

due under this Article, then in addition to any other remedies that SWBT might have, the Collocator shall be liable in the amount equal to the non-recoverable costs less estimated net salvage. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs.

**6.8 Late Payment Charge.** In the event that any charge is not paid when due, the unpaid amounts shall bear interest in accordance with the terms and conditions set forth in SWBT's intrastate tariff late payment provision(s) applicable to access services for the State in which the dedicated collocation space is located, or the highest rate permitted by law, whichever is lower, from the due date until paid.

**6.9 Charges will begin to accrue on the Effective Billing Date.** The Effective Billing Date is the date SWBT made the Dedicated Collocation Space available to Collocator.

**6.10 Billing.** Billing shall occur on or about the 25th day of each month, with payment due thirty (30) days from the bill date. SWBT may change its billing date practices upon thirty (30) days notice to the Collocator.

**6.11** Charges for interconnection shall be as set forth in any interconnection agreement between SWBT and Collocator and any applicable tariffs.

## **7.0 USE OF DEDICATED COLLOCATION SPACE**

**7.1 Nature of Use** – The dedicated collocation space is to be used by Collocator for purposes of collocating equipment and facilities within SWBT's Eligible Structure for interconnection with SWBT's network, pursuant to 47 U.S.C. 251(c)(2), and for obtaining access to SWBT's unbundled network elements, pursuant to 47 U.S.C. 251 (c)(3). Consistent with the nature of the Eligible Structure and the environment of the dedicated collocation space, Collocator shall not use the dedicated collocation space for office, retail, or sales purposes. No signage or markings of any kind by Collocator shall be permitted on the eligible structure or on the grounds surrounding the Building.

**7.2** Collocator shall not have access to SWBT's Main Distribution Frame or Intermediate Distribution Frame, DSXs, DCS, or any other SWBT equipment or facilities not specifically designated by SWBT for Collocator access.

**7.3 Fiber Entrances** – Collocator shall use a single mode dielectric fiber optic cable as a transmission medium to the dedicated collocation space. Collocator shall be permitted no more than two (2) entrance routes into the Building, if available.

**7.4 Demarcation Point** – SWBT shall designate the point(s) of termination within the eligible structure as the point(s) of physical demarcation between Collocator's network and

SWBT's network, with each being responsible for maintenance and other ownership obligations and responsibilities on its side of that demarcation point.

**7.5 Administrative Uses** – Collocator may use the dedicated collocation space for placement of equipment and facilities only. Collocator's employees, agents and contractors shall be permitted access to the dedicated collocation space at all reasonable times, provided that Collocator's employees, agents and contractors comply with SWBT's policies and practices pertaining to fire, safety and security. The Collocator agrees to comply promptly with all laws, ordinances and regulations affecting the use of the dedicated collocation space. Upon the expiration of the Agreement, Collocator shall surrender the dedicated collocation space to SWBT, in the same condition as when first occupied by Collocator, ordinary wear and tear excepted.

**7.6 Threat to Network or Facilities** – Regarding safety and network security, Collocator equipment or operating practices representing a significant demonstrable technical threat to SWBT's personnel, network or facilities, including the Eligible Structure, or those of others are strictly prohibited.

**7.7 Interference or Impairment** – Notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in the dedicated collocation space shall not interfere with or impair service over any facilities of SWBT or the facilities of any other person or entity located in the Building; create hazards for or cause damage to those facilities, the dedicated collocation space, or the Building; impair the privacy of any communications carried in, from, or through the Building; or create hazards or cause physical harm to any individual or the public. Any of the foregoing events would be a material breach of this Agreement.

**7.8 Personalty and its Removal** – Subject to this Article, Collocator may place or install in or on the dedicated collocation space such fixtures and equipment as it shall deem necessary for the conduct of business. Personal property, fixtures and equipment placed by Collocator in the dedicated collocation space shall not become a part of the dedicated collocation space, even if nailed, screwed or otherwise fastened to the dedicated collocation space, but shall retain their status as personalty and may be removed by Collocator at any time. Any damage caused to the dedicated collocation space by the removal of such property shall be promptly repaired by Collocator at its expense.

**7.9 Alterations** – In no case shall Collocator or any person purporting to be acting through or on behalf of Collocator make any rearrangement, modification, improvement, addition, repair, or other alteration to the dedicated collocation space or the Eligible Structure without the advance written permission and direction of SWBT. SWBT shall consider a modification, improvement, addition, repair, or other alteration requested by Collocator, provided that SWBT shall have the right to reject or modify any such request. The cost of any such construction shall be paid by Collocator in accordance with SWBT's then-standard custom work order process.

**7.10 Minimum Standards** – This Agreement and the physical collocation provided hereunder is made available subject to and in accordance with the SBC Technical Publication 76200MP Level 1 requirements (ii) SWBT's Interconnector's Collocation Service Handbook for Physical Collocation dated June 1, 1999, as may be amended from time to time; (iii) SBC Technical Publication 76300MP, Installation Guide, followed in installing network equipment and facilities within SWBT central offices, as may be amended from time to time; (iv) SWBT's Emergency Operating Procedures, as may be amended from time to time; and (v) any statutory and/or regulatory requirements in effect at the execution of this Agreement or that subsequently become effective and then when effective. Collocator shall strictly observe and abide by each.

**7.11 Revisions** – Any revision to SWBT's Interconnector's Collocation Service Handbook, its Technical Publication 76300MP, any other Technical Publication specified within the Interconnector's Collocation Services Handbook, or its Emergency Operating Procedures shall become effective and thereafter applicable under this Agreement thirty (30) days after such revision is released by SWBT; provided, however, that any revision made to address situations potentially harmful to SWBT's network or the dedicated collocation space or to comply with statutory and/or regulatory requirements shall become effective immediately.

**7.12 Compliance Certification** – Collocator warrants and represents that all equipment or facilities placed in an Eligible Structure shall be in compliance with SBC TP76200MP Level 1 requirements.

**7.13 Power** – Unless otherwise expressly agreed in writing, SWBT will provide for all AC and DC power requirements in the eligible structure. Collocator is not permitted to, and will not, place any AC or DC power-generating or power-storing devices (including, for example, rectifiers, battery plants, AC or DC generators) in the Eligible Structure. Power will support Collocator Telecom Equipment at the specified DC and AC voltages. At a minimum, the Power and SWBT's associated performance, availability, restoration, and other operational characteristics shall be at parity with that provided to SWBT's substantially similar telecommunications equipment unless otherwise mutually agreed in writing. All necessary Power will be supplied on a timely basis. A physical collocation space will be considered timely delivered only if it is fully operational, including power, at the time it is turned over to Collocator. The use of at least one Collocation Interconnect Power Panel (CIPP) will be required with each application. This panel will provide a location for DC power terminations in all physical collocation arrangements. This panel will reside within one of Collocator's equipment bays within their designated space.

## **8.0 RESPONSIBILITIES OF COLLOCATOR**

**8.1 Contact Number** – Collocator is responsible for providing to SWBT personnel a contact number for Collocator's technical personnel who are readily accessible 24 hours a day, 7 days a week.

**8.2 Trouble Status Reports** – Collocator is responsible for providing trouble report status when requested by SWBT.

**8.3 Optical Fiber Extension** – Collocator is responsible for bringing its fiber optic cable to the wire center entrance manhole(s) designated by SWBT, and for leaving sufficient cable length in order for SWBT to fully extend the Collocator-provided cable through the cable vault to the dedicated collocation space.

**8.4 Regeneration** – Regeneration of either DS1 or DS3 signal levels may be provided by Collocator, or SWBT under its then-standard custom work order process, including payment requirements prior to the installation of the regeneration equipment.

**8.5 Removal** – Collocator is responsible for removing any equipment, property or other items that it brings into the dedicated collocation space or any other part of the Building. If Collocator fails to remove any equipment, property, or other items from the dedicated collocation space within thirty (30) days after discontinuance of use, SWBT may perform the removal and shall charge Collocator for any materials used in any such removal, and the time spent on such removal at the then-applicable hourly rate for custom work. Further, in addition to the other provisions herein, Collocator shall indemnify and hold SWBT harmless from any and all claims, expenses, fees, or other costs associated with any such removal by SWBT.

**8.6 Collocator's Equipment and Facilities** – Collocator is solely responsible for the design, engineering, testing, performance, and maintenance of the equipment and facilities placed by Collocator in the dedicated collocation space. Collocator will be responsible for servicing, supplying, repairing, installing and maintaining the following facilities within the dedicated collocation space:

- (a) Its fiber optic cable(s);
- (b) Its equipment;
- (c) Optional point of termination cross connects in its dedicated collocation space or the optional POT Frame/cabinet located in the collocation common area except if on SWBT's equipment.
- (d) Collocator requested dedicated point of termination frame maintenance, including replacement of fuses and circuit breaker restoration, to the extent that such fuses and circuit breakers are within Collocator's dedicated collocation space or in the optional POT frame located in the collocation common area if and as required; and
- (e) The connection cable and associated equipment which may be required within Collocator's dedicated collocation space or in the optional POT frame/cabinet

located in the collocation common area to the point(s) of termination of that cable within Collocator's dedicated space.

- (f) Any power cables required beyond the SWBT provided Collocation Interconnection Power Panel (CIPP) to Collocator's equipment. SWBT must always engineer, furnish and install the Collocation Interconnect Power Panel (CIPP) within Collocator-provided equipment bay, the associated power cables to the CIPP from the SWBT provided power distribution source and terminate and test the power cables. The CIPP will be placed within Collocator-provided equipment bay in a location within the bay as designated by Collocator.

**SWBT NEITHER ACCEPTS NOR ASSUMES ANY RESPONSIBILITY WHATSOEVER IN ANY OF THESE AREAS.**

**8.7 Verbal Notifications Required** – Collocator is responsible for immediate verbal notification to SWBT of significant outages or operations problems which could impact or degrade SWBT's network, switches, or services, and for providing an estimated clearing time for restoral. In addition, written notification must be provided within twenty-four (24) hours.

**8.8 Service Coordination** – Collocator is responsible for coordinating with SWBT to ensure that services are installed in accordance with the service request.

**8.9 Testing** – Collocator is responsible for testing, to identify and clear a trouble when the trouble has been isolated to a Collocator-provided facility or piece of equipment. If SWBT testing is also required, it will be provided at charges specified in SWBT's F.C.C. No. 73, Section 13.

**9.0 VIRTUAL COLLOCATION**

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

**10.0 CASUALTY LOSS**

**10.1 Damage to dedicated collocation space** - If the dedicated collocation space are damaged by fire or other casualty, and

- (i) The dedicated collocation space are not rendered untenable in whole or in part, SWBT shall repair the same at its expense (as hereafter limited) and the rent shall not be abated, or
- (ii) The dedicated collocation space are rendered untenable in whole or in part and such damage or destruction can be repaired within ninety (90) days, SWBT has the option to repair the dedicated collocation space at its expense (as hereafter limited) and rent shall be proportionately abated while Collocator was deprived of

the use. If the dedicated collocation space cannot be repaired within ninety (90) days, or SWBT opts not to rebuild, then this Agreement shall (upon notice to Collocator within thirty (30) days following such occurrence) terminate as of the date of such damage.

Any obligation on the part of SWBT to repair the dedicated collocation space shall be limited to repairing, restoring and rebuilding the dedicated collocation space as originally prepared for Collocator and shall not include any obligation to repair, restore, rebuild or replace any alterations or improvements made by Collocator or by SWBT on request of Collocator; or any fixture or other equipment installed in the dedicated collocation space by Collocator or by SWBT on request of Collocator.

**10.2 Damage to Building** – In the event that the eligible structure shall be so damaged by fire or other casualty that closing, demolition or substantial alteration or reconstruction thereof shall, in SWBT's opinion, be advisable, then, notwithstanding that the dedicated collocation space may be unaffected thereby, SWBT, at its option, may terminate this Agreement by giving Collocator ten (10) days prior written notice within thirty (30) days following the date of such occurrence, if at all possible.

## **11.0 RE-ENTRY**

If Collocator shall default in performance of any agreement herein, and the default shall continue for thirty (30) days after receipt of written notice, or if Collocator is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, SWBT may, immediately or at any time thereafter, without notice or demand, enter and repossess the dedicated collocation space, expel Collocator and any claiming under Collocator, remove Collocator's property, forcibly if necessary, and thereupon this Agreement shall terminate, without prejudice to any other remedies SWBT might have. SWBT may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service by Collocator at any time thereafter.

## **12.0 LIMITATION OF LIABILITY**

**12.1 Limitation** – With respect to any claim or suit for damages arising in connection with the mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing service hereunder, the liability of SWBT, if any, shall not exceed an amount equivalent to the proportionate monthly charge to Collocator for the period during which such mistake, omission, interruption, delay, error, or defect in transmission or service occurs and continues. However, any such mistakes, omissions, interruptions, delays, errors, or defects in transmission or service which are caused or contributed to by the negligence or willful act of Collocator or which arise in connection with the use of Collocator-provided facilities or equipment shall not result in the imposition of any liability whatsoever upon SWBT.

**12.1.1** Neither party shall be responsible to the other for any indirect, special, consequential, lost profit, or punitive damages, whether in contract or tort.

12.1.2 Each party shall be indemnified and held harmless by the other against claims and damages by any third party arising from provision of the other party's services or equipment except those claims and damages directly associated with the provision of services to the other party which are governed by the provisioning party's applicable tariffs.

12.1.3 Neither party shall have any liability whatsoever to the customers of the other party for claims arising from the provision of the other party's service to its customers, including claims for interruption of service, quality of service or billing disputes.

12.1.4 The liability of either party for its willful misconduct, if any, is not limited by this Agreement. With respect to any other claim or suit, by a customer or by any others, for damages associated with the installation, provision, preemption, termination, maintenance, repair or restoration of service, SWBT's liability, if any, shall not exceed an amount equal to the proportionate monthly charge for the affected period.

12.1.5 SWBT shall not be liable for any act or omission of any other carrier or customer providing a portion of a service, nor shall SWBT for its own act or omission hold liable any other carrier or customer providing a portion of a service.

12.1.6 When Collocator is provided service under this Agreement, SWBT shall be indemnified, defended and held harmless by Collocator against any claim, loss or damage arising from the customer's use of services offered under this Agreement, involving:

- (a) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from the customer's own communications;
- (b) Claims for patent infringement arising from the customer's acts combining or using the service furnished by SWBT in connection with facilities or equipment furnished by the customer; or
- (c) All other claims arising in connection with any act or omission of in the course of using services provided pursuant to this Agreement.

**12.2 Third Parties** – Collocator acknowledges and understands that SWBT may provide space in or access to the eligible structure to other persons or entities ("Others"), which may include competitors of Collocator; that such space may be close to the dedicated collocation space, possibly including space adjacent to the dedicated collocation space and/or with access to the outside of the dedicated collocation space; and that if Collocator requests a cage around its equipment, the cage dedicated collocation space is a permeable boundary that will not prevent the Others from observing or even damaging Collocator's equipment and facilities. In addition to any other applicable limitation, SWBT shall have absolutely no liability with respect to any action or omission by any other, regardless of the degree of culpability of any such other or SWBT, and regardless of whether any claimed SWBT liability arises in tort or in contract.

