall, within 60 days following the assignment:

- (a) sign this Agreement as an assignee or successor expressly agreeing to be bound by all provisions of this Agreement and licenses subject to this Agreement;
- (b) provide proof, satisfactory to SWBT, of such assignee's assumption of the obligations of this Agreement; and
- (c) pay a one-time contract administration fee, as provided in APPENDIX I of this Agreement, if no Master Agreement for Access to SWBT's Poles, Ducts, Conduits, or Rights-of-Way between SWBT and such assignee is in effect for this State, or an administrative record-keeping fee as provided in APPENDIX I of this Agreement, if there is a Master Agreement in effect for this State.

24.08 Sublicenses Prohibited. Nothing contained in this Agreement shall be construed as granting Applicant the right to sublicense any rights under this Agreement or licenses subject to this Agreement to any third party. Except as otherwise expressly permitted in this Agreement, Applicant shall not allow third party to attach or place facilities to or in pole or conduit space occupied by or assigned to Applicant or to utilize such space.

ARTICLE 25: TERMINATION OF AGREEMENT OR LICENSES; REMEDIES FOR BREACHES

25.01 Termination Due to Non-Use of Facilities or Loss of Required Authority. Applicant shall, by written notice to SWBT, terminate this Agreement and all licenses subject to this Agreement if Applicant ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if Applicant is cable television system having access to SWBT's poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in this State (if Applicant is a telecommunications carrier which does not also have authority to provide cable television service in this State), or ceases to make active use of SWBT's poles, ducts, conduits, and rights-of-way in this State. Applicant shall, by written notice to SWBT, terminate individual licenses subject to this Agreement if (a) Applicant ceases to utilize the pole attachment or conduit occupancy space subject to

such licenses or (b) Applicant's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated for reasons of safety or any other lawful reason by any federal, state, or local governmental authority or third-party property owner having authority to revoke, deny, or terminate such use or access. Responsibility for terminating this Agreement or individual licenses under the circumstances set forth in this section shall be a contractual obligation imposed on Applicant, and the failure by Applicant to terminate this Agreement or individual licenses pursuant to this section shall be a material breach of this Agreement.

25.02 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Applicant's access to SWBT's poles, ducts, conduits, and rights-of-way shall not materially interfere with or impair service over any facilities of SWBT or any joint user, cause material damage to SWBT's plant or the plant of any joint user, impair the privacy of communications carried over the facilities of SWBT or any joint user, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of SWBT's poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, SWBT may limit, terminate or refuse access if Applicant violates this provision; provided, however, that such limitation, termination or refusal will be limited to Applicant's access to poles, ducts, conduits, and rights-of-way located in the SWBT construction district in which the violation occurs, shall be as narrowly limited in time and geographic scope as may be necessary to enable Applicant to adopt suitable controls to prevent further violations, and shall be subject to review, at Applicant's request, pursuant to the dispute resolution procedures set forth in this Agreement (or, if applicable, the parties' interconnection agreement) or, as permitted by law, before any court, agency, or other tribunal having jurisdiction over the subject matter. In the event Applicant invokes dispute resolution procedures or seeks review before a court, agency, or other tribunal having jurisdiction of the subject matter, the limitation, termination, or refusal of access may be stayed or suspended by agreement of the parties or by order of the tribunal having jurisdiction over the parties' dispute.

25.03 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either party, the aggrieved party may give written notice of such claimed breach as provided in this section.

(a) The notice shall set forth in reasonable detail:

- (1) the conduct or circumstances complained of, together with the complaining party's legal basis for asserting that a breach has occurred;
- (2) the action believed necessary to cure the alleged breach; and
- (3) any other matter the complaining party desires to include in the notice.

- (b) Except as provided in Section 25.02 and subsection (c) of this section, the complaining party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given and (1) the breaching party fails to cure the breach within 30 days of such notice, if the breach is one which can be cured within 30 days, or (2) the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure; provided, however, that nothing contained in this section shall preclude either party from invoking the dispute resolution procedures set forth in Article 30 of this Agreement, or any complaint or dispute resolution procedures offered by the FCC or State Commission, at any time.
- (c) Nothing contained in this section shall preclude either party from filing a complaint or bringing suit in any court, agency, or other tribunal of competent jurisdiction to restrain or enjoin any conduct of the other party which threatens the complaining party with irreparable injury, loss or damage without first giving the notice otherwise required by subsection (b).

25.04 Remedies for Breach. Subject to the provisions of this article and the dispute resolution procedures of Article 30, either party may terminate this Agreement in the event of a material breach by the other party or exercise any other legal or equitable right which such party may have to enforce the provisions of this Agreement. Except as otherwise specifically provided in Section 30.07, in any action based on an alleged breach of this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred by such party, including but not limited to reasonable attorneys' fees.

ARTICLE 26: FAILURE TO ENFORCE

26.01 No Waiver. The failure by either party to take action to enforce compliance with any of the terms or conditions of this Agreement, to give notice of any breach, or to terminate this Agreement or any license or authorization subject to this Agreement shall not constitute a waiver or relinquishment of any term or condition of this Agreement, a waiver or relinquishment of the right to give notice of breach, or waiver or relinquishment of any right to terminate this Agreement. Notwithstanding any such failure, all terms and conditions of this Agreement and all rights of either party hereunder shall be and remain at all times in full force and effect.

ARTICLE 27: EFFECTIVE DATE, TERM, AND ELECTIVE TERMINATION

27.01 Effective Date. This Agreement shall be effective as of the ____ day of _____, 1999, or, if this Agreement has been entered into as an appendix,

attachment, or exhibit to an interconnection agreement between the parties, the date of approval by the State Commission of the interconnection agreement, whichever date first occurs.

27.02 Initial Term. Unless sooner terminated as herein provided, the initial term of this Agreement shall run from the effective date until the end of the calendar year which includes the effective date.