Collocator shall save and hold SWBT harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other acting for, through, or as a result of Collocator.

### **13.0 INDEMNIFICATION OF SWBT**

In addition to any other provision hereof, Collocator agrees to indemnify, defend and save harmless SWBT (including its officers, directors, employees, and other agents) from any and all claims, liabilities, losses, damages, fines, penalties, costs, attorney's fees or other expenses of any kind, arising in connection with Collocator's use of the dedicated collocation space, conduct of its business or any activity, in or about the dedicated collocation space, performance of any terms of this Agreement, or any act or omission of Collocator (including its officers, directors, employees, agents, contractors, servants, invitees, or licensees). Defense of any claim shall be reasonably satisfactory to SWBT.

### **14.0 LIMITATION OF ACTIONS; DISPUTE RESOLUTION**

**14.1 Finality of Disputes** – No claim arising from this Agreement shall be brought more than twenty-four (24) months from the date of occurrence which gives rise to the claim.

**14.2 Alternative to Litigation** – The parties desire to resolve disputes arising in connection with this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising from or relating to this Agreement.

**14.3 Resolution of Disputes Between Parties** – At the written request of a party, each party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may use other alternative dispute resolution procedures, such as mediation, to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement, exempt from discovery and production, shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

**14.4 Arbitration** – If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set forth in those rules. Discovery shall be controlled by the arbitrator and shall be permitted only to the extent set forth

in this Section. Each party may submit in writing to the other party, and the receiving party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following:

- (a) Interrogatories
- (b) Demands to produce documents
- (c) Requests for admission

Additional discovery may be permitted upon mutual agreement of the parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in St. Louis, Missouri. The arbitrator shall control the scheduling so as to process the matter expeditiously. The parties shall submit written briefs five days before the hearing. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

**14.5 Costs** – Each party shall bear its own costs of these procedures. A party seeking discovery shall reimburse the responding party the costs of production of documents (including search time and reproduction costs). The parties shall equally split the fees of the arbitration and the arbitrator.

## **15.0 NOTICES**

Except as may be specifically permitted in this Agreement, any notice, demand, or payment required or desired to be given by one party to the other shall be in writing and shall be valid and sufficient if dispatched by registered or certified mail, return receipt requested, postage prepaid, in the United States mails, or by facsimile transmission; provided, however, that notices sent by such registered or certified mail shall be effective on the third business day after mailing and those sent by facsimile transmission shall only be effective on the date transmitted if such notice is also sent by such registered or certified mail no later than the next business day after transmission, all addressed as follows:

If to SWBT: Account Manager - Collocation  
Four Bell Plaza, 9<sup>th</sup> Floor  
311 S. Akard St.  
Dallas, TX 75202-5398

If to Collocator: Director-Regulatory Affairs/Business Development  
1999 Broadway, Suite 800  
Denver, CO 80202

Either party hereto may change its address by written notice given to the other party hereto in the manner set forth above.

## **16.0 COMPLIANCE WITH LAWS**

Collocator and all persons acting through or on behalf of Collocator shall comply with the provisions of the Fair Labor Standards Act, the Occupational Safety and Health Act, and all other applicable federal, state, county, and local laws, ordinances, regulations and codes (including identification and procurement of required permits, certificates, approvals and inspections) in its performance hereunder. Collocator further agrees during the term of this Agreement to comply with all applicable Executive and Federal regulations as set forth in SW9368, attached as Exhibit \_\_\_\_ and incorporated herein, as may be modified from time to time.

## **17.0 OSHA STATEMENT**

Collocator, in recognition of SWBT's status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of SWBT with all federal, state and local laws, safety and health regulations relating to the dedicated collocation space which Collocator has assumed the duty to maintain pursuant to this Agreement, and to indemnify and hold SWBT harmless for any judgments, citations, fines, or other penalties which are assessed against SWBT as the result of Collocator's failure to comply with any of the foregoing. SWBT, in its status as an employer, shall comply with all federal, state and local laws, safety and health standards and regulations with respect to the structural and those other portions of the dedicated collocation space which SWBT has agreed to maintain pursuant hereto.

## **18.0 INSURANCE**

18.1 Coverage Requirements - Collocator shall, at its sole cost and expense procure, maintain, pay for and keep in force the following insurance coverage and any additional insurance and/or bonds required by law and underwritten by insurance companies having a BEST Insurance rating of A+VII or better, and which is authorized to do business in the jurisdiction in which the dedicated collocation space are located. SWBT shall be named as an ADDITIONAL INSURED on general liability policy.

- (1) Comprehensive General Liability insurance including Products/Completed Operations Liability insurance including the Broad Form Comprehensive General Liability endorsement (or its equivalent(s)) with a Combined Single limit for Bodily Injury and Property Damage of \$1,000,000. Said coverage shall include the contractual, independent contractors products/completed operations, broad form property, personal injury and fire legal liability.
- (2) If use of an automobile is required or if Collocator is provided or otherwise allowed parking space by SWBT in connection with this Agreement, automobile liability insurance with minimum limits of \$1 million each accident for Bodily Injury, Death and Property Damage combine. Coverage shall extend to all owned,

hired and non-owned automobiles. Collocator hereby waives any rights of recovery against SWBT for damage to Collocator's vehicles while on the grounds of the eligible structure and Collocator will hold SWBT harmless and indemnify it with respect to any such damage or damage to vehicles of Collocator's employees, contractors, invitees, licensees or agents.

- (3) Workers' Compensation insurance with benefits afforded in accordance with the laws of the state in which the space is to be provided.
- (4) Employer's Liability insurance with minimum limits of \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease per employee and \$500,000 for bodily injury by disease policy aggregate.
- (5) Umbrella/Excess liability coverage in an amount of \$5 million excess of coverage specified above.
- (6) All Risk Property coverage on a full replacement cost basis insuring all of Collocator's personal property situated on or within the eligible structure or the dedicated collocation space. Collocator releases SWBT from and waives any and all right of recovery, claim, action or cause of action against SWBT, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to Collocator or located on or in the space at the instance of Collocator by reason of fire or water or the elements or any other risks would customarily be included in a standard all risk casualty insurance policy covering such property, regardless of cause or origin, including negligence of SWBT, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on Collocator's fixtures and other personal property shall contain a waiver of subrogation against SWBT, and any rights of Collocator against SWBT for damage to Collocator's fixtures or personal property are hereby waived.

Collocator may also elect to purchase business interruption and contingent business interruption insurance, knowing that SWBT has no liability for loss of profit or revenues should an interruption of service occur.

**18.2 Coverage Increases** – The limits set forth in Section 18.1 may be increased by SWBT from time to time during the term of occupancy to at least such minimum limits as shall then be customary in respect of comparable situations within the existing SWBT buildings.

**18.3 Primary Coverage** – All policies purchased by Collocator shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by SWBT.

**18.4 Effective Date** – All insurance must be in effect on or before occupancy date and shall remain in force as long as any of Collocator's facilities or equipment remain within the dedicated

collocation space or the Building. If Collocator fails to maintain the coverage, SWBT may pay the premiums thereon and, if so, shall be reimbursed by Collocator.

**18.5 Supporting Documentation** – Collocator shall submit certificates of insurance and copies of policies reflecting the coverages specified above prior to the commencement of the work called for in this Agreement. Collocator shall arrange for SWBT to receive thirty (30) days advance written notice from Collocator's insurance company (ies) of cancellation, non-renewal or substantial alteration of its terms.

**18.6 Carrier Recommendations** – Collocator must also conform to the recommendation(s) made by SWBT's Property Insurance Company which Collocator has already agreed to or to such recommendations as it shall hereafter agree to.

**18.7 Material Breach** – Failure to comply with the provisions of this section will be deemed a material violation of this Agreement.

## **19.0 SWBT'S RIGHT OF ACCESS**

SWBT, its agents, employees, and other SWBT-authorized persons shall have the right to enter the collocation area of the SWBT dedicated collocation space at any reasonable time to examine its condition, make repairs required to be made by SWBT hereunder, and for any other purpose deemed reasonable by SWBT. SWBT may access the collocation area dedicated collocation space for purpose of averting any threat of harm imposed by Collocator or its equipment or facilities upon the operation of SWBT equipment, facilities and/or personnel located outside of the dedicated collocation space. If routine inspections are required, they shall be conducted at a mutually agreeable time.

## **20.0 MISCELLANEOUS**

**20.1 Exhibits** – The following Exhibits are attached hereto and made part hereof:

Exhibit \_\_\_\_\_

Exhibit \_\_\_\_\_

Exhibit \_\_\_\_\_

Exhibit \_\_\_\_\_

**20.2 Variations** – In the event of variation or discrepancy between any duplicate originals hereof, including exhibits, the original Agreement held by SWBT shall control.

**20.3 Governing Law** – This Agreement shall be governed by the laws of the State in which the dedicated collocation space is located, without regard to the choice of law principles thereof.

**20.4 Joint and Several** – If Collocator constitutes more than one person, partnership, corporation, or other legal entities, the obligation of all such entities under this Agreement is joint and several.

**20.5 Future Negotiations** – SWBT may refuse requests for space in an Eligible structure if Collocator is in material breach of this Agreement, including having any past due charges hereunder. In any and each such event, Collocator hereby releases and holds SWBT harmless from any duty to negotiate with Collocator or any of its affiliates for any additional space or physical collocation.

**20.6 Severability** – With the exception of the requirements, obligations, and rights set forth in this Appendix, if any of the provisions herein are otherwise deemed invalid, such invalidity shall not invalidate the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid provision(s), and the rights and obligations of SWBT and Collocator shall be construed accordingly.

**20.7 Paragraph Headings and Article Numbers** – The headings of the articles and paragraphs herein are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.

**20.8 Entire Agreement** – This Agreement with the attached schedules and exhibits, and referenced documentation and materials attached hereto set forth the entire understanding of the parties and supersedes all prior agreements, arrangements and understandings relating to this subject matter and may not be changed except in writing by the parties; provided, however, that this provision shall not affect current or pending tariffs, under investigation or otherwise, including any charges due thereunder. No representation, promise, inducement or statement of intention has been made by either party which is not embodied herein, and there are no other oral or written understandings or agreements between the parties relating to the subject matter hereof except as may be referenced herein.

**20.9 No Third Party Beneficiaries** – Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

**20.10 Construction** – This Agreement shall be interpreted and governed without regard to which party drafted this Agreement.

**20.11 Multiple Originals** – This Agreement may be executed in multiple copies, each of which shall be deemed an original.

## **20.12 Waiver of Obligations**

20.12.1 Whenever this Agreement requires the consent of a party, any request for such consent shall be in writing.

20.12.2 Neither party shall be deemed to have waived or impaired any right, authority, or option reserved by this Agreement (including the right to demand exact compliance with every term, condition and covenant herein, or to declare any breach hereof to be a default and to terminate this Agreement prior to the expiration of its term), by virtue of any custom or practice of the parties at variance with the terms hereof or any failure, refusal or neglect to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder, including any rule or procedure, or any waiver, forbearance, delay, failure or omission by SWBT to exercise any right, power or option, whether of the same, similar or different nature, with respect to one or more other collocators.

**20.13 Rights of Review with Remedies** – The parties acknowledge and agree that the rates, terms, and conditions set forth in this Amendment, including among others those above relating to cageless collocation, are subject to any legal or equitable rights of review and remedies (including, but not limited to, the need to renegotiate this Amendment if any agency reconsideration and/or court review results in changes in FCC 99-48).

**20.14 Rights Cumulative** – The rights of a party hereunder are cumulative and no exercise or enforcement by such party of any right or remedy hereunder shall preclude the exercise or enforcement of any other right or remedy hereunder or to which such party is entitled to enforce.

**20.15 Binding Effect** – This Agreement is binding upon the parties hereto, their respective executors, administrators, heirs, assigns and successors in interest. All obligations by either party which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature.

**20.16 Impossibility of Performance** – Neither party shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from: (a) compliance with any law, ruling, order, regulation, requirement or instruction of any federal, state or municipal government or any department or agency thereof or court of competent jurisdiction; (b) acts of God; (c) acts of omissions of the other party; (d) fires, strikes, labor difficulties, embargoes, war, insurrection or riot; or any other intervening act beyond the reasonable control of the party claiming such a delay. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable. In any such event, Collocator's, authorized agents and contractors will comply with the Emergency Operating Procedures established by SWBT.

**20.17 Survival** – The terms, provisions, representations, and warranties contained in this Agreement that by their nature and/or context are intended to survive the performance thereof by

either or both parties hereunder shall so survive the completion of performances and termination of this Agreement, including the making of any and all payments due hereunder.

**20.18 Successors Bound** – Without limiting Article XI hereof, the conditions and agreements contained herein shall bind and inure to the benefit of SWBT, Collocator and their respective successors and, except as otherwise provided herein, assigns.

**20.19 Conflict of Interest** – Collocator represents that no employee or agent of SWBT has been or will be employed, retained, paid a fee, or otherwise has received or will receive any personal compensation or consideration from Collocator, or any of Collocator's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents.

**20.20 Non-Exclusive Remedies** – No remedy herein conferred upon is intended to be exclusive of any other remedy in equity, provided by law, or otherwise, but each shall be in addition to every other such remedy.

**20.21 Assignment** – Collocator shall not assign or otherwise transfer this Agreement, neither in whole nor in part, or permit the use of any part of the dedicated collocation space by any other person or entity, without the prior written consent of SWBT which shall not be unreasonable withheld. Any purported assignment or transfer made without such consent shall be voidable at the option of SWBT including subleased or shared caged physical collocation arrangements.

## **21.0 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.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed and delivered this Agreement as of the day and year first above written.

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT.**

SOUTHWESTERN BELL TELEPHONE COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Interconnector: Collocator

By: \_\_\_\_\_

Title: \_\_\_\_\_

## **APPENDIX DAL**

**APPENDIX DAL**

**MUTUAL LICENSE AND COMPENSATION AGREEMENT  
FOR LOCAL DIRECTORY ASSISTANCE LISTINGS**

This appendix contains the terms and conditions under which SWBT and CLEC agree to the mutual licensing of subscriber listing information, as follows:

**PREAMBLE**

1. SWBT and CLEC each own and maintain databases containing the subscriber listing information (name, address and published telephone number, or an indication of "non-published status") of their respective telephone subscribers.
2. SWBT uses the subscriber listing information in its databases to provide directory assistance (DA) service to individuals who call SWBT's DA to obtain such information.
3. Inasmuch as SWBT provides DA service under contract for other Local Exchange Carriers (LECs) and Competitive Local Exchange Carriers, (CLECs), SWBT's databases also contain subscriber listing information for other LEC and CLEC end users.
4. CLEC wishes to provide DA service to its end users located in the CLEC's service area, and therefore, wishes to load its databases with subscriber listing information pertaining to SWBT's subscribers residing in CLEC's service area.
5. In order to maintain the completeness of its DA databases and its DA service, SWBT wishes to receive from CLEC subscriber listing information pertaining to CLEC's end users residing in SWBT's service area.
6. Now therefore, in consideration of these premises, SWBT and CLEC agree to license to each other certain subscriber listing information contained in each party's database, under the following terms and conditions:

**I. SERVICE PROVIDED**

- A. SWBT and CLEC shall license to each other the subscriber listing information of their end users for the exchanges listed in Attachment A (SWBT exchanges) and (CLEC exchanges). With respect to SWBT listings, SWBT will be referred to as "Licensor" and CLEC will be referred to as "Licensee." With respect to CLEC listings, CLEC will be referred to as "Licensor" and SWBT will be referred to as "Licensee." In the case of end users who have non-published listings, Licensor shall provide to Licensee the end user's name and address and an indicator that

shows the nonpublished status of the listing. Licensors shall not provide the non-published end user's telephone number.

- B. Should a Licensee's end user calling DA request a nonpublished listing and indicate that an emergency situation exists, the Licensors shall attempt to contact the nonpublished subscriber and relay the calling party's name and number to this customer. This service will be provided at the rates established under Section VII., B. (Non-Published Emergency Message Service) of this Appendix. At least two attempts shall be made to deliver this information to the nonpublished customer.
- C. Licensors shall provide to Licensee published subscriber listing information contained in Licensors' database pertaining to subscribers of all LECs and CLECs that have granted Licensors written authorization to release such subscriber listing information to the Licensee.
- D. Licensors and Licensee shall exchange subscriber listing information in a mutually acceptable format. Licensee shall provide Licensors a minimum of sixty (60) days notice prior to the date when the initial exchange of listing information is to occur.

## **II. USE OF SUBSCRIBER LISTING INFORMATION**

- A. Licensee may use the subscriber listing information licensed and provided pursuant to this Appendix for the sole purpose of providing traditional voice DA services.
- B. Upon termination of the Agreement, Licensee shall cease using, for any purpose whatsoever, the subscriber listing information provided hereunder by Licensors, and shall promptly return such subscriber listing information to Licensors.

## **III. ASSIGNMENT**

The subscriber listing information shall remain the property of the Licensors. The Licensee shall not sublicense, assign, sell or transfer the subscriber listing information licensed hereunder, nor shall the Licensee authorize any other company or any person to use the subscriber listing information for any other purpose. Each Party shall take appropriate measures to guard against any unauthorized use of the listings provided to it hereunder (at least the same measures it takes to protect its own listings from unauthorized use), whether by the Party, its agents, employees or others.

#### **IV. BREACH OF CONTRACT**

In the event a Party is found to have materially breached this Appendix, such breach shall be remedied immediately and the non-breaching party shall have the right to terminate the breaching party's license, without terminating its own rights hereunder, upon fifteen (15) days notice, until the other Party's breach is remedied. Upon such termination of license rights, the breaching Party shall immediately cease use of the subscriber listing information.

#### **V. LIABILITY**

- A. Neither Party makes any express or implied warranties whatsoever regarding the correctness of the subscriber listing information provided to the other Party. Neither Party will be held liable for any errors or omissions in or arising out of the other party's use of such information; provided, however, that each Party warrants that the subscriber listing information it licenses to the other Party shall be identical to the data it uses to provide DA service.
- B. Licensee hereby releases the Licensor from any and all liability for damages due to errors or omissions in the subscriber listing information provided under this Appendix, or by reason of delay in providing the subscriber listing information, including, but not limited to, special, indirect, consequential, punitive or incidental damages.
- C. Licensee shall indemnify, protect, save harmless and defend the Licensor (or Licensor's officers, employees, agents, assigns and representatives) from and against any and all losses, liability, damages and expense arising out of any demand, claim, suit or judgment by a third party in any way related to Licensor supplying subscriber listing information, or any actual error or omission. Licensee shall so indemnify regardless of whether the demand, claim or suit by the third party is brought jointly against Licensee and Licensor, and/or against Licensor alone. However, if such demand, claim or suit specifically alleges that an error or omission appears in DA listing information, the Licensor may, at its option, assume and undertake its own defense, or assist in the defense of the Licensee, in which event the Licensee shall reimburse Licensor for reasonable attorney's fees and other expenses incurred by it in handling and defending such demand, claim and/or suit. Licensee shall not enter into any settlement of any such demand, claim or suit without the prior written consent of the Licensor.

#### **VI. TERM OF CONTRACT**

This Appendix shall continue in force until terminated by one hundred-twenty (120) days prior written notice by either Party to the other.

**VII. COMPENSATION**

- A. Licensee shall compensate the Licensor for the reciprocal licensing of subscriber listing information. Prices for the per listing initial load, and the per listing update are shown on the attached rate sheet entitled "DIRECTORY ASSISTANCE RATES". Each addition, deletion, or change to the subscriber listing information constitutes an "update listing."
- B. Licensee shall compensate the Licensor for Non-Published Emergency Message Service at a price per message shown on the attached rate sheet entitled "DIRECTORY ASSISTANCE RATES".

**VIII. 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 DAL - ATTACHMENT A**

[illegible]

## DIRECTORY ASSISTANCE RATES

MISSOURI	
<b>Directory Assistance</b>	
- DA - Per Call	\$0.401
- DACC - Per Call	\$0.240
- Non Pub Emergency Service	\$2.10
<b>Branding - Facility Based</b>	
- Initial Load	\$1,718.00
- Subsequent Load	\$1,718.00
- Per Call (Line # based*)	\$0.0425
<b>Branding - Resellers</b>	
- Initial Load	\$1,072.00
- Subsequent Load	\$1,072.00
- Per Call	\$0.0425
<b>External Rater - Facility Based</b>	
- Initial Load	\$1,939.29
- Subsequent Rater Load	\$716.47
- Subsequent Reference Load	\$716.47
<b>External Rater - Resellers</b>	
- Initial Load	\$1,538.54
- Subsequent Rater Load	\$623.37
- Subsequent Reference Load	\$623.37
<b>Directory Assistance Listings (DAL)</b>	
- Initial Load, per listing	\$0.0585
- Updates, per listing	\$0.0585
- Non-Pub Emergency Message Service	\$2.10

\*When unbundled switching is used or where more than one brand required on the same trunk group

Proprietary: Not for use or Disclosure Outside the SBC Communications Inc. Family of companies Except Under Written Agreement. The terms, conditions, and prices contained herein are subject to negotiation by both Parties, and therefore, subject to entire agreement and indicate such agreement by signing the document.

## **APPENDIX DCO**

**APPENDIX DCO**

EXCHANGE:

Direction <sup>1</sup>	CLEC Location <sup>2</sup>	DCO <sup>3</sup>	NIP <sup>4</sup> [Insert address and V&H below]	Interconnection Method

<sup>1</sup> This column will be completed by indicating the direction of the terminating traffic (e.g., either CLEC to SWBT or SWBT to CLEC.)

<sup>2</sup> **CLEC LOCATION** - The address of the CLEC Location that will house CLEC's interconnection equipment and through which SWBT will terminate traffic on the CLEC's network.

<sup>3</sup> **DESIGNATED CONNECTING OFFICE (DCO)** - The address of the SWBT end office or tandem through which the CLEC will terminate traffic on SWBT's network.

<sup>4</sup> **NETWORK INTERCONNECTION POINT or "NIP"** - The NIP is the location where SWBT and CLEC facilities connect. The NIP will be identified by address and V&H Coordinates. The NIP for traffic going from CLEC to SWBT and going from SWBT to CLEC could be different. Where the physical interface occurs at a SWBT end office or tandem, the NIP shall be located at the DCO. When SWBT and an CLEC agree to interconnect with a Mid-Span Fiber Interconnection (MSFI) the NIP is the location where the fiber of SWBT and the fiber of the CLEC is connected, unless both Parties agree that the NIP is defined otherwise. Where the physical interface occurs at the CLEC location the NIP for that interconnection shall be located at the CLEC location.

## **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 DIRECT**

## **APPENDIX DIRECT**

### **DIRECT ACCESS AGREEMENT FOR LOCAL DIRECTORY ASSISTANCE LISTINGS**

This Appendix sets forth the terms and conditions under which SWBT provides electronic access to its Directory Assistance database.

#### **I. SERVICE**

Direct Access allows CLECs access to SWBT's Directory Assistance ("DA") database (which includes residence, business, and government listings) for the sole purpose of providing voice DA to CLEC's end user. This service shall allow the CLEC to obtain listed name, address, zip code and telephone numbers, except that access to non-published telephone numbers is not allowed. SWBT will provide CLECs nondiscriminatory access to the same directory listing information available to its own directory assistance operators.

CLEC may receive Direct Access from SWBT's host switches, which are located in St. Louis, Oklahoma City, Dallas, Houston, Kansas City, Little Rock, Ft. Worth and San Antonio, for Options 1 and 2 below. Option 3 is available only for SWBT's host switches in Dallas, Houston, Oklahoma City or St. Louis. CLEC may use the following three options to receive Direct Access:

- A. Option 1, a diagram of which is attached as Exhibit I, allows the CLEC to provision an Operation Service Center ("OSC") with Direct Access from SWBT's Traffic Operator Position ("TOPS") switch. With this access method, CLEC shall equip itself with Nortel Multi-Purpose Positions ("MP") or Nortel MPX positions. Option 1 shall allow the CLEC Operator to release the DA call to a SWBT audio system, the Nortel Interactive Voice System ("IVS").

Option 1A, a diagram of which is attached as Exhibit 1A, makes available to the CLEC, who chooses to install MPX-1WSS operator workstations, additional SWB TOPS Open Position Protocol (OPP) software. The OPP software, ASN Routers (at the OSC and the D1 engine location), Sync and Token Ring Cards will be provisioned by SWB and the CLEC will bear the cost of this hardware and software, plus the appropriate Engineering, Furnish and Installation (EF&I) charges incurred by SWB. The serving D1 engine location will require, in increments of one hundred-twenty (120) MPX-1WSS CLEC Operator workstations, two (2) Asynchronous Routers (ASN), with Sync and Token Ring cards. Each pair of ASN Routers will support up to six (6) Token Rings. Each Token Ring supports up to 20 MPX-1WSS workstations.

- B. Option 2, a diagram of which is attached as Exhibit II, allows the CLEC to receive Direct Access via a CLEC owned DMS200 TOPS Host switch, a LUCENT 5ESS OSPS switch or any other Operator Services switch type with Call Processing Data Link ("CPDL"). CPDL is a proprietary, licensable interface that utilizes a standard format message protocol for transport of messages between Directory One Call Control and a switching entity. CPDL provides the protocol by which the CLEC switch may provide audio and offer DACC.
- C. Option 3, a diagram of which is attached as Exhibit III, allows the CLEC to receive Direct Access through the Electronic White Page ("EWP") node via a modem and a personal computer (PC). Details shall be provided to CLEC by SWBT if this option is chosen. Switched audio capability and DACC are not available with Option 3.

## **II. DEFINITIONS**

Attachment 1, which is attached hereto, and is made a part hereof, contains definition of terms used in this Appendix.

## **III. RESPONSIBILITIES OF SWBT**

- A. SWBT shall provide and maintain its own Directory One ("D1") equipment to furnish DA services to CLEC for all SWBT listings.
- B. SWBT shall provide DA listings to CLEC from its current DA records and in accordance with SWBT's methods, practices, and procedures.
- C. For Option 1, the SWBT host switch shall distinguish and route the call to the CLEC's OSC.
- D. When Option 1 is used, SWBT shall produce Bellcore standard Automated Message Accounting ("AMA") billing records for the CLEC to use in billing the end user for the DA call.
- E. SWBT shall provide CLEC access to the same listing information that is available to its own operators.
- F. SWBT shall maintain the same level of system performance for CLEC as it provides to itself.

**IV. RESPONSIBILITIES OF CLEC**

- A. CLEC shall submit requests for Direct Access in writing to SWBT. Requests for Direct Access will be pursuant to the Bona Fide Request Process as outlined in Appendix BFR.
- B. When Option 1 is selected, CLEC shall acquire, at its own expense, its own TOPS MP or MPX positions and provision its OSC from the appropriate SWBT's TOPS Host switch for CLEC's serving area. SWBT shall provision the ASN Routers (with sync and token ring cards) at the D1 Network Interface. The CLEC will bear the cost of all hardware and software it acquires for this Option, and shall reimburse SWBT for the ASN Routers, plus Engineering, Furnish and Installation charges.
- C. When Option 1 or 1A is chosen, the CLEC shall provide voice and data circuits from the serving SWBT's host switch to the CLEC's OSC.
- D. When Option 2 is chosen and CLEC utilizes a switch other than those specified in TR-BX.25, the CLEC must obtain CPDL/D1 certification of their switch from NORTEL. The CLEC shall bear all costs of obtaining certification including payment of any applicable license fees from Nortel. SWBT shall supply D1 hardware and software i.e., (two (2) ADAX cards per 9,000 Busy Hour calls) to provision Option 2. SWBT shall bear the cost of this hardware and software, but the CLEC will be responsible for EF&I charges.
- E. The CLEC shall only access Option 3 through an X.25 network.

**V. RESPONSIBILITIES OF BOTH PARTIES**

The Party providing the circuit between CLEC's office and SWBT's office shall make such circuits available for use in connection with the DA services covered herein. When the total traffic exceeds the capability of the existing circuits, additional circuits will be provided by the CLEC. If additional ADAX cards and ASN Routers (with sync and token ring cards) are necessary, they will be provided by SWBT, and CLEC will reimburse SWBT for the cost, plus EF&I.

**VI. BILLING**

SWBT shall bill Options 1, 1.A., and 2 in accordance with SWBT's IBIS system. SWBT shall bill Option 3 through a Mechanized Special Bill Process.

**VII. USE OF SUBSCRIBER LISTING INFORMATION**

CLEC is authorized to use the subscriber listing information accessed and provided pursuant to this Appendix for the sole purpose of providing local voice DA for its own end user customers.

**VIII. ASSIGNMENT**

The subscriber listing information accessed shall remain the property of SWBT. CLEC shall not download, store, print or otherwise extract the DA listing information made available through Direct Access nor shall the CLEC authorize any other company or any person to use any subscriber listing information for any purpose. Each party shall take appropriate measures to guard against any unauthorized use of the listings provided to it hereunder, whether by the other party, its agents or employees.

**IX. TERM OF CONTRACT AND RATE STRUCTURE**

Upon CLEC's request, and pursuant to the terms and conditions herein, SWBT will set rates and other appropriate criteria for provision of Direct Access to CLEC under the procedures outlined in Appendix Network Element Bona Fide Request.

The following types of rates shall apply to Direct Access, and shall be finalized, and actual rates shall be set by individual case basis procedures.