27.03 Automatic Renewal. Unless sooner terminated as herein provided, this Agreement shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year after the effective date.

27.04 Elective Termination. Either party may terminate this Agreement by giving the other party at least six months prior written notice as provided in this section.

- (a) Applicant may terminate this Agreement with or without cause.
- (b) The parties acknowledge that the Pole Attachment Act, 47 U.S.C. §224(e), as added by the Telecommunications Act of 1996, expressly directs the FCC to promulgate new regulations governing charges to telecommunications carriers for access to poles, ducts, conduits, and rights-of-way and that such new regulations are to take effect five years after the date of enactment of the Telecommunications Act of 1996 (that is, February 8, 2001). The parties further acknowledge that due to nondiscrimination requirements, it is desirable that formal attachment agreements establishing rates, terms, and conditions of access be revised simultaneously, to the extent possible. Accordingly, the parties agree that SWBT may terminate this Agreement only for cause during the period beginning with the effective date of this Agreement through February 8, 2001. Thereafter, SWBT may terminate this Agreement with or without cause, subject to the provisions of subsection (d) and Section 27.05 below.
- (c) The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current term of this Agreement or six months after the date the notice is given.
- (d) The elective termination of this Agreement by SWBT under this section shall not require immediate removal of Applicant's facilities from poles, ducts, conduits, and rights-of-way owned or controlled by SWBT and shall be subject to the provisions of Section 27.05 below; provided, however, that Applicant shall, within 60 days after the effective date of the termination, either initiate negotiations for continued access to

SWBT's poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Article 18 of this Agreement.

27.05 Effect of Elective Termination. Elective termination of this Agreement by Applicant, as permitted under Section 27.04 of this Agreement, shall not affect Applicant's liabilities and obligations incurred under this Agreement prior to the effective date of termination and shall not entitle Applicant to the refund of any advance payment made to SWBT under this Agreement. Elective termination of this Agreement by SWBT shall not affect SWBT's obligations to afford access to SWBT's poles, ducts, conduits, and rights-of-way owned or controlled by SWBT as required by the Pole Attachment Act, the Telecommunications Act of 1996, and other applicable laws, regulations, and commission orders.

ARTICLE 28: CONFIDENTIALITY OF INFORMATION

28.01 Information Provided by Applicant to SWBT. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Applicant to SWBT in connection with this Agreement (including but not limited to information submitted in connection with Applicant's applications for the assignment of pole attachment and occupancy space and for pole attachment and conduit occupancy licenses) shall be deemed to be "confidential" or "proprietary" information of Applicant and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Applicant's review of records regarding a particular market area, or relating to assignment of space to Applicant in a particular market area, and further includes knowledge or information about the timing of Applicant's request for or review of records or its inquiry about SWBT facilities. This article does not limit the use by SWBT of aggregate information relating to the occupancy and use of SWBT's poles, ducts, conduits, and rights-of-way by firms other than SWBT (that is, information submitted by Applicant and aggregated by SWBT in a manner that does not directly or indirectly identify Applicant).

28.02 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Applicant to SWBT in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons (including but not limited to personnel involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities) other than those who have a need to know such information for the limited purposes set forth in Sections 28.03-28.06.

28.03 Permitted Uses of Applicant's Confidential Information. Notwithstanding the provisions of Sections 28.01 and 28.02 above, SWBT and persons acting on SWBT's behalf may utilize Applicant's confidential or proprietary information for the following purposes: (a) posting information, as necessary, to SWBT's outside plant records; (b)

placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SWBT's poles, ducts, conduits, and rights-of-way and any SWBT facilities located on, within, or in the vicinity of such poles, ducts, conduits, and rights-of-way; (c) performing SWBT's obligations under this Agreement and similar agreements with third parties; (d) performing SWBT's general obligations to afford nondiscriminatory access to telecommunications carriers and cable television systems under the Pole Attachment Act; (e) determining which of SWBT's poles, ducts, conduits, and rights-of-way are (or may in the future be) available for SWBT's own use, and making planning, engineering, construction, and budgeting decisions relating to SWBT's poles, ducts, conduits, and rights-of-way; (f) preparing cost studies; (g) responding to regulatory requests for information; (h) maintaining SWBT's financial accounting records; and (i) complying with other legal requirements relating to poles, ducts, conduits, and rights-of-way.

28.04 Access by Third Parties. Information reflecting the assignment of pole attachment and conduit occupancy space to Applicant may be made available to personnel of third parties seeking access to SWBT's records under provisions, and subject to protections, equivalent to those contained and required by Section 7.03 of this Agreement.

28.05 Defense of Claims. In the event of a dispute between SWBT and any person or entity, including Applicant, concerning SWBT's performance of this Agreement, satisfaction of obligations under similar agreements with third parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, SWBT may utilize confidential or proprietary information submitted by Applicant in connection with this Agreement as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that SWBT shall not disclose Applicant's proprietary or confidential information without first, at SWBT's option: (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Applicant's information; (b) seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing Applicant notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

28.06 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding SWBT from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that SWBT shall not disclose Applicant's proprietary or confidential information without first, at SWBT's option: (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Applicant's information; (b) seeking such a

protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing Applicant notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

28.07 Other Uses of Confidential Information. No other uses of confidential information received from Applicant pursuant to this Agreement are authorized or permitted without Applicant's express written consent.

ARTICLE 29: NOTICES

29.01 Notices to Applicant. Except as otherwise provided in APPENDIX VI ("Notices to Applicant"), all written notices required to be given to Applicant shall be delivered or mailed to Applicant's duly authorized agent or attorney, as designated in this section.