**A. Service Establishment**

CLEC shall pay a Direct Access Service Establishment Charge (a non-recurring charge) applied at the time a CLEC orders Direct Access.

**B. Direct Access Database Service**

CLEC shall pay a monthly recurring charge for Direct Access Database Service which provides for database security and administration and ongoing support.

**C. Direct Access Per Search**

CLEC shall pay a Direct Access Per Search charge for each CLEC subscriber listing search queried from SWBT's listing database.

**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.

**ATTACHMENT 1  
DEFINITION OF TERMS**

As used herein, the following terms shall be defined and set forth below:

1. **Automated Message Accounting (AMA)** - Billing detail recordings in the switch.
2. **Call Processing Data Link - (CPDL)** -
3. **Data Terminating Equipment ( DTE)** - A terminal attached to a data network as an end user node.
4. **Digital Multiplexing Switch (DMS 200)** - DMS performs base call processing functions and supports service capabilities.
5. **Directory Assistance Call Completion (DACC)** - DACC is a service that provides customers the option of having their local or intraLATA calls automatically completed when they request a telephone listing from the DA operator.
6. **Directory One (D1)** - D1 offers directory search applications built on a standard operating software environment.
7. **Directory One Call Control** - Allows bi-directional call control capability between the TOPS switch and the D1 network.
8. **Electronic White Pages (EWP)** - EWP allows telephone companies to offer fully customized electronic directory assistance services for all types of users.
9. **Interactive Voice System (IVS)** - Peripheral off the switch that provides interactive audio.
10. **Multi Purpose Position (MP or MPX)** - Operator Workstations.
11. **Non-Published Number (NP)** - A telephone number that at the request of the telephone subscriber, is neither published in a telephone directory nor provided by a SWBT DA operator.
12. **Operator Service Center (OSC)** - Physical location of the Operators/workstations.
13. **Published Number** - A telephone number that is published in a telephone directory and is available upon request by calling a SWBT DA operator.
14. **Queue Management System (QMS)** - Supports up to 255 unique queues on calls to operator positions.

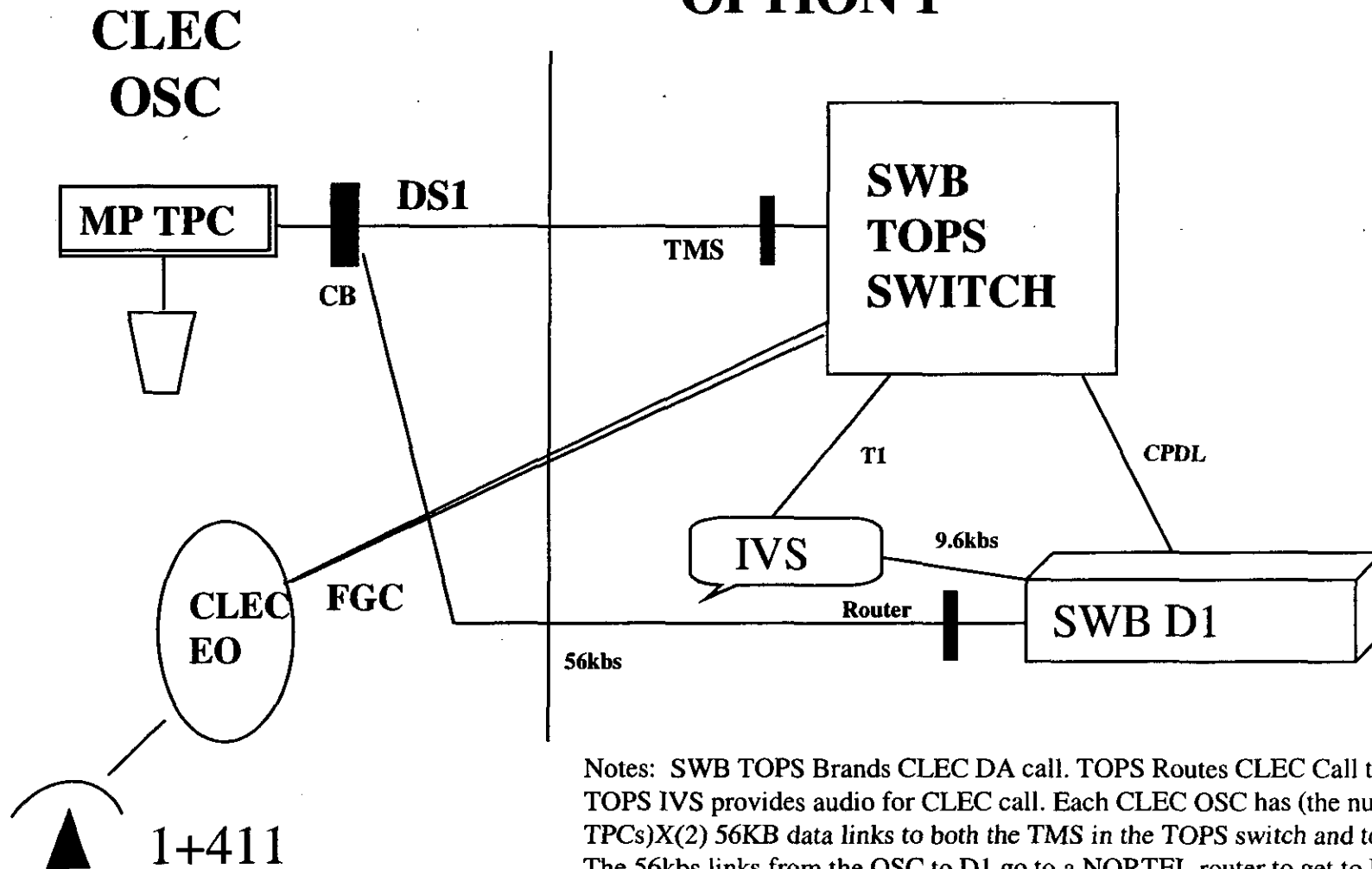
15. **Traffic Operating Position System (TOPS)** - Performs base call processing functions and support service capabilities.

# DIRECT ACCESS TO DA CLEC OSC OPTION 1

APPENDIX DIRECT-EXHIBIT I

SWBT/U. S. WEST DBA ENTERPRISE  
AMERICA

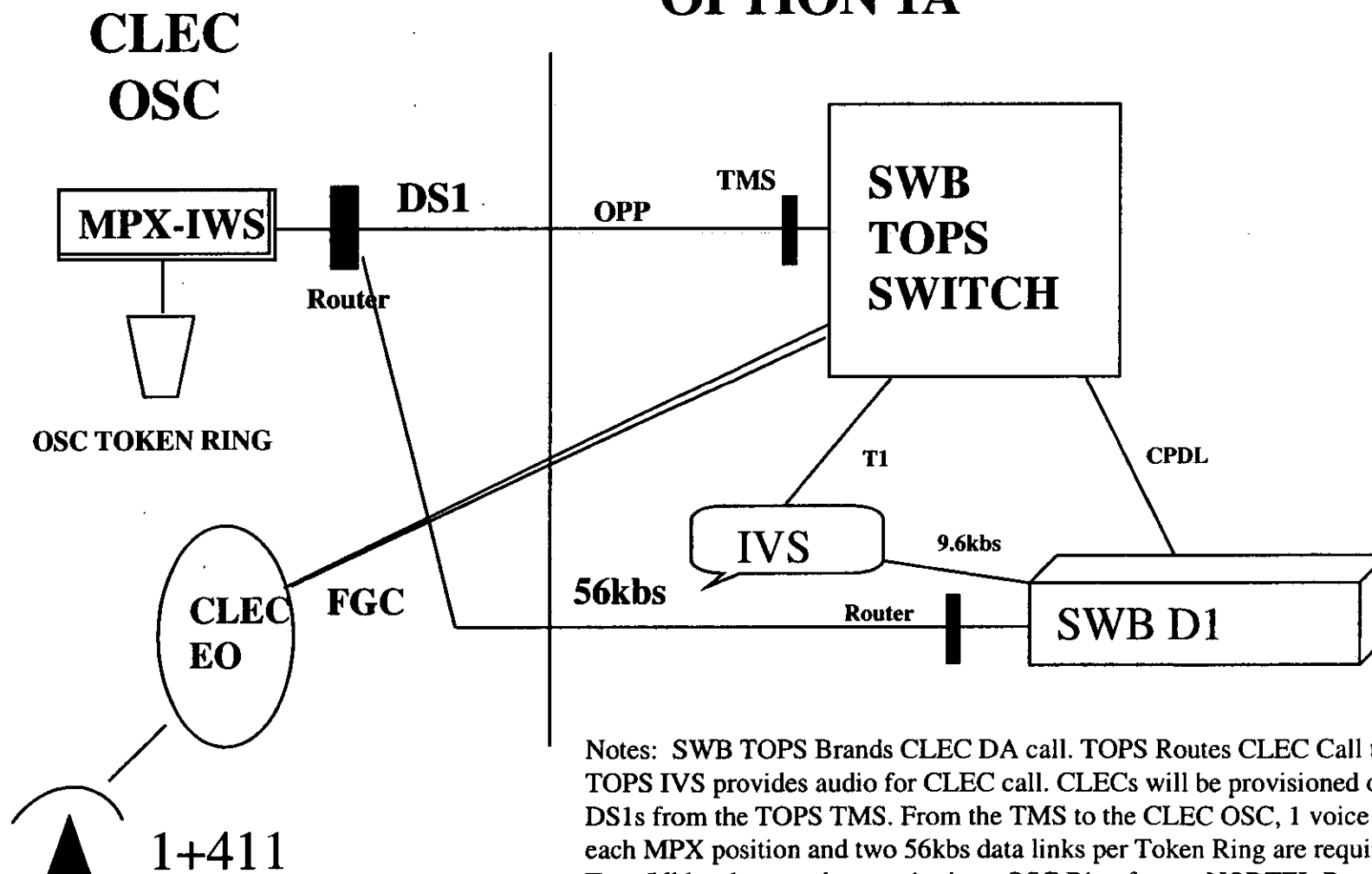
PAGE 1 OF 4



Notes: SWB TOPS Brands CLEC DA call. TOPS Routes CLEC Call to CLEC OSC. TOPS IVS provides audio for CLEC call. Each CLEC OSC has (the number of TPCs)X(2) 56KB data links to both the TMS in the TOPS switch and to D1. The 56kbs links from the OSC to D1 go to a NORTEL router to get to D1. Four voice circuits from each TPC to the TMS is also required. The channel bank (CB) at the CLEC OSC will serve to distribute the DSOs to the OSCs individual TPCs. Each TPC supports 4 MP positions.

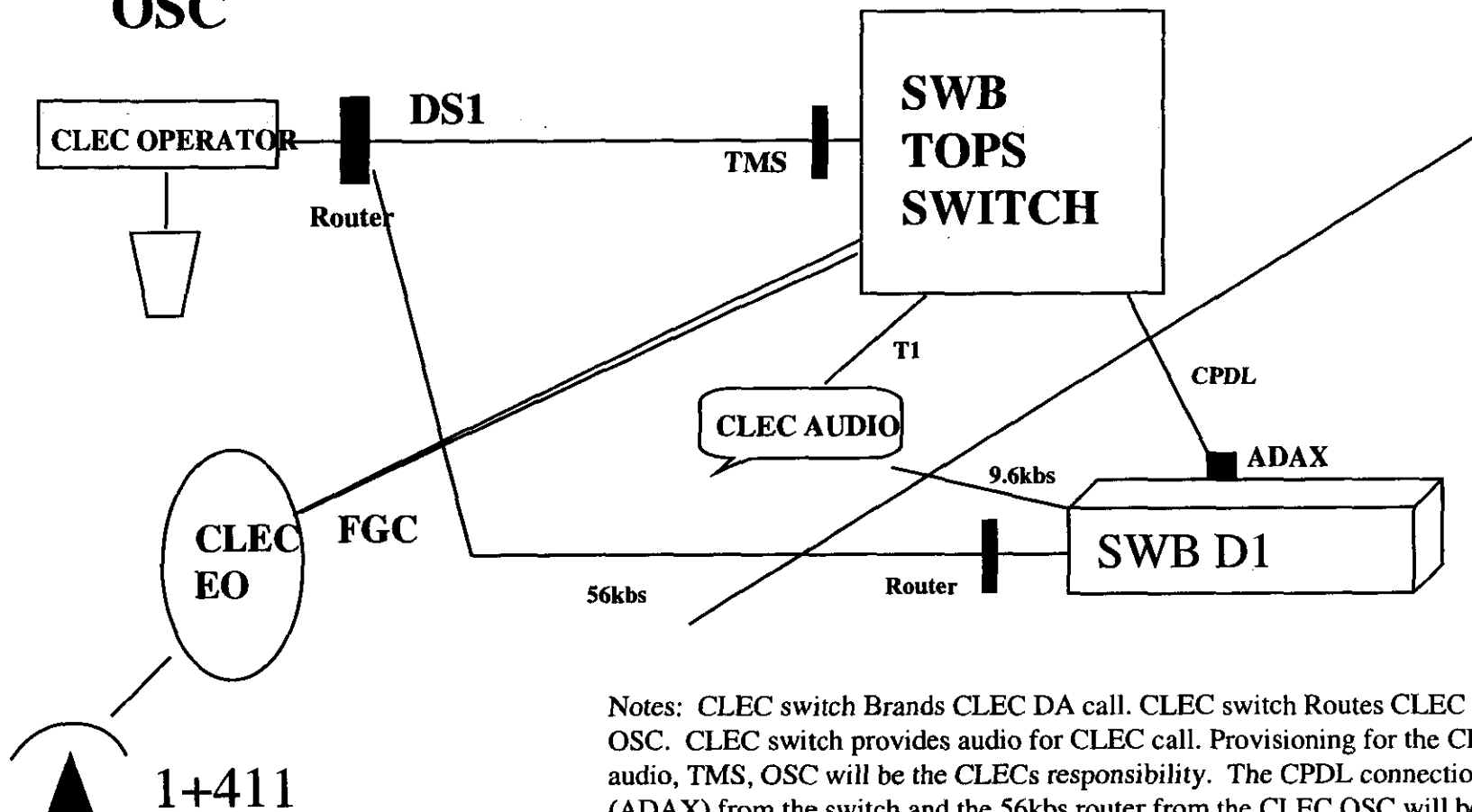
# DIRECT ACCESS TO DA CLEC OSC OPTION 1A