- (a) Such notice may be delivered to Applicant's duly authorized agent or attorney in person or by agent or courier receipted delivery.
- (b) Such notice may be mailed to Applicant's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.
- (c) Applicant may authorize delivery of the notice by telephonic document transfer to the Applicant's duly authorized agent or attorney. Notice by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed given on the following day.
- (d) Notices to Applicant shall be sent to the authorized agent or attorney designated below:

Name: _____

Title: _____

Firm: _____

Address: _____

City/State/Zip: _____

29.02 Notices to SWBT. Except as otherwise provided in APPENDIX VII ("Notices to SWBT"), all written notices required to be given to SWBT shall be delivered or mailed to SWBT's duly authorized agent or attorney, as designated in this section.

- (a) Such notice may be delivered to SWBT's duly authorized agent or attorney in person or by agent or courier receipted delivery.
- (b) Such notice may be mailed to SWBT's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.
- (c) SWBT may authorize delivery of the notice by telephonic document transfer to SWBT's duly authorized agent or attorney. Notice by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed given on the following day.
- (d) On the effective date of this Agreement, and until further notice to Applicant, SWBT's duly authorized agent shall be the Utility Liaison Supervisor ("ULS") designated in APPENDIX VIII.

29.03 Changes in Notice Requirements. Either party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other party. Such notice shall state, at a minimum, the name, title, firm, and full address of the new addressee.

ARTICLE 30: DISPUTE RESOLUTION

30.01 Purpose. The provisions of this article are intended to minimize litigation between the parties with respect to disputes arising in connection with this Agreement and shall be construed accordingly. Any dispute between the parties arising under this Agreement may be submitted by either party for resolution under this article.

30.02 Exclusive Remedy for Monetary Claims under \$25,000. Except for actions seeking injunctive relief related to the purposes of this Agreement or suits to compel compliance with the dispute resolution processes set forth in this article, the parties agree to use the dispute resolution processes set forth in this Agreement as their sole remedy with respect to any monetary claim of \$25,000 or less which arises out of or in connection with this Agreement.

30.03 Prerequisite to Litigation. The provisions of this article shall also apply to all disputes, without regard to the amount in controversy, in which Applicant contests charges billed by SWBT to Applicant under the terms of this Agreement. No suit, except for actions seeking injunctive relief related to the purposes of this Agreement or suits to compel compliance with the dispute resolution processes set forth in this article, shall be filed by either party against the other with respect to such contested charges until the parties have engaged in good faith negotiations as provided in Section 30.04, and, if the parties agree, in mediation under Section 30.05.

30.04 Good Faith Negotiation. Good faith negotiation as provided in this section shall be the first step in the dispute resolution process.

- (a) With respect to any dispute subject to the provisions of this article, either party may initiate negotiation proceedings by writing a certified or registered letter to the other party setting forth the particulars of the dispute, the terms of the Agreement that are involved, and a suggested resolution of the problem.
- (b) The recipient of the letter shall respond within 21 days to the proposed solution. The recipient shall either agree to the proposed solution or explain its disagreement.
- (c) If the correspondence does not resolve the dispute, each party, at the request of either party, will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve the dispute. The location, form, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations.
- (d) Discussions and correspondence among the representatives as provided by this section are for purposes of settlement, are exempt from discovery and production, and shall not be admissible in arbitration, judicial, regulatory, or other proceedings in any forum.

30.05 Mediation. If the parties agree to mediation, the mediation may be conducted as provided in this section or in such other manner as may be mutually agreeable to the parties.

- (a) If agreed to by the parties, the dispute shall be referred to the nearest office of the American Arbitration Association, or such other mediator as may be selected by agreement of the parties, for mediation, that is, an informal, non-binding conference or conferences between the parties in

which a mediator will seek to guide the parties to a resolution of the dispute.

- (b) If the dispute is referred to the American Arbitration Association, the parties are free to select any mutually acceptable panel member from the list of mediators at the American Arbitration Association. If the parties cannot agree or have no particular choice of a mediator and simply request that the American Arbitration Association assign a mediator to the dispute, then a list and resumes of available mediators, numbering one more than there are parties, will be sent to the parties, each of whom may strike one name leaving the remaining name as the mediator. If more than one name remains, the designated mediator shall be selected by the Administrator of the American Arbitration Association from the remaining names.
- (c) Mediation sessions shall be private.
- (d) All records, reports or other documents considered by the mediator shall be confidential.
- (e) The parties agree that the mediator shall not be compelled to divulge confidential materials or to testify about the mediation in arbitration, regulatory, judicial, or other proceedings in any forum.
- (f) The parties agree to maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial, or other proceeding:
 - (1) views expressed or suggestions made by the other party with respect to a possible settlement of the dispute;
 - (2) admissions made by the other party during the mediation proceedings;
 - (3) proposals made or views expressed by the mediator; or
 - (4) the fact that the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.
- (g) Subsections (e) and (f) of this section shall apply to anything said, done or occurring in the course of the mediation, including any private caucus or discussions between the mediator and any party or counsel before or after the joint mediation session. There shall be no stenographic record of the mediation process, except to memorialize a settlement record.

- (h) The mediation process shall be considered settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views, and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views, and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of its having been used in connection with this settlement process.

30.06 Arbitration. If negotiations and mediations do not resolve the dispute within 90 days after the initiation of dispute resolution proceedings as provided in subsection (a) of Section 30.04 of this Agreement, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association if the dispute involves any monetary claim of \$25,000 or less which arises out of or in connection with this Agreement. The parties may voluntarily elect to arbitrate disputes in which the amount in controversy exceeds \$25,000, but they shall not be required by this Agreement to do so.

- (a) Either party may demand such arbitration in accordance with the procedures set out in the Commercial Arbitration Rules.
- (b) Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this subsection.
 - (1) Each party may submit in writing to any other party, and such other party shall so respond, to a maximum of any combination of 35 of the following: interrogatories, document production requests, and requests for admissions. The interrogatories, document production requests, and requests for admissions shall not have subparts.
 - (2) Additional discovery may be permitted upon mutual agreement of the parties or upon order of the arbitrator on a showing of good cause.
- (c) The arbitrator shall control the scheduling so as to process the matter expeditiously. The times set forth in this subsection shall apply unless extended upon mutual agreement of the parties or by the arbitrator on a showing of good cause.