APPENDIX DIRECT-EXHIBIT 1A  
SWBT/U. S. WEST DBA ENTERPRISE  
AMERICA  
PAGE 2 OF 4



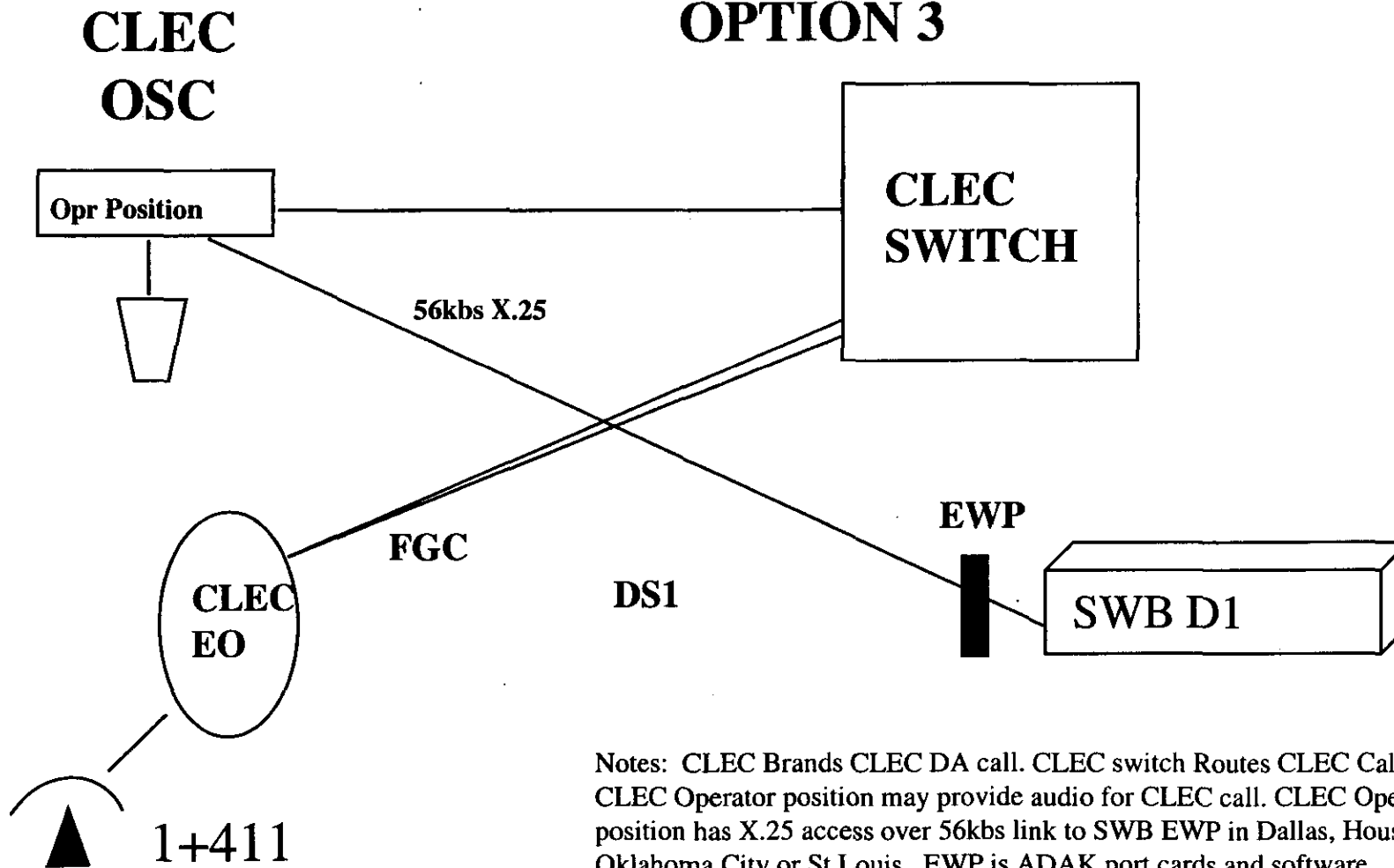
Notes: SWB TOPS Brands CLEC DA call. TOPS Routes CLEC Call to CLEC OSC. TOPS IVS provides audio for CLEC call. CLECs will be provisioned off TOPS via DS1s from the TOPS TMS. From the TMS to the CLEC OSC, 1 voice circuit per each MPX position and two 56kbs data links per Token Ring are required. Two 56kbs ckts are also required per OSC Ring from a NORTEL Router at the OSC to a NORTEL router to get D1. Each TOKEN RING at the CLEC OSC supports up to 20 MPXs.

**CLEC  
OSC**



**Notes:** CLEC switch Brands CLEC DA call. CLEC switch Routes CLEC Call to CLEC OSC. CLEC switch provides audio for CLEC call. Provisioning for the CLEC switch, audio, TMS, OSC will be the CLECs responsibility. The CPDL connections to D1 (ADAX) from the switch and the 56kbs router from the CLEC OSC will be provisioned at the SWB D1 location by SWB. The router at the CLEC OSC will need to be the same brand and model as the SWB router at the SWB D1.

# DIRECT ACCESS TO DA NON-SWITCH EWP ACCESS OPTION 3



Notes: CLEC Brands CLEC DA call. CLEC switch Routes CLEC Call to CLEC OSC. CLEC Operator position may provide audio for CLEC call. CLEC Operator position has X.25 access over 56kbs link to SWB EWP in Dallas, Houston, Oklahoma City or St Louis. EWP is ADAK port cards and software.

## **APPENDIX DSL**

## **ATTACHMENT 21: DSL**

### **Digital Subscriber Line ("DSL")-Capable Loops**

- I. The term digital subscriber line ("DSL") describes various technologies and services. The 'x' in xDSL is a place holder for the various types of DSL services, such as ADSL (asymmetric digital subscriber line), HDSL (high-speed digital subscriber line), UDSL (universal digital subscriber line), VDSL (very-high speed digital subscriber line), and RADSL (rate-adaptive digital subscriber line). The provision of DSL services is subject to a variety of important technical constraints, including subscriber loop length and the quality of the loop, which must be free of excessive bridged taps, loading coils, and other devices commonly used to aid in the provision of analog voice and data transmission, but which interfere with the provision of DSL services. In addition, clear spectral compatibility standards and spectrum management rules and practices are necessary both to foster competitive deployment of innovative technologies and to ensure the quality and reliability of the public telephone network. The parties will comply with the FCC's rules on spectrum compatibility and management that enable the reasonable and safe deployment of advanced services prior to the development of industry standards.

Based upon the foregoing, SWBT's unbundled DSL loop offerings are set forth below for CLECs to use in conjunction with their desired DSL technologies and equipment to provision DSL services to their end-user customers.

#### **II. Unbundled DSL-Capable Loop Offerings**

- A. DSL-Capable Loops used with DSL Technology which complies with Existing Industry Standards

To ensure spectral compatibility, the parties agree that PSD mask standards permit divergent technologies to coexist in close proximity within the same binder groups. Industry standards bodies such as American National Standards Institute ("ANSI") have developed or are in the process of developing PSD mask standards for various DSL technologies to enable multiple technologies to coexist within binder groups. If multiple national standards exist and are mutually incompatible, the Parties shall expend diligent efforts to arrive at an agreement as to which national standard will be implemented. If negotiations fail, dispute between the Parties concerning the appropriate national standard to be implemented, shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

1. 2-Wire ADSL Capable Loop: A 2-Wire ADSL Capable Loop ("ADSL Capable Loop") is a loop that supports the transmission of Asymmetrical Digital Subscriber Line technologies which comply with current national standards (ANSI T1.413-1998). Although the current national standard provides for the use of echo cancellation in some situations, ANSI T1E1.4 has determined that echo canceled ADSL systems interfere with other echo canceled and non-echo canceled systems, thus reducing the reach of the DSL services. Therefore, SWBT and CLEC agree that echo-cancellation will not be deployed on the 2-Wire ADSL Capable Loop. SWBT Technical Publications 76730, "ADSL Based Service Network Interface/Interconnection Specification," dated January 1999 ("TP 76730"), and 76860, "Unbundled Network Elements," dated January 1999 ("TP 76860"), which comply with current national standards, set forth SWBT's procedures and policies relating to CLEC's deployment of ADSL over SWBT's 2-Wire ADSL Capable Loop. CLEC's transmission rate over an ADSL Capable Loop shall not be limited, except as may be required in order to conform with the power and spectrum parameters set forth in appropriate national standards, currently ANSI T1.413-1998. Loop Qualification, the Selective Feeder Separation ("SFS") spectrum management provisions and optional conditioning as described below are applicable to the 2-Wire ADSL Capable Loop.
2. 2-Wire Very Low-band Symmetric Technology Capable Loop: A 2-Wire Very Low-band Symmetric Loop ("VLS Capable Loop") is a loop that supports the transmission of technology which is consistent with current ANSI contributions under study. The VLS Capable Loop supports various DSL technologies and some operating speeds of non-standard technologies used to provision symmetric service, commonly referred to as "Symmetric Digital Subscriber Line" ("SDSL"). SWBT Technical Publication 76750, "Very Low-Band Symmetric Technology Network Interface/Interconnection Specification," dated February 1999 ("TP 76750") and TP 76860, which comply with existing national standards and are consistent with current ANSI contributions under study, set forth SWBT's procedures and policies relating to CLEC's deployment of certain DSL technologies over SWBT's VLS Capable Loop. CLEC shall use VLS Capable Loops in a manner that is consistent with the SWBT TP's 76860 and 76750 until national standards are adopted. CLEC's transmission rate over a VLS Capable Loop shall not be limited, except as may be required in order to conform to the power and spectrum parameters set forth in TPs 76860 and 76750. Separate charges relating to loop qualification and optional conditioning will not apply to these

loops as they will be managed, offered and designed under the Power Spectrum Density ("PSD") limits of SWBT's current 2-Wire Digital Loop offering (which complies with ANSI standard T1.601), as found in Appendix UNE of this Agreement.

3. 2-Wire Mid-band Symmetric Technology Capable Loop: A 2-Wire Mid-band Symmetric Loop ("2-Wire MS Capable Loop") is a loop that supports the transmission of technology which is consistent with current ANSI contributions under study. The 2-Wire MS Capable Loop supports various 2-Wire HDSL technologies and some operating speeds of non-standard technologies used to provision SDSL. SWBT Technical Publication 76740, "Mid-band Symmetric Technology Network Interface/Interconnection Specification," dated February 1999 ("TP 76740"), and TP 76860, which comply with existing national standards and are consistent with current ANSI contributions under study, set forth SWBT's procedures and policies relating to CLEC's deployment of certain DSL technologies over SWBT's 2-Wire MS Capable Loop. TP 76740 is consistent with Bellcore Technical Reference 28 ("TR28") that serves as the de facto standard for HDSL service until such time as the ANSI standard has been adopted. CLEC shall use 2-Wire MS Capable Loops in a manner that is consistent with the SWBT TP's 76860 and 76740 until national standards are adopted. CLEC's transmission rate over a 2-Wire MS Capable Loop shall not be limited, except as may be required to conform to the power and spectrum parameters set forth in TPs 76860 and 76740. Loop Qualification and optional conditioning as described below are applicable to the 2-Wire MS Capable Loop.
4. 4-Wire Mid-band Symmetric Technology Capable Loop: A 4-Wire Mid-band Symmetric Loop ("4-wire MS Capable Loop") is a loop that supports the transmission of technology which is consistent with current ANSI contributions under study. The 4-Wire MS Capable Loop supports various 4-Wire HDSL technologies and some operating speeds of non-standard technologies used to provision SDSL. SWBT TPs 76860 and 76740, which comply with existing national standards and are consistent with current ANSI contributions under study, set forth SWBT's procedures and policies relating to CLEC's deployment of certain DSL technologies over SWBT's 4-Wire MS Capable Loop. TP76740 is consistent with Bellcore TR28 that serves as the de facto standard for HDSL service until such time as the ANSI standard has been adopted. CLEC shall use 4-Wire MS Capable Loops in a manner that is consistent with the SWBT TP's 76860

and 76740, "Mid-band Symmetric Technology Network Interface/Interconnection Specification," ("TP76740"), until national standards are adopted. CLEC's transmission rate over a 4-Wire MS Capable Loop shall not be limited, except as may be required to conform to the power and spectrum parameters set forth in TPs 76860 and 76740. Loop Qualification and optional conditioning as described below are applicable to the 4-Wire MS Capable Loop.

5. Other Industry Standard DSL-capable loops: If an industry standards body adopts other national standard technologies (PSD) for which SWBT does not have an existing supporting loop as defined above, SWBT will provide a loop capable of supporting the new technology for CLEC as follows: If the new technology requires the use of a 2-wire or 4-wire loop materially the same as described above, with materially the same loop conditioning, then SWBT will provide CLEC a loop capable of supporting the new technology at the same rates listed for the appropriate 2-wire and 4-wire loops and associated loop conditioning as needed. SWBT will supply CLEC with the appropriate ordering procedures within 30 calendar days of CLEC's request for a loop capable of supporting the new technology.

If the new technology requires a loop type that materially differs from the existing 2-Wire and/or 4-Wire loops defined above (e.g. different loop design, different conditioning, significantly different spectrum impact, etc.), the Parties shall expend diligent efforts to arrive at an agreement as to the rates, terms and conditions for an unbundled loop capable of supporting the proposed technology. If negotiations fail, dispute between the Parties concerning the rates, terms and conditions for an unbundled loop capable of supporting the proposed technology, shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

B. Non-Standard DSL-Capable Loops

1. Approved or successfully deployed non-standard DSL technologies:

In addition to DSL capable loops referenced in subsection A above, non-standard DSL technologies which have been approved by the FCC or any state commission or which have been successfully deployed by any carrier without significantly degrading the performance of other services are presumed acceptable for deployment. SWBT will provide a loop capable of

supporting a new, non-standard technology approved by a commission or successfully deployed for the CLEC as follows: If the new technology requires the use of a 2-Wire or 4-Wire loop materially the same as described above, with materially the same loop conditioning, then SWBT will provide CLEC a loop capable of supporting the new technology at the same rates listed for the appropriate 2-Wire and 4-Wire loops and associated loop conditioning as needed. SWBT will supply CLEC with the appropriate ordering procedures within 30 calendar days of CLEC's request for a loop capable of supporting the new technology.

If the new technology requires a loop type that materially differs from the existing 2-Wire and/or 4-Wire loops defined above (e.g. different loop design, different conditioning, significantly different spectrum impact, etc.), the Parties shall expend diligent efforts to arrive at an agreement as to the rates, terms and conditions for an unbundled loop capable of supporting the proposed technology and for loop qualification and conditioning if needed. If negotiations fail, dispute between the Parties concerning the rates, terms and conditions for an unbundled loop capable of supporting the proposed technology, shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

2. Other non-standard DSL technologies: CLEC may deploy new technologies that do not conform to the national standards and have not yet been approved by a standards body (or otherwise authorized by the FCC, any state commission or which have not been successfully deployed by any carrier without significantly degrading the performance of other services) if the CLEC can demonstrate to the state commission that the particular technology will not significantly degrade the performance of other advanced services or traditional voice band services. In this situation, there would be no presumption in favor of deployment and the burden would be on the CLEC to make the appropriate showing.

Upon request by CLEC, SWBT will cooperate in the testing and deployment of new technologies or may direct the CLEC, at CLEC's expense, to a third party laboratory for such evaluation.