- (1) The arbitration hearing shall commence within 60 days of the demand for arbitration and shall be held, in the absence of agreement by the parties to a different venue, St. Louis, Missouri.
- (2) The parties shall submit written briefs five days before the hearing.
- (3) The arbitrator shall rule on the dispute by issuing a written opinion within 30 days after the close of hearings.
- (4) The arbitrator shall have no authority to order punitive or consequential damages.
- (5) Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

30.07 Costs. Except as specifically provided in this section, each party shall bear its own costs of all dispute resolution procedures under this article.

- (a) A party seeking discovery shall reimburse the responding party for the costs incurred by the responding party in producing documents.
- (b) The parties shall equally split the fees of the arbitration and the arbitrator.

30.08 No Abridgment of Rights under the Communications Act of 1934 or the Pole Attachment Act. Nothing contained in this article shall abridge the rights of either party to seek relief from the FCC with respect to any dispute subject to the jurisdiction of the FCC under the Communications Act of 1934 or the Pole Attachment Act, or from the State Commission with respect to any dispute subject to its jurisdiction, except that the parties may not seek relief from the FCC or the State Commission with respect to any dispute that has already been resolved by mediation under Section 30.05 or by binding arbitration under Section 30.06.

ARTICLE 31: ACCESS TO APPLICANT'S POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

31.01 No Reciprocal Access to Applicant's Facilities. This Agreement does not include provisions for reciprocal access by SWBT to Applicant's poles, ducts, conduits, and rights-of-way.

ARTICLE 32: GENERAL PROVISIONS

32.01 Entire Agreement. This Agreement, together with the interconnection agreement, if any, to which this Agreement is an appendix, attachment, or exhibit, sets forth the entire understanding and agreement of the parties.

32.02 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Applicant and SWBT relating to the placement and maintenance of Applicant's facilities on and within SWBT's poles, ducts, and conduits within this State.

32.03 Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

32.04 Survival of Obligations. Any liabilities or obligations of either party for acts or omissions prior to the termination of this Agreement, any obligations of either party under provisions of this Agreement relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, will survive the termination of this Agreement.

32.05 Multiple Counterparts. This Agreement may be executed in multiple counterparts.

32.06 Effect on Licenses Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy licenses granted to Applicant shall, on the effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.

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

32.08 Severability. If any article, section, subsection, or other provision or portion of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement as to either party, the invalidity of such provision shall not render this entire Agreement unenforceable and this Agreement shall be administered as if it did not contain the invalid provision.

32.09 Choice of Law. Except to the extent that federal law controls any aspect of this Agreement, the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties will be governed by the laws of this State, applied without regard to the provisions of this State's laws relating to conflicts-of-laws.

32.10 Changes in the Law. Because the primary purpose of this Agreement is to provide access to poles, ducts, conduits, and rights-of-way in accordance with the Pole Attachment Act, as amended by the Telecommunications Act of 1996 and subsequent amendments, the parties contemplate that changes in this Agreement may from time to time be necessary or desirable to conform to changes in the Pole Attachment Act as that Act is amended, interpreted, and applied. This Agreement is based in large part on regulatory decisions by the FCC, which has jurisdiction over the rates, terms, and conditions of access to poles, ducts, conduits, and rights-of-way (except to the extent that such jurisdiction has been pre-empted by individual states) and decisions by the State Commission. More specifically, this Agreement is based in large part on the FCC's First Interconnection Order in CC Docket No. 96-98, on FCC rules announced with the First Interconnection Order, and on Arbitration Orders by the State Commission.

[] Applicant desires to have access to SWBT's poles, ducts, conduits, and rights-of-way on terms that are not less favorable than those obtained by firms participating in interconnection arbitration proceedings before the State Commission. Applicant also desires to have access to SWBT's poles, ducts, conduits, and rights-of-way to the full extent permitted under the FCC's First Interconnection Order in CC Docket No. 96-98. SWBT is entering into this Agreement for the purpose of providing nondiscriminatory access in compliance with the Pole Attachment Act and regulatory decisions thereunder, including decisions by the State Commission in interconnection arbitration proceedings in which Applicant is not a party. Each party is entering into this Agreement based on current interpretations of the law by the FCC and State Commission. In the event of any changes in the Pole Attachment Act, changes in applicable FCC or State Commission rulings, or judicial determinations that such rulings are erroneous or invalid, each party shall, at the request of the other, engage in good faith negotiations to supplement, amend or replace any provisions of this Agreement affected by such changes or

determinations and to conform this Agreement to changes in the underlying laws on which the Agreement is based.

- [] This Agreement has been entered into as a result of private negotiation between the parties and arbitration by the State Commission, acting pursuant to the Telecommunications Act of 1996. If the actions of any legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws, rules, regulations, or commission orders that were the basis for a provision of this Agreement (including but not limited to any provision of this Agreement required by any arbitration award approved by the State Commission), the affected provision shall be invalidated, modified, or stayed as required by action of the legislative body, court, or regulatory agency. In the event of such a change in the law, each party shall expend diligent efforts to arrive at an agreement respecting the modifications to the Agreement required by the law or requested in good faith by the other party. If negotiations fail, disputes between the parties concerning interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in the interconnection agreement or this Agreement; provided, however, that this section shall not be construed as precluding either party from seeking appropriate relief from the FCC in connection with the parties' rights and obligations under the Pole Attachment Act. In the event of any material change in the law, each party agrees to enter into good faith negotiations to conform this Agreement to the changes in the law.

ARTICLE 33: 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.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

SOUTHWESTERN BELL TELEPHONE COMPANY

By: _____

Signature of SWBT's Authorized Officer/Employee

Name of SWBT's Authorized Officer/Employee (Printed or Typed)

Position/Title of SWBT's Authorized Officer/Employee

Date

City and State of Execution by SWBT

SBC ADVANCED SOLUTIONS, INC.

Applicant's Name (Printed or Typed)

By: _____

Signature of Applicant's Authorized Officer/Employee

Name of Authorized Officer/Employee (Printed or Typed)

Position/Title of Authorized Officer/Employee

Date

City and State of Execution by Applicant

APPENDIX CH

APPENDIX CLEARINGHOUSE (CH)

WHEREAS, SWBT operates a Clearinghouse (CH), as described below, for its own behalf and that of participating LECs and CLECs, including ASI; and

WHEREAS, ASI wants to participate in the CH on the terms set forth herein;

The Parties agree to the following:

I. CLEARINGHOUSE DESCRIPTION

SWBT operates a CH for the purpose of facilitating the exchange of certain alternatively billed intrastate intraLATA message toll call records and the reporting of settlement revenues owed by and among participating LECs and CLECs, including SWBT and ASI.

II. QUALIFYING MESSAGE CRITERIA

The only toll call messages that qualify for submission to SWBT for CH processing are: (a) intrastate intraLATA sent collect (including calling card, collect and third number) messages which are originated in one LEC or CLEC exchange, exclusively carried by a LEC or CLEC over LEC or CLEC facilities and billed to a customer located in a second LEC's or CLEC exchange within the same state; or (b) intrastate intraLATA sent collect (but limited to calling card and third number) messages originated in one of SWBT's operating areas (located in parts of Texas, Arkansas, Kansas, Missouri or Oklahoma), exclusively carried by a LEC or CLEC over LEC or CLEC facilities, and billed to a customer located in a second LEC's or CLEC exchange and not in the originating State.

III. RESPONSIBILITIES OF THE PARTIES

- A. ASI agrees that it will provide SWBT with billing records for CH processing that are in an industry standard format acceptable to SWBT and at a minimum will display the telephone number of the end user to whom the call is to be billed, and data about the call sufficient for a carrier to comply with all applicable state regulatory requirements. For purposes of this Attachment, these records ("CH Records") will detail intraLATA toll calls which were originated by use of the single digit access code (i.e., 0+ and 0-) in one LEC or CLEC exchange but are to be billed to an end user in a second LEC's or CLEC exchange. Such records are referred to as category ninety-two (92) records for CH processing purposes. The term "CH Record" will mean the call detail attributed to a single completed toll message.

ASI agrees that all CH Records it generates will display indicators denoting whether category ninety-two (92) Records should be forwarded to SWBT's CH.

ASI will retain its originating records for ninety (90) days such that the category ninety-two (92) Records can be retransmitted to SWBT for CH processing, if needed.

- B. SWBT will provide and maintain such systems as it believes are required to furnish the CH service described herein. SWBT, in its capacity as operator of the CH, agrees to retain all CH Records processed through the CH for two (2) years.
- C. ASI will timely furnish to SWBT all CH Records required by SWBT to provide the CH service in accordance with the Technical Exhibit Settlement Procedures (TESP) dated DD/MM/YEAR, or as otherwise mutually agreed upon by the Parties. SWBT will provide the CH service in accordance with the TESP, and such modifications as are subsequently agreed upon.
- D. Presently, in operating the CH, SWBT relies upon NXX codes to identify messages for transmission to participating billing companies. To the extent any subprocesses are required to settle CH messages due to the use of ported numbers, such subprocessing will be the responsibility of the porting entity.

IV. PROCESSING CHARGE

ASI agrees to pay SWBT a processing charge in consideration of SWBT's performance of CH services. This charge, as outlined in Appendix Pricing, is per originated CH Record processed on behalf of ASI.

V. BILLING CHARGE

ASI agrees to pay a per message charge, as outlined in Appendix Pricing, to the LEC or CLEC responsible for billing the message, including SWBT, when SWBT bills the message.

VI. SETTLEMENT REPORT

SWBT will issue monthly reports containing the results of the processing of CH Records to each participating LEC and CLEC. These reports list the: (a) amounts owed by ASI for billing messages originated by others; (b) amounts due to ASI for CLEC originated messages billed by others; (c) applicable billing charges; and (d) processing charges.

VII. RETROACTIVE AND LOST MESSAGES

The Parties agree that processing of retroactive messages through the CH is acceptable, if such messages utilize the industry standard format for call records, pursuant to Section III of this Attachment. The Parties agree that lost messages are the complete responsibility of the originating LEC or CLEC. If messages are lost by any Party, and cannot be

recreated or retransmitted, the originating LEC or CLEC will estimate messages, minutes, and associated revenues based on the best available data. No estimate will be made for messages which are more than two years old at the time the estimate is made. The estimates will be off-line calculations (i.e., not part of the routine CH processing) and will be included as a supplement to the monthly settlement report.

VIII. LIMITATION OF LIABILITY

- A. By agreeing to operate the CH, SWBT assumes no liability for any LEC's or CLEC's receipt of appropriate revenues due to it from any other entity. ASI agrees that SWBT will not be liable to it for damages (including, but not limited to, lost profits and exemplary damages) which may be owed to it as a result of any inaccurate or insufficient information resulting from any entity's actions, omissions, mistakes, or negligence and upon which SWBT may have relied in preparing settlement reports or performing any other act under this Attachment.
- B. ASI agrees to indemnify and hold SWBT harmless against and with respect to any and all third party claims, demands, liabilities or court actions arising from any of its actions, omissions, mistakes or negligence occurring during the course of SWBT's performance of CH processing pursuant to this Attachment.
- C. SWBT will not be liable for any losses or damages arising out of errors, interruptions, defects, failures, or malfunction of the CH services provided pursuant to this Attachment, including those arising from associated equipment and data processing systems, except such losses or damages caused by the sole negligence of SWBT. Any losses or damage for which SWBT is held liable under this Attachment will in no event exceed the amount of processing charges incurred by ASI for the CH services provided hereunder during the period beginning at the time SWBT receives notice of the error, interruption, defect, failure or malfunction, to the time service is restored.