If it is demonstrated that the new technology will not significantly degrade the other advanced services or traditional voice based services, SWBT will provide a loop to support the new technology for CLEC as follows: If the technology requires the use of a 2-Wire or 4-Wire loop materially the same as described above, with

materially the same loop conditioning, then SWBT will provide CLEC a loop capable of supporting the new technology at the same rates listed for the appropriate 2-Wire and 4-Wire loops and associated loop conditioning as needed. SWBT will supply CLEC with the appropriate ordering procedures within 30 calendar days of CLEC's request for a loop capable of supporting the new technology. If the new technology requires a loop type that materially differs from the existing 2-Wire and/or 4-Wire loops defined above (e.g. different loop design, different conditioning, significantly different spectrum impact, etc.), the Parties shall expend diligent efforts to arrive at an agreement as to the rates, terms and conditions for an unbundled loop capable of supporting the proposed technology. If negotiations fail, dispute between the Parties concerning the rates, terms and conditions for an unbundled loop capable of supporting the proposed technology, shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

3. In deploying any non-standard DSL technologies referenced in subsections II.B.1 and II.B.2 above, CLEC will not hold SWBT responsible, and will indemnify and hold SWBT harmless, for any claims by CLEC, CLEC's end users, and/or any other carrier or end user for any harm or degradation to any carrier's or customer's service and or to SWBT's or any third party's network or equipment.
4. For such non-standard DSL technologies deployed under sections II.B.1 and II.B.2 above, once national ANSI standards are adopted, CLECs shall begin the process of bringing its deployed DSL technologies into compliance with such new standards within thirty (30) days and shall complete the transition within 180 days.
5. Until such time the FCC defines the term more precisely, "significantly degrade" is defined as an action that noticeably impairs a service from a user's perspective.

### III. Pre-qualification of Loops

- A. SWBT will provide CLECs with nondiscriminatory access to the operations support systems ("OSS") functions for pre-ordering, ordering, and provisioning DSL-capable loops. In order to obtain access to this OSS functionality, CLEC must have the applicable rates, terms and conditions for such OSS in its Agreement.

- B. Effective April 4, 1999, SWBT will make available the capability for CLECs to pre-qualify loops on a mechanized basis through enhancements to Verigate/Data Gate OSS interfaces. VLS Capable Loops will not require or benefit from this process as they are qualified for use on any facility designed to support ISDN. The pre-qualification process will permit a database query, which will result in the retrieval of an indicator with one of the following meanings:
1. An indicator, which identifies the loop as copper based and less than 12,000 feet from the serving office (26 gauge equivalent including bridged tap). This indicator will signify a high potential for use with ADSL technology, and a potential for use with most 2-Wire or 4-Wire Mid-band Symmetric technologies.
  2. An indicator which identifies the loop as copper based and between 12,000 and 17,500 feet from the serving office (26 gauge equivalent including bridged tap). This indicator will signify a potential for use with ADSL technology, but with some possibility that conditioning will be recommended and/or that a spectrum conflict with existing services may exist. This indicator will also signify there is little or no probability of potential for use with 2-Wire or 4-Wire Mid-band Symmetric technologies.
  3. An indicator which identifies the loop as either copper and greater in length than 17,500 feet from the serving office or that it is not a copper based facility. This indicator will signify there is little or no probability of potential for use with ADSL technology. This indicator will also signify there is no probability for use with 2-Wire or 4-Wire Mid-band Symmetric technologies.
- C. In the event CLEC desires a manual pre-qualification arrangement, SWBT will negotiate a rate, along with terms and conditions for handling such inquiries on a manual basis.

#### IV. Loop Qualification

- A. SWBT will provide CLECs with nondiscriminatory access to the OSS functions for pre-ordering, ordering, and provisioning DSL-capable loops. In order to obtain access to this OSS functionality, CLEC must have the applicable rates, terms and conditions for such OSS in its Agreement.
- B. SWBT will use a loop qualification process ("Loop Qualification") in connection with provisioning ADSL Capable and 2-Wire and 4-Wire MS Capable Loops or other DSL-Capable Loops which would require conditioning and spectrum management. VLS Capable Loops will not

require this step, as they will be designed under the 2-Wire Digital Loop offering, which can be delivered over any facility. The Loop Qualification examines the available loop facility for suitability for use in terms of physical characteristics and spectrum compatibility based upon the conditions set forth in industry standards and documented in SWBT TP's 76730, 76740 and 76860 ("Technical Parameters"). When multiple loops are requested at the same end-user address, SWBT will perform Loop Qualification on each loop until it is determined that no suitable loops remain. CLEC shall pay the rate set forth below for each Loop Qualification performed by SWBT, whether or not the loop is deemed to support the desired technology. When SWBT performs Loop Qualification for multiple loops at the same end-user address, CLEC shall pay the rate set forth below for each Loop Qualification performed by SWBT for all loops that qualify and the first loop which does not. If SWBT determines that the first loop is 17,500 feet or greater, CLEC will be so notified, and charged the rate set forth below for one Loop Qualification. If CLEC subsequently requests Loop Qualification on the remaining loops, the Loop Qualification charge set forth below will apply to each loop requested.

- C. Until a mechanized process is in place for Loop Qualification, requests for Loop Qualification shall be submitted to SWBT on a manual basis. A standard Loop Qualification interval of 3-5 business days is available for requests in markets where the Loop Qualification process is currently in place. In other markets, a maximum standard Loop Qualification interval of 15 business days is available until Loop Qualification methods, procedures, and training are established for the subject central office. In an effort to establish the Loop Qualification process by central office in the priority order desired by CLEC, CLEC will provide SWBT with a prioritized list of central office locations where CLEC has appropriate associated equipment and intends to order access to ADSL or MS Capable Loops. Within 60 days of receipt of the list of central offices, SWBT will establish Loop Qualification methods, procedures, and training, for CLEC's 3 highest central office priorities and will meet with CLEC to establish a schedule for the remaining identified locations, if any. In any event, CLEC shall be entitled to the Loop Qualification interval of 3-5 business days associated with any SWBT central office(s), where SWBT has established the process for another CLEC or for SWBT's own purposes. After the initial Loop Qualification and installation on behalf of any CLEC in a given central office, a standard Loop Qualification interval of 3-5 business days will be established.
- D. If the results of the Loop Qualification indicate that the loop is less than 12,000 feet and meets the Technical Parameters without additional conditioning, CLEC will be notified, provided loop makeup data and the

charges set forth below for the ADSL or MS Capable Loop and Cross-Connect will apply if such loop is ordered by CLEC. Should the loop meet SWBT design requirements but not function as desired by CLEC, CLEC may request, and must pay for, any requested conditioning at the rates set forth below. Loops less than 12,000 feet that do not meet SWBT's design criteria for its tariffed ADSL service, but that could be conditioned to meet the minimum requirements defined in the associated SWBT Technical Publications through the removal of load coils, bridged taps and/or repeaters will be so conditioned at no charge to CLEC.

- E. If the results of the Loop Qualification indicate that the loop is between 12,000 feet and 17,500 feet and does otherwise meet the Technical Parameters, CLEC may order and SWBT will provide the loop and the associated loop makeup data. The charges set forth below for the ADSL or MS Capable Loop and the Cross-Connect will apply if such loop is ordered by CLEC.
- F. If the results of the Loop Qualification indicate that the loop is between 12,000 feet and 17,500 feet and does not meet the Technical Parameters, but will do so with optional loop conditioning, CLEC will be notified before commencement of any conditioning work and will be provided loop makeup data. If CLEC authorizes the conditioning, CLEC will be billed for such work at the rates for DSL Conditioning Options set forth below. CLEC may order, and SWBT will provide, the loop without some or all of the SWBT-recommended conditioning. The charges set forth below for the ADSL or MS Capable Loop and the Cross-Connect will apply if such loop is ordered by CLEC.
- G. If the results of the Loop Qualification indicate that the loop is between 12,000 feet and 17,500 feet and does not meet the Technical Parameters, and will not do so even with optional loop conditioning, CLEC will be notified and furnished the associated loop makeup data. If CLEC subsequently requests the loop with or without such conditioning, the charges set forth below for any conditioning work requested shall apply. CLEC may order, and SWBT will provide, the loop without some or all of the requisite conditioning. The charges set forth below for the ADSL or MS-Capable Loop and the Cross-connect will apply if such loop is ordered by CLEC.
- H. If the results of the Loop Qualification indicate that the loop length exceeds 17,500 feet, CLEC will be so notified and provided the associated loop make-up data. If CLEC subsequently orders the loop with or without optional conditioning, CLEC will be billed for any conditioning work requested at charges to be calculated on an incremental basis using incremental charges to be developed by SWBT. The appropriate charges

for the DSL Capable Loop and Cross-Connect set forth below will apply if such loop is ordered by CLEC.

V. Service Performance

- A. If the results of the Loop Qualification indicate: (i) that the loop is between 12,000 feet and 17,500 feet and does not meet the Technical Parameters, but will do so with optional conditioning and CLEC elects to order such loop without all the recommended conditioning; or (ii) that the loop is between 12,000 feet and 17,500 feet and does not meet the Technical Parameters and will not do so even with optional conditioning and CLEC elects to order such loop with some or all of the conditioning; or (iii) that the loop exceeds 17,500 feet and CLEC elects to order the loop with or without any of optional conditioning; then, SWBT will not guarantee service performance on the loop, nor will SWBT be held responsible for any service-related issues on such loop; provided, however, SWBT will maintain electrical continuity and line balance on the loop at parity with SWBT's tariffed POTS services. CLEC will not hold SWBT responsible and will indemnify and hold SWBT harmless from any claims by CLEC and/or CLEC's end-users for any damages arising from SWBT's provision of such loop.
- B. Unconditioned or partly conditioned loops in excess of 12,000 feet for which SWBT has recommended conditioning, will not be included in any service performance measurements. No ADSL or MS Capable Loops in excess of 17,500 feet will be included in any performance measurements.

VI. Maintenance

Maintenance, other than assuring loop continuity and balance, on unconditioned or partially conditioned loops in excess of 12,000 feet will only be provided on a time and material basis as set out elsewhere in this Agreement. On loops where CLEC has requested that no conditioning be performed, SWBT's maintenance will be limited to verifying loop suitability for POTS. For loops having had partial or extensive conditioning performed at CLEC's request, SWBT will verify continuity, the completion of all requested conditioning, and will repair at no charge to CLEC any gross defects which would be unacceptable for POTS and which do not result from the loop's modified design.

VII. Provisioning and Installation

- A. The provisioning and installation interval for an ADSL, 2-Wire or 4-Wire MS Capable Loop or other DSL-Capable loops that are materially the same, as defined above, where no conditioning is requested, will be 5-7 business days after the Loop Qualification process is complete, or the

provisioning and installation interval applicable to SWBT's tariffed DSL-based services, whichever is less. The provisioning and installation intervals for the ADSL, 2-Wire or 4-Wire MS Capable Loops where conditioning is requested will be 15 business days for loops up to 17,500 feet, or the provisioning and installation interval applicable to SWBT's tariffed DSL-based services where conditioning is required, whichever is less. An ADSL, 2-Wire or 4-Wire MS Capable Loop in excess of 17,500 feet where conditioning is requested will have a provisioning and installation interval agreed upon by the Parties for each instance of special construction. VLS Capable Loops will be provisioned under the terms of the 2-Wire Digital Loop as described in Appendix UNE of this Agreement.

- B. Subsequent to the initial order for an ADSL, 2-Wire or 4-Wire MS Capable Loop or other DSL-Capable loops that are materially the same, as defined above, additional conditioning may be requested on such loop at the rates set forth below and the applicable service order charges will apply; provided, however, when requests to add or modify conditioning are received within 24 hours of the initial order for an ADSL, 2-Wire or 4-Wire MS Capable Loop, no service order charges shall be assessed, but may be due date adjusted as necessary. The provisioning interval for additional requests for conditioning pursuant to this subsection will be the same as set forth above.

### VIII. Spectrum Management

- A. In order to protect the integrity of the network, CLEC agrees to use the ADSL, 2-Wire VLS Capable and 2-Wire and 4-Wire MS Capable Loops and any other DSL-Capable loops that are materially the same, as defined above, in a manner consistent with the industry standards referenced above, and SWBT Technical Publications which are consistent with said standards. The Parties acknowledge and agree that early attention to binder group management issues will guard against problems arising as advanced services reach higher penetration. The Parties further acknowledge and agree that there may be a limit to the number of lines delivering advanced services that can share a binder group without interfering with other customers' services. CLEC agrees not to exceed the power levels specified therein or exceed other technical parameters without the specific written consent of SWBT.
- B. The Parties agree that spectrum management, defined to include binder/cable administration as well as deployment practices (e.g. the rules for testing and implementing DSL-based and other advanced services), is essential to the success of advanced services deployment. SWBT provides CLECs with nondiscriminatory access to its spectrum management

procedures and policies through the publication of its Technical Publications referenced above and periodic forums.

For spectrum management purposes, SWBT will inventory an ADSL Capable Loop at the operating speed range for which it was qualified, solely for purposes of inventory and maintenance assurance, and not for the purpose of limiting CLEC's transmission speeds over such loop. CLEC agrees that SWBT may use a selective feeder separation method to manage the spectrum. As such a method is implemented or modified, SWBT shall comply with any appropriate national standards. SWBT shall apply such program fairly and equally to SWBT unbundled DSL Capable Loops and to SWBT's tariffed DSL-based services. SWBT agrees that CLEC's order for an ADSL Capable loop will not be delayed by any lack of availability of a specific binder group. Rather, SWBT will provision the loop and may later reconfigure the loop into a designated binder group. VLS and MS Capable Loops will not require the use of a specific binder group or selective feeder separation. However, if appropriate spectrum cannot be found in any available facility (i.e., the loop is incapable of supporting DSL-based services due to interference measured in accordance with the standards set forth in TPs 76730, 76750 and 76740), SWBT will not provision the loop. In such case, SWBT will disclose to CLEC the specific reason for rejecting the CLEC's loop request including the number of loops using advanced services technology within the binder and type of technology deployed on those loops. Should a national standard for spectrum management be developed that differs from SWBT's Technical Publications, the Parties will negotiate the method for managing interference consistent with such national standard.

- C. CLECs use of any SWBT network element, or of its own equipment or facilities in conjunction with any SWBT network element, will not materially interfere with or impair service over any facilities of SWBT, its affiliated companies or its connecting and concurring carriers involved in its services, cause damage to their plant, impair the privacy of any communications carried over their facilities or create hazards to the employees of any of them or the public. Upon reasonable written notice and opportunity to cure, SWBT may discontinue or refuse service if CLEC violates this provision, provided that such termination of service will be limited to CLEC's use of the element(s) causing the violation.

#### IX. Rates for DSL Capable Loops and Associated Charges

SWBT's rate for DSL Capable Loops, and associated charges, are set forth on Schedule 1, which is attached hereto and incorporated herein by reference.

- X. The Parties acknowledge and agree that the provision of these DSL-Capable Loops and the associated rates, terms and conditions set forth above are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). Any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory body or court of competent jurisdiction which stays, modifies, or otherwise affects any of the rates, terms and conditions herein, specifically including those arising with respect to the Federal Communications Commission (whether from the Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188 (rel. August 7, 1998), in CC Docket No. 98-147, or the FCC's First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), in CC docket 98-147, or any other proceeding, the Parties shall expend diligent efforts to arrive at an agreement on conforming modifications to this Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or the provisions affected shall be handled under the Dispute Resolution procedures set forth in this Agreement.
- XI. SWBT's provision of UNEs identified in this Agreement is subject to the provisions of the Federal Act, including but not limited to, Section 251(d). Both Parties reserve the right to dispute whether any UNEs identified in the Agreement must be provided under Section 251(c)(3) and Section 251(d) of the Act, and under this Agreement. In the event that the FCC, a state regulatory agency or a court of competent jurisdiction, based upon any action by any telecommunications carrier, finds, rules and/or otherwise orders ("order") that any of the UNEs and/or UNE combinations provided for under this Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be invalidated, modified or stayed as required to immediately effectuate the subject order upon written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement on the modifications required to the Agreement to immediately effectuate such order. If negotiations fail, disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.
- XII. 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**  
**FAILURE TO MEET PERFORMANCE**  
**CRITERIA**

## **APPENDIX FAILURE TO MEET PERFORMANCE CRITERIA**

This Appendix Failure to Meet Performance Criteria to the Agreement sets forth the terms and conditions by which SWBT will pay CLEC liquidated damages in the event of a Specified Performance Breach as defined in this Appendix. This Appendix contains Performance Criteria which would apply to resold services, stand alone unbundled network elements (UNEs) and unbundled network elements, if and when SWBT provides combination of such UNEs. By this Appendix, SWBT is not agreeing to combine UNEs, but is agreeing to performance criteria which would apply in the event SWBT later provides combinations.

### **1.0      Definitions**

1.1      When used in this Appendix, the following terms will have the meanings indicated:

1.1.1      Specified Activity means any activity performed under this Agreement as to which a Performance Measurement has been established in this Appendix.

1.1.2      Performance Measurements means the set of measurements listed in all of Section 9.0 of this Appendix, as it may be supplemented or modified by agreement of the Parties.

1.1.3      Performance Criteria means the target level of SWBT performance specified for each Performance Measurement.

1.1.4      Specified Performance Breach means the failure by SWBT to meet the Performance Criteria for any Specified Activity listed in Section 1.1.4.4 by any of the degrees of variance as described below.

1.1.4.1      Where monthly performance by SWBT for CLEC on a Performance Measurement is within one standard deviation of the Performance Criteria specified, no Specified Performance Breach occurs with respect to that measurement.

1.1.4.2      SWBT performance on a single measurement for CLEC that is greater than one standard deviation and less than three standard deviations below the Performance Criteria will constitute a Specified Performance Breach if the same measure remains in this range for two consecutive months (liquidated damages of \$25,000 apply to each measurement which remains in the above stated range for two months); Conversely, if for two consecutive months, the performance provided to CLEC exceeds that provided to SWBT (within one to three standard deviations), SWBT will accrue a performance credit for the service category which may be used to offset future performance penalties incurred in the same service category.

- 1.1.4.3 SWBT performance for CLEC on any Performance Measurement in a single month that is greater than three standard deviations below the Performance Criteria will constitute a Specified Performance Breach and will result in liquidated damages of \$75,000 payable for each such month; Conversely, if in a single month, the performance provided to CLEC exceeds that provided to SWBT (by greater than three standard deviations), SWBT will accrue a performance credit for the service category which may be used to offset future performance penalties incurred in the same service category.
- 1.1.4.3.1 The four service categories within which performance credits may be used to offset the penalties are Pre-Ordering, Ordering/Provisioning, Maintenance/Repair, and General.
- 1.1.4.4 Liquidated damages for a Specified Performance Breach, as defined above, will only apply to the following Specified Activities:
  - Pre-Ordering
  - 1.1.4.4.1 Average response time for OSS Pre-Order Interfaces
    - Ordering and Provisioning
    - A. Completions
    - POTS & UNE POTS Loop and Port Combinations
  - 1.1.4.4.2 Average installation interval
  - 1.1.4.4.3 Percent SWBT Caused Missed Due Dates
  - 1.1.4.4.4 Delay Days for Missed Due Dates
  - 1.1.4.4.5 Percent No Access
    - Specials and UNE Specials Loop and Port Combination
  - 1.1.4.4.6 Average installation interval
  - 1.1.4.4.7 Percent SWBT Caused Missed Due Dates
    - UNEs (Excludes UNE Loop and Port Combination)
  - 1.1.4.4.8 Average installation interval

1.1.4.4.9 Percent SWBT Caused Missed Due Dates

B. Order Accuracy

1.1.4.4.10 Percent POTS Installation Reports Within 10 Days

1.1.4.4.11 Percent Specials Installation Reports Within 30 Days

1.1.4.4.12 Percent UNE Installation Reports Within 30 Days

C. Order Status

1.1.4.4.13 Percent Firm Order Completions received within "x" hours

1.1.4.4.14 Percent Mechanized Rejects Returned within 1 hour of the start of the EDI/LASR batch process

1.1.4.4.15 Percent Mechanized Completion Notices return within one hour of successful execution of the SORD (BU340) batch cycle

D. Held Orders

1.1.4.4.16 Percent Company Missed Due Dates Due to Lack of Facilities

1.1.4.4.17 Delay Days for Missed Due Dates Due to Lack of Facilities

E. Flow Through

1.1.4.4.18 Percent Flow Through

Maintenance/Repair

A. Time to Restore

POTS & UNE POTS Loop and Port Combinations

1.1.4.4.19 Receipt to Clear Duration

1.1.4.4.20 Percent Out of Service < 24 Hours

Specials and UNE Specials Loop and Port Combination

1.1.4.4.21 Mean Time to Restore

UNEs (Excludes UNE Loop and Port Combination)

1.1.4.4.22 Mean Time to Restore

1.1.4.4.23 Percent Out of Service < 24 Hours

B. Repeat Troubles

1.1.4.4.24 Percent POTS & UNE POTS with Loop and Port Combinations Repeat Reports

1.1.4.4.25 Percent Specials and UNE Specials with Loop and Port Combination Repeat Reports

1.1.4.4.26 Percent UNEs (Excludes UNE Loop and Port Combinations) Repeat Reports

C. Report Rate

1.1.4.4.27 POTS & UNE POTS with Loop and Port Combinations Trouble Report Rate

1.1.4.4.28 Specials and UNE Specials with Loop and Port Combination Failure Frequency

1.1.4.4.29 UNEs (Excludes UNE Loop and Port Combinations) Trouble Report Rate

D. Appointments Missed

1.1.4.4.30 POTS & UNE POTS with Loop and Port Combinations Percent Missed Repair Commitments

1.1.4.4.31 UNEs (Excludes UNE Loop and Port Combinations) Percent Missed Repair Commitments

E. No Access

1.1.4.4.32 POTS & UNE POTS with Loop and Port Combinations Percent No Access

General

A. Billing

1.1.4.4.33 Percent of Billing Records Transmitted Correctly

- 1.1.4.4.34 Any Measurement listed below that is provided on an aggregate basis by SWBT (Reported for SWBT and CLECs combined) that in the future if SWBT provides the service such that SWBT differentiates itself from the CLEC, then SWBT would provide CLEC with the information related to CLEC and SWBT as well as the aggregate CLEC data.

**2.0 Specified Performance Standards**

- 2.1 The performing Party warrants that it will meet the above Performance Criteria, except in those instances where its failure to do so is a result of a) the other Party's failure to perform any of its obligations set forth in this Agreement, b) any delay, act or failure to act by an end user, agent, or subcontractor of the other Party, c) any Force Majeure Event, or d) for INP, where memory limitations in the switch in the service office cannot accommodate the request.

**3.0 Occurrence of a Specified Performance Breach.**

- 3.1 In recognition of either: 1) the loss of end user opportunities, revenues and goodwill which a Party might sustain in the event of a Specified Performance Breach; 2) the uncertainty, in the event of a Specified Performance Breach, of a Party having available to it end user opportunities similar to those opportunities available to a Party at the time of a breach; and 3) the difficulty of accurately ascertaining the amount of damages a Party would sustain if a Specified Performance Breach occurs. In the event of a Specified Performance Breach, the breaching Party agrees to pay the other Party, subject to Section 5.1 below, damages as referenced in all of Section 1.1.4 of this Appendix.

**4.0 Liquidated Damages**

- 4.1 The damages payable by either Party as a result of a Specified Performance Breach will be the amounts specified for each Specified Performance Breach in all of Section 1.1.4 (collectively, these amounts are referred to as "Liquidated Damages"). The Parties agree and acknowledge that a) the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances of the Parties at the time of the negotiation and entering into of this Agreement, with due consideration given to the performance expectations of each Party; b) the Liquidated Damages constitute a reasonable approximation of the damages either Party would sustain if its damages were readily ascertainable; and c) neither Party will be required to provide any proof of the Liquidated Damages.

**5.0**      **Limitations**

- 5.1      In no event will a Party be liable to pay the Liquidated Damages if that Party's failure to meet or exceed any of the Performance Criteria is caused, directly or indirectly, by a Delaying Event. A "Delaying Event" means: a) a failure by a Party to perform any of its obligations set forth in this Agreement; b) any delay, act or failure to act by an end user, agent or subcontractor of either Party; c) any Force Majeure Event; d) for Out of Service Repairs for unbundled Loops, where either Party lacks automatic testing capability; or e) for INP, where memory limitations in the switch in either Party serving office cannot accommodate the request. If a Delaying Event (i) prevents a Party from performing a Specified Activity, then such Specified Activity will be excluded from the calculation of a Party's compliance with the Performance Criteria, or (ii) only suspends a Party's ability to timely perform the Specified Activity, the applicable time frame in which that Party's compliance with the Performance Criteria is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event.

**6.0**      **Records and Reports**

- 6.1      SWBT will not levy a separate charge for provision of the data to CLEC called for under this Appendix. Notwithstanding other provisions of this Agreement, the Parties agree that such records will be deemed Proprietary Information.
- 6.2      Reports are to be made available to the CLEC by the 15<sup>th</sup> day following the close of the calendar month. If the 15<sup>th</sup> falls on a weekend or holiday, the reports will be made available the next business day. If requested by CLEC, data files of CLEC raw data are to be transmitted by SWBT to CLEC on the 15<sup>th</sup> day pursuant to mutually acceptable format, protocol, and transmission media.
- 6.3      If SWBT does not provide a measurement at the time required, and fails to cure this omission by the 15<sup>th</sup> day of the succeeding month, the measurement will be considered to be out of parity by more than three standard deviations under the liquidated damages provisions set forth above, unless SWBT can demonstrate that the omission was the result of any of the factors listed in Section 5.1 above.
- 6.4      Using the rules defined for liquidated damages, SWBT will provide the credits for the associated damages within 30 days after reporting the measurement. Where liquidated damages result from a failure to report a measurement, SWBT will provide the credits within 30 days after the expiration of the cure period provided for in Section 6.3 above (i.e., the 15<sup>th</sup> day of the month succeeding the month in which the omission occurred).

6.5 CLEC and SWBT will consult with one another and attempt in good faith to resolve any issues regarding the accuracy or integrity of data collected, generated, and reported pursuant to this Appendix. In the event that CLEC requests such consultation and the issues raised by CLEC have not been resolved within 45 days after CLEC's request for consultation, then SWBT will allow CLEC to have an independent audit conducted, at CLEC's expense, of SWBT's performance measurement data collection, computing, and reporting processes. The auditor will enter into an appropriate non-disclosure agreement. CLEC may not request more than one audit per twelve calendar months under this section. This section does not modify CLEC's audit rights under other provisions of this Agreement.

6.6 Should SWBT at some future date purchase local services from CLEC, the Parties will negotiate performance measures to be provided to SWBT.

#### **7.0 Remedial Plans**

7.1 Within 15 business days after any of the following events occur, SWBT will prepare and provide to CLEC a remedial plan that specifies and schedules the steps SWBT will take to determine and remedy the particular performance deficiency:

7.1.1 SWBT reports performance for CLEC on any Performance Measurement in a single month that is greater than three standard deviations below the Performance Criteria; or

7.1.2 SWBT reports performance for CLEC on any Performance Measurement in three successive months that is greater than one standard deviations below the Performance Criteria.

#### **8.0 Initial Implementation; Data Review**

8.1 The Parties agree that none of the liquidated damages provisions set forth in this Appendix will apply (except for liquidated damages based on a failure to provide Performance Measurement reports) during the first three months after CLEC first purchases the type of service or unbundled network element(s) associated with a particular Performance Measurement. During this three month period the Parties agree to consider in good faith any adjustments that may be warranted to the Performance Criteria for that Performance Measurement. The remedial plan provisions of this Appendix apply during this three month period.

8.2 The Parties agree to revise the Performance Criterion for a Performance Measurement whenever a sufficient quantity of performance data indicate that SWBT's performance for itself on a particular measurement does not closely enough approximate a normal distribution curve to make use of standard deviation measures

reasonable. In this event, the Parties will substitute a Performance Criterion that provides an alternative, statistically sound measure of parity performance. If the Parties cannot agree on a substitute Performance Criterion, they will appoint an independent statistician to select one.

## **9.0 Performance Measurements**

SWBT will provide the following Performance Measurements under this Agreement:

9.0.1 All UNE combination measurements listed below will apply if and when SWBT combines the elements for the CLEC.

9.0.2 When SWBT does not combine elements for CLECs, some measurements below may not apply and additional measurements may be required to be developed based upon the access provided by SWBT to CLECs for the purpose of combining elements. Additional measurements required based upon the access given to CLECs for combining elements are subject to arbitration or dispute resolution by the Missouri Commission.

9.0.2.1 For UNE combination measurements that do not apply, liquidated damages are not applicable.

9.0.2.2 Liquidated damages for the following measurements will not apply unless the measurement for the CLEC includes at least thirty individual data points.