IX. DISCLAIMER OF WARRANTIES

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.

X. 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.

SOUTHWESTERN BELL TELEPHONE COMPANY

SUBJECT INDEX

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Advanced Intelligent Network	AIN
Billing, Collection and Remitting	BCR
Clearinghouse	CH
Collocation	COLLOCATION
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Digital Subscriber Line	DSL
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Interconnection Trunking Requirements	ITR
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Numbering	NUMBERING
Operations Support Systems	OSS-RESALE & UNE
Performance Criteria	PERFORMANCE MEASUREMENTS
Poles, Ducts, Conduit, and Right of Way	POLES
Pricing	PRICING
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APPENDIX 800

APPENDIX 800

ACCESS TO THE TOLL FREE CALLING DATABASE

This Appendix sets forth the terms and conditions under which SWBT provides Access to the Toll Free Calling Database.

I. DESCRIPTION

- A. SWBT's 800 database, an ANSI SS7 call-related database system, receives updates processed from the national Service Management System (SMS). Customer records in the SMS are created or modified by entities known as Responsible Organizations (RespOrg) who obtain access to the SMS via the 800 Service Management System, FCC ordered Tariff No. 1. 800 Service Providers must either become their own RespOrg or use the services of an established RespOrg. The services of a RespOrg includes creating and updating 800 records in the SMS to download in the 800 database(s). SWBT does not, either through a Commission ordered tariff or contract, provide RespOrg service.
- B. After the 800 customer record is created in the SMS, the SMS downloads the records to the appropriate databases, depending on the area of service chosen by the 800 subscriber. An 800 customer record is created in the SMS for each 800 number to be activated. The SMS initiates all routing changes to update information on a nationwide basis.
- C. Access to the Toll Free Calling Database allows ASI to access SWBT's 800 database for the purpose of switch query and database response. Access to the Toll Free Calling Database supports the processing of toll free calls (e.g., 800 and 888) where identification of the appropriate carrier (800 Service Provider) to transport the call is dependent upon the full ten digits of the toll free number (e.g., 1+800+NXX+XXXX). Access to the Toll Free Calling Database includes all 800-type dialing plans (i.e., 800 and 888 [and 877, 866, 855, 844, 833, 822, when available]).
- D. Access to the Toll Free Calling Database provides the carrier identification function required to determine the appropriate routing of an 800 number based on the geographic origination of the call, from a specific or any combination of NPA/NXX, NPA or LATA.
- E. There are three optional features available with 800 service: Designated 10-Digit Translation, Call Validation and Call Handling and Destination.

1. The Designated 10-Digit Translation feature converts the 800 number into a designated 10-digit number. If the 800 Service Provider provides the designated 10-digit number associated with the 800 number and requests delivery of the designated 10-digit number in place of the 800 number, SWBT will deliver the designated 10-digit number.
2. The Call Validation feature limits calls to an 800 number to calls originating only from an 800 Subscriber's customized service area. Calls originating outside the area will be screened and an out of band recording will be returned to the calling party.
3. The Call Handling and Destination feature allows routing of 800 calls based on one or any combination of the following: time of day, day of week, percent allocation and specific 10 digit ANI.

II. TERMS AND CONDITIONS

- A. Access to the Toll Free Calling Database provided under these terms and conditions is only available for use in the provision of telephone exchange and exchange access telecommunications services as specified in the Telecommunications Act of 1996 and any effective rules and regulations of the FCC and the state Public Service Commission.
- B. Access to the Toll Free Calling Database is offered separate and apart from other unbundled network elements necessary for operation of the network routing function addressed in these terms and conditions, e.g., end office 800 SSP functionality and CCS/SS7 signaling. This Appendix is separate from the prices, terms, conditions and billing for such related elements, and in no way shall this Appendix be construed to circumvent the prices, terms, conditions or billing as specified for such related elements.
- C. ASI shall address its queries to SWBT's database to the alias point code of the STP pair identified by SWBT. ASI's queries shall use subsystem number 0 in the calling party address field and a translations type of 254 with a routing indicator set to route on global title. ASI acknowledges that such subsystem number and translation type values are necessary for SWBT to properly process queries to its 800 database.
- D. Each Party warrants to the other that it shall send queries and SS7 messages conforming to the ANSI approved standards for SS7 protocol and pursuant to the Specifications and Standards documents attached and incorporated herein in Exhibit I. Both Parties acknowledge that transmission in said protocol is necessary for each Party to provision Access to the Toll Free Calling Database (or the equivalent thereof). Each Party reserves the right to modify its network

pursuant to other specifications and standards, which may include Telcordia Specifications defining specific service applications, message types and formats, that may become necessary to meet the prevailing demands within the U.S. telecommunications industry. All such changes shall be announced in accordance with the then prevailing industry standard procedures. Each party shall work cooperatively to coordinate any necessary changes.

- E. ASI acknowledges and agrees that CCS/SS7 network overload due to extraordinary volumes of queries and/or other SS7 network messages can and will have a detrimental effect on the performance of SWBT's CCS/SS7 network and its 800 database. ASI further agrees that SWBT, at its sole discretion, may employ certain automatic and/or manual overload controls within SWBT's CCS/SS7 network to guard against these detrimental effects. SWBT shall report to ASI any instances where overload controls are invoked due to ASI's CCS/SS7 network. ASI shall take immediate, corrective actions as are necessary to cure the conditions causing the overload situation.
- F. During periods of 800 database system congestion, SWBT shall utilize an automatic code gapping procedure to control congestion that may affect the service of all customers of SWBT's 800 database. The automatic code gapping procedure used by SWBT shall tell ASI's switch the gap (how long ASI's switch should wait before sending another query) and the duration (how long the switch should continue to perform gapping). For example, during an overload condition, the automatic code gapping procedure shall tell SWBT's 800 database when to begin to drop one out of three queries received. This code gapping procedure shall be applied uniformly to all users of SWBT's 800 database. SWBT reserves the right to manually invoke the automatic code gapping procedure to control congestion.
- G. Prior to SWBT initiating service under this Appendix, ASI shall provide an initial forecast of busy hour query volumes. ASI shall update its busy hour forecast for each upcoming calendar year (January - December) by October 1 of the preceding year. ASI shall provide such updates each year for the first three (3) years of this Appendix. If, prior to the establishment of a mutually agreeable service effective date, in writing, SWB, at its discretion, determines that it lacks adequate processing capability to provide Access to the Toll Free Calling Database to ASI, SWBT shall notify ASI of SWBT's intent not to provide the services under this Appendix and this Appendix will be void and have no further effect.
- H. ASI shall from time to time at SWBT's request, provide additional forecasted information as deemed necessary by SWBT for network planning in connection with this offering.

- I. SWBT shall test the Access to the Toll Free Calling Database in conjunction with CCS/SS7 Interconnection Service (e.g., Appendix SS7) as outlined in Telcordia Technical References TR-NWT-000533, TR-NWT-000954, TR-TSV-000905, and TP 76638.
- J. ASI shall only use Access to the Toll Free Calling Database to determine the routing requirements for originating 800 calls. Neither ASI nor carrier customers of ASI if ASI is acting on behalf of other carriers, shall use the database information to copy, store, maintain or create any table or database of any kind or for any purpose. If ASI acts on behalf of other carriers to access SWBT's Toll Free Calling Database, ASI shall prohibit such carriers from copying, storing, maintaining, or creating any table or database of any kind from any response provided by SWBT after a query to SWBT's Toll Free Calling Database. ASI shall only use this network element in connection with the provision of telephone exchange and exchange access services.
- K. ASI shall ensure that it has sufficient link capacity and related facilities to handle its signaling and toll free traffic without adversely affecting other network subscribers.
- L. SWBT shall provide Access to the Toll Free Calling Database as set forth in this Appendix only as such elements are used for ASI's activities on behalf of its Missouri local service customers where SWBT is the incumbent local exchange carrier. ASI agrees that any other use of SWBT's Toll Free Calling Database for the provision of 800 database service by ASI will be pursuant to the terms, conditions, rates, and charges of SWBT's effective tariffs, as revised, for 800 database services.
- M. Ordering and billing inquiries for the elements described herein shall be directed to the Competitive Local Exchange Carrier Service Center (CLECSC). Ordering shall be done through the CLECSC using the standard CLEC order form and SWBT CCS7-2 Form, if applicable.

III. RATE REGULATIONS

- A. ASI shall pay a Local Service Order Request Charge for each ASI request for service order activity to establish Access to the Toll Free Calling Database.
- B. ASI shall pay the rates for Access to the Toll Free Calling Database, as described in the Appendix Pricing. These rates and charges will apply for one (1) year from the service effective date for each exchange. After one (1) year, SWBT may change the rates upon sixty (60) days notice. SWBT may first give such notice sixty (60) days before the end of the first year.

- C. ASI shall pay a nonrecurring charge when ASI establishes or changes a signaling point code. The rates and charges for Signaling Point Code(s) are described in the Appendix SS7. This charge also applies to point code information provided by ASI allowing other telecommunications providers to use ASI's SS7 signaling network.
- D. There are four rate elements associated with Access to the Toll Free Calling Database:
1. Toll Free Database Query Rate Element
 2. Designated 10-Digit Translation Rate Element
 3. Call Validation Rate Element
 4. Call Handling and Destination Rate Element
- E. ASI shall pay the Toll Free Database query rate for each query received and processed by SWB's database. When applicable, the charge for the additional features (Designated 10-Digit Translation, Call Validation and Call Handling and Destination) are per query and in addition to the Toll Free Database query charge, and will also be paid by ASI.

IV. MONTHLY BILLING

SWBT shall render monthly billing statements to ASI, and remittance in full will be due within thirty (30) days of receipt.

V. 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.

**APPENDIX 800
EXHIBIT I**

SPECIFICATIONS AND STANDARDS

Description of Subject Area
and Issuing Organization

Document Number

Telcordia , SS7 Specifications

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APPENDIX 911 - MOKA

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TERMS AND CONDITIONS FOR PROVIDING CONNECTION TO E911 UNIVERSAL EMERGENCY NUMBER SERVICE (ARKANSAS, KANSAS, MISSOURI, AND OKLAHOMA)

This Appendix between SWBT and ASI sets forth the terms and conditions upon which SWBT will provide ASI's connection to E911 Universal Emergency Number Service.

1. DEFINITIONS

1.1. The following definition is in addition to those in the Arkansas, Kansas, and Oklahoma Commission ordered General Exchange Tariffs referenced below:

1.1.1. Independent Exchange Company (IEC): A local exchange telephone company, including Competitive Local Exchange Carriers (CLECs) who are certified by the state commission, other than Southwestern Bell Telephone Company. An IEC may also be a customer for Universal Emergency Number Service in order to provide that service or elements of that service to legally authorized agencies within the IEC's serving area.

1.2. The definition of IEC in the Missouri Commission ordered General Exchange Tariff referenced below is modified as follows (modifications are shown in bold and italicized):

1.2.1 Independent Exchange Company (IEC): A local exchange telephone company, including CLECs who are certified by the state commission, other than Southwestern Bell Telephone Company.

2. TERMS AND CONDITIONS

2.1. The following is in addition to those terms and conditions in the Arkansas, Kansas and Oklahoma Commission ordered General Exchange Tariffs referenced below:

2.1.1. The Universal Emergency Number Service may be provided by Southwestern Bell Telephone Company or jointly by Southwestern Bell Telephone Company and an IEC.

2.2. The following are in addition to those terms and conditions in the Arkansas, Kansas, Missouri, and Oklahoma Commission ordered General Exchange Tariffs referenced below:

2.2.1. SWBT shall provide ASI with a file containing the Master Street Address Guide (MSAG) for the exchanges or communities specified in Exhibit I, in accordance with the methods and procedures described in the document "Universal Emergency Number Service - Competitive Local Exchange Carriers". SWBT shall provide ASI additional files with the entire

MSAG, including subsequent additions or updates to the MSAG in accordance with the intervals specified in Exhibit I. In addition, SWBT shall provide ASI with a statistical report in a timely fashion and in accordance with the methods and procedures described in the above mentioned document, for each file downloaded by ASI to SWBT's DBMS, so that ASI may ensure the accuracy of the end user records. ASI will attest it has been provided a copy of the document referenced above.

- 2.2.2. At a reasonable time prior to the establishment of E911 Service, ASI shall download and maintain thereafter all information required to establish records necessary for furnishing connection to E911 Service and shall promptly notify SWBT in writing of any changes to be made to such records. ASI shall adopt and comply with operating methods applicable to downloading and maintaining ASI's end user records in SWBT's DBMS, as set forth in the document referenced in the paragraph above.
- 2.2.3. ASI and SWBT agree that Exhibit I shall be completed by the Parties thirty (30) days prior to the passing of live traffic.
- 2.2.4. ASI acknowledges that its end users in a single local calling scope may be served by different PSAPs, and ASI shall be responsible for providing facilities to route calls from its end users to the proper E911 Control Office(s).
- 2.2.5. ASI shall connect its switches to the E911 Control Office by one-way outgoing CAMA trunks dedicated for originating 911 emergency service calls.
- 2.2.6. The Parties agree that the E911 service is provided for the use of the E911 Customer, and recognizes the authority of the E911 Customer to establish service specifications and grant final approval (or denial) of service configurations offered by SWBT and ASI. The terms and conditions of this Appendix represent a plan for providing E911 service, for which ASI must obtain documentation of approval from the appropriate E911 Customer(s) which have jurisdiction in the area(s) in which ASI's customers are located. ASI shall provide such documentation to SWBT prior to the use of ASI's E911 connection for actual emergency calls.
- 2.2.7. Both Parties agree to designate a representative who shall have the authority to execute additional exhibits to this Appendix when necessary to accommodate expansion of the geographic area of ASI into the jurisdiction of additional PSAPs or to increase the number of CAMA trunks. The designated representative for SWBT is _____ and for ASI is _____.

- 2.2.8. The terms and conditions of this Appendix are subject to renegotiation in the event that the E911 Customer orders changes to the E911 service that necessitate revision of this Appendix.

3. RATES, TERMS AND CONDITIONS

3.1. Arkansas:

E911 Universal Emergency Number Service will be provided utilizing the rates, terms and conditions set forth in the following Commissioned ordered state tariff, in addition to those terms and conditions described previously in this Appendix:

SWBT's General Exchange Tariff Section 44 - Universal Emergency Number Service (911)

3.2. Kansas:

E911 Universal Emergency Number Service will be provided utilizing the rates, terms and conditions set forth in the following Commissioned ordered state tariff, in addition to those terms and conditions described previously in this Appendix:

SWBT's General Exchange Tariff Section 19 - Universal Emergency Number Service (911)

3.3 Missouri:

E911 Universal Emergency Number Service will be provided utilizing the rates, terms and conditions set forth in the following Commissioned ordered state tariff, in addition to those terms and conditions described previously in this Appendix:

SWBT's General Exchange Tariff (Mo. P.S.C. No. 35) Section 28 - Universal Emergency Number Service (9-1-1)

3.4 Oklahoma:

E911 Universal Emergency Number Service will be provided utilizing the rates specified in Appendix Pricing , which is attached hereto and made part of this Appendix, as well as the terms and conditions set forth in the following Commissioned ordered state tariff, in addition to those terms and conditions described previously in this Appendix:

SWBT's General Exchange Tariff Section 36 - 911 Emergency Number Service

4. **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.

EXHIBIT I to APPENDIX 9-1-1

CLEC SERVING AREA DESCRIPTION AND E9-1-1 INTERCONNECTION DETAILS				
CLEC NAME & CONTACTS	CLEC OCN	CLEC Switch Name & Addr	Switch Type	CLEC NPA/NXX(s) include
E9-1-1 Manager	CLEC Telco ID		CLI Code	# 9-1-1 Trunks Requested
			Connect Signal Digits ⁽⁴⁾	Default PSAP
Database Administrator		Estimated # of EAAs	ETST Code	
	CLEC Service Area Definition			
Switch Site Contact				
SWBT E9-1-1 SYSTEM CONFIGURATION ASSOCIATED WITH DESIGNATED E9-1-1 CONTROL OFFICE				
E9-1-1 CONTROL OFFICE		PSAPs INCLUDED IN 9-1-1 SERVICE PLAN	COMMUNITY for MSAG PULL ⁽³⁾	E9-1-1 CUSTOMER and AGENCY TYPE (see legend below)
CLI Code				
E9-1-1 Features Required				
# of 9-1-1 Trunks from CLEC				
MSAG Update Interval	Monthly			
FOOTNOTES: (1)				
(2)				
(3) MSAG will only include addresses within SWBT exchanges, unless specifically stated otherwise.				
(4) Refer to network interface specifications in Exhibit III.				
TYPE of AGENCY LEGEND:				
HRC = Home Rule City				
ECD = Emergency Communications District				
COG = Council of Governments or Regional Planning Commission				
GLC = General Law City				
Cnty = County with special provisions (only applies to Dallas County)				
				Date Prepared

EXHIBIT II

DOCUMENTATION OF E911
CUSTOMER'S APPROVAL