### **9.1 Pre-Ordering**

#### **9.1.1 Measurement - Average response time for OSS Pre-Order Interfaces**

Definition - The average response time in seconds from the SWBT side of the Remote Access Facility (RAF) and return for pre-order interfaces (Verigate and DataGate) by function:

- |   |           |             |              |
|---|-----------|-------------|--------------|
| • Address Verification                      | Datagate: | 80% ≤ 5 sec | 90% ≤ 7 sec  |
|   | Verigate: | 80% ≤ 5 sec | 90% ≤ 7 sec  |
| • Request For Telephone Number              | Datagate: | 80% ≤ 4 sec | 90% ≤ 6 sec  |
|   | Verigate: | 80% ≤ 4 sec | 90% ≤ 6 sec  |
| • Request For Customer Service Record (CSR) | Datagate: | 80% ≤ 6 sec | 90% ≤ 8 sec  |
|   | Verigate: | 80% ≤ 7 sec | 90% ≤ 10 sec |

- Service Availability

Datagate:	80% ≤ 3 sec	90% ≤ 5 sec
Verigate:	80% ≤ 11 sec	90% ≤ 13 sec

- Service Appointment Scheduling (Due Date)

Datagate:	80% ≤ 2 sec	90% ≤ 3 sec
Verigate:	80% ≤ 2 sec	90% ≤ 3 sec

- Dispatch Required

Datagate:	80% ≤ 17 sec	90% ≤ 19 sec
Verigate:	80% ≤ 17 sec	90% ≤ 19 sec

Calculation -  $\Sigma[(\text{Query Response Date \& Time}) - (\text{Query Submission Date \& Time})]/(\text{Number of Queries Submitted in Reporting Period})$

Report Structure - Reported on a company basis by interface for DATAGATE and VERIGATE.

9.1.1.1 Note: The response times stated above may be altered if mutually agreed upon.

9.1.1.2 Note: CLEC and SWBT agree that when national standards for pre-ordering are available and both parties have implemented the interface, the parties will jointly develop performance measurements to be used recognizing that a comparative parity measure or a mutually agreed to standard will be provided.

9.1.2 Measurement - EASE Average Response Time

Definition - Average screen to screen response from the SWBT side of the Remote Access Facility (RAF) and return.

Calculation -  $\Sigma[(\text{Query Response Date \& Time}) - (\text{Query Submission Date \& Time})]/(\text{Number of Queries Submitted in Reporting Period})$

Report Structure - Reported for all CLECs and SWBT by division name (CPU platform).

9.1.3 Measurement - Percent Responses Received within "x" seconds.

Definition - The % of functions completed in "x" seconds for pre-order interfaces (Verigate and DataGate) by function:

- Address Verification  
DataGate: <5, <7, and >7  
Verigate: <5, <7, and >7
- Request For Telephone Number  
DataGate: <4, <6, and >6  
Verigate: <4, <6, and >6
- Request For Customer Service Record (CSR)  
DataGate: <6, <8, and >8  
Verigate: <7, <10, and >10
- Service Availability  
DataGate: <3, <5, and >5  
Verigate: <11, <13, and >13
- Service Appointment Scheduling (Due Date)  
DataGate: <2, <3, and >3  
Verigate: <2, <3, and >3
- Dispatch Required  
DataGate: <17, <19, and >19  
Verigate: <17, <19, and >19

Calculation - (# of responses within each time interval ÷ total responses) \* 100

Report Structure - Reported on a company basis by interface for DataGate and Verigate.

- 9.1.4 Note: CLEC and SWBT agree that when national standards for pre-ordering are available and both parties have implemented the interface, the parties will jointly develop performance measurements to be used recognizing that a comparative parity measure or a mutually agreed to standard will be provided.

## 9.2 **Ordering And Provisioning**

### A. Completions

POTS & UNE POTS Loop and Port Combinations

9.2.1 Measurement - Average installation interval

Definition - Average business days from application date to completion date for N,T,C orders, excluding customer caused misses and customer requested due dates greater than 5 business days.

Calculation -  $[\Sigma(\text{completion date} - \text{application date})]/(\text{Total number of orders completed})$

Report Structure - Reported for CLEC, all CLECs and SWBT by Field Work (FW), No Field Work (NFW), Business and Residence.

Report Structure - Reported for CLEC, all CLECs and SWBT by Field Work (FW), No Field Work (NFW), Business and Residence. Broken out by Resale or UNE Loop and Port.

9.2.2 Measurement - Percent Installations Completed within "x" business days

Definition - Percent installations completed within 5 business days for FW and 3 business days for NFW orders from receipt of confirmed service order excluding orders where customer requested a due date greater than 5 business days for FW and 3 business days for NFW orders and orders with only customer caused misses.

Calculation -  $(\# \text{ N,T,C orders installed within "x" business days} \div \text{Total N,T,C orders}) * 100$

Report Structure - Reported for CLEC, all CLECs and SWBT by Field Work (FW), No Field Work (NFW), Business and Residence. Broken out by Resale or UNE Loop and Port.

9.2.3 Measurement - Percent SWBT Caused Missed Due Dates

Definition - Percent of N,T,C orders where installation was not completed by the due date, excluding customer caused misses.

Calculation -  $(\text{Count of N,T,C orders not completed by the committed due, excluding customer caused misses} \div \text{Total number of N,T,C orders}) * 100$

Report Structure - Reported for CLEC, all CLECs and SWBT by Field Work (FW), No Field Work (NFW), Business and Residence. Broken out by Resale or UNE Loop and Port.

9.2.4 Measurement - Delay Days for SWBT caused Missed Due Dates

Definition - Average calendar days from due date to completion date on company missed orders.

Calculation -  $\Sigma(\text{Completion date} - \text{Committed order due date}) / (\# \text{ of posted orders})$

Report Structure - Reported for CLEC, all CLECs and SWBT Retail for POTS, Specials and UNE. Broken out by Resale or UNE Loop and Port.

9.2.5 Measurement - Percent No Access

Definition - Percent of Field Work (FW) N,T,C orders that are no accessed.

Calculation -  $\text{Count of FW N,T,C orders that are no accessed} \div \text{Total number of FW N,T,C orders}$ .

Report Structure - Reported for CLEC, total CLECs and SWBT retail. Broken out by Resale or UNE Loop and Port.

Specials and UNE Specials Loop and Port Combination

9.2.6 Measurement - Average Installation Interval

Definition - Average business days from application date to completion date for N,T,C orders excluding customer cause misses and customer requested due date greater than "x" business days.

Calculation -  $[\Sigma(\text{completion date} - \text{application date})] / (\text{Total number of orders completed})$

Report Structure - Reported for CLEC, all CLECs and SWBT by DDS, DS1, DS3, Voice Grade Private Line (VGPL) and ISDN. Broken out by Resale or UNE Loop and Port.

9.2.7 Measurement - Standard Deviation of Installation Intervals

Definition - Measure of the variation of the installation intervals around the mean installation interval.

Calculation -  $\sqrt{[\Sigma(\text{individual installation interval} - \text{mean installation interval})^2 / (\text{number of orders in the sample} - 1)]}$

Report Structure - Reported for CLEC, all CLECs and SWBT by DDS, DS1, DS3, Voice Grade Private Line (VGPL) and ISDN. Broken out by Resale or UNE Loop and Port.

9.2.8 Measurement - Percent SWBT Caused Missed Due Dates

Definition - Percent of N,T,C orders (N,T,C orders include all orders that a CLEC may send to SWBT including conversions) where installations were not completed by the negotiated due date excluding customer caused misses.

Calculation -  $(\text{Count of N,T,C orders not completed by the committed due, excluding customer caused misses} \div \text{Total number of N,T,C orders}) * 100$

Report Structure - Reported for CLEC, all CLECs and SWBT by DDS, DS1, DS3, Voice Grade Private Line (VGPL) and ISDN. Broken out by Resale or UNE Loop and Port.

UNEs (Excludes UNE Loop and Port Combinations)

9.2.9 Measurement - Average Installation Interval

Definition - Average business days from application date to completion date for N,T,C orders excluding customer cause misses and customer requested due date greater than "x" business days.

Calculation -  $[\Sigma(\text{completion date} - \text{application date})] / (\text{Total number of orders completed})$

Report Structure - Reported for CLEC and all CLECs by loop type [2-Wire Analog 8dB Loop, BRI (2-Wire Digital Loop), and PRI (DS1 Loop)], and switch port (Analog, Analog DID, BRI and PRI), and Dedicated Transport (all types in pricing schedule).

The following are standard intervals for installation intervals for UNEs since no parity measurement is proposed:

2 Wire Analog and Digital and INP (1-10) – 3 Days  
2 Wire Analog and Digital and INP (11-20) – 7 Days  
2 Wire Analog and Digital and INP (20+) – 10 Days

DS1 loop(includes PRI) – 3 Days

Switch Ports - Analog Port - 2 Days

Switch Ports - BRI Port (1-50) - 3 Days  
Switch Ports - BRI Port (50+) - 5 Days  
Switch Ports - PRI Port (1-20) - 5 Days  
Switch Ports - PRI Port (20+) - 10 Days

DS1 Trunk Port (1 to 10) – 3 days  
DS1 Trunk Port (11 to 20) – 5 Days  
DS1 Trunk Port (20+) – ICB

Dedicated Transport (DS0, DS1, and DS3) (1 to 10) – 3 days  
Dedicated Transport (DS0, DS1, and DS3) (11 to 20) – 5 Days  
Dedicated Transport (DS0, DS1, and DS3) (20+) and all other types – ICB

9.2.10 Measurement - Standard Deviation of Installation Intervals

Definition - Measure of the variation of the installation intervals around the mean installation interval.

Calculation -  $\sqrt{\frac{\sum(\text{individual installation interval} - \text{mean installation interval})^2}{(\text{number of orders in the sample} - 1)}}$

Report Structure - Reported for CLEC and all CLECs by loop type [2-Wire Analog 8dB Loop, BRI (2-Wire Digital Loop), and PRI (DS1 Loop)], and switch port (Analog, Analog DID, BRI and PRI), and Dedicated Transport (all types in pricing schedule). Standard to be developed as data is produced.

9.2.11 Measurement - Percent SWBT Caused Missed Due Dates

Definition - Percent of UNE N,T,C orders where installations are not completed by the negotiated due date excluding customer caused misses.

Calculation -  $(\text{Count of N,T,C orders not completed by the committed due, excluding customer caused misses} \div \text{Total number of N,T,C orders}) * 100$

Report Structure - Reported for SWBT, CLEC and all CLECs by loop type [2-Wire Analog 8dB Loop, BRI (2-Wire Digital Loop), and PRI (DS1 Loop)], and switch port (Analog, Analog DID, BRI and PRI), and Dedicated Transport(all types in pricing schedule).

**B. Order Accuracy**

**9.2.12 Measurement - Percent POTS Installation Reports Within 10 Days (I-10)**

**Definition -** Percent of N,T,C orders that receive a network customer trouble report not caused by CPE or wiring within 10 calendar days of service order completion excluding subsequent reports and all disposition code "13" reports (excludable reports).

**Calculation -** (Count of N,T,C orders that receive a network customer trouble report within 10 calendar days of service order completion ÷ Total N,T,C orders (excludes trouble reports received on the due date)) \* 100

**Report Structure -** Reported for POTS Resale and UNE POTS with Loop and port combinations by CLEC, all CLECs and SWBT retail by Field Work (FW), No Field Work (NFW) business and residence.

**9.2.13 Measurement - Percent Specials Installation Reports Within 30 Days (I-30)**

**Definition -** Percent N,T,C orders that receive a network customer trouble report within 30 calendar days of service order completion.

**Calculation -** (Count of N,T,C orders that receive a network customer trouble report within 30 calendar days of service order completion ÷ Total N,T,C orders (excludes trouble reports received on the due date)) \* 100

**Report Structure -** Reported for Resale Specials and UNE Specials with loop and port combinations by CLEC, all CLECs and SWBT by DDS, DS1, DS3, Voice Grade Private Line (VGPL) and ISDN.

**9.2.14 Measurement - % UNE Installation Reports Within 30 Days (I-30)**

**Definition -** Percent UNE N,T,C orders that receive a network customer trouble report within 30 calendar days of service order completion.

**Calculation -** (Count of number of UNE N,T,C orders that receive a network customer trouble report within 30 calendar days of service order completion ÷ Total UNE N,T,C orders (excludes trouble reports received on the due date)) \* 100

**Report Structure -** Reported for SWBT, CLEC and all CLECs by loop type [2-Wire Analog 8dB Loop, BRI (2-Wire Digital Loop), and PRI (DS1 Loop)], and switch port (Analog, Analog DID, BRI and PRI), and Dedicated Transport(all types in pricing schedule).

9.2.15 Measurement - Provisioning Accuracy

Definition - % of orders installed without error.

Calculation -  $(\text{Count of orders completed without error} \div \text{total orders}) * 100$

Report Structure - Reported by individual CLEC, all CLECs and SWBT.

C. Order Status

9.2.16 Measurement - % Firm Order Confirmations (FOCs) received within "x" hours.

Definition - Percent of FOCs returned within a specified time frame from receipt of service order to return of confirmation to CLEC.

- All Res. And Bus. < 24 Hours
- Complex Business (1-200) < 48 Hours
- Complex Business (200+) - negotiated
- UNE Loop (1-49 Loops) < 24 Hours
- UNE Loop ( > 50 Loops) - 48 Hours
- Switch Ports < 24 hours

Calculation -  $(\# \text{ FOCs returned within "x" hours} \div \text{total FOCs sent}) * 100$

Report Structure - Reported for CLEC and all CLECs. This includes mechanized from EDI and LEX and manual (FAX or phone orders). The FOC for EASE is considered to be at the time the due date is negotiated and is not included in the calculation.

9.2.17 Measurement - Average Time To Return FOC

Definition - The average time to return FOC from receipt of service order to return of confirmation to CLEC.

Calculation -  $\Sigma[(\text{Date and Time of FOC}) - (\text{Date and Time of Order Acknowledgment})]/(\# \text{ of FOCs})$

Report Structure - Reported for CLEC and all CLECs.

- 9.2.18 Measurement - Percent Mechanized Rejects returned within 1 hour of the start of the EDI/LASR batch process. The EDI and LASR processes executes every two hours between 6:00 AM and 12:00 AM.

Definition - % mechanized rejects returned 1 hour of the start of the EDI/LASR batch process.

Calculation -  $(\# \text{ mechanized rejects returned within 1 hour} \div \text{Total rejects}) * 100$

Report Structure - Reported for CLEC and all CLECs for the electronic interfaces (EDI and LEX). The 2 hour interval above is subject to change as the EDI polling time frame changes. The parties will negotiate in good faith and reserve the right to bring this issue in front of the commission through dispute resolution in the future for real time rejects.

- 9.2.19 Measurement - Average Time to Return Mechanized Rejects

Definition - Average time required to return a mechanized reject.

Calculation -  $\Sigma[(\text{Date and Time of Order Rejection}) - (\text{Date and Time of Order Acknowledgment})]/(\# \text{ of Orders Rejected})$

Report Structure - Reported for CLEC and all CLECs for the electronic interfaces (EDI and LEX).

The standard interval to send a reject will be within 97% within 1 hour PON. The parties will negotiate in good faith and reserve the right to bring this issue in front of the commission through dispute resolution in the future for real time rejects.

- 9.2.20 Measurement - Percent Mechanized Completions Returned Within 1 hour upon the successful execution of the SORD (BU340) batch cycle which updates the order status, indicating a completion notice. The batch process executes at the following times: 9:00 am, 12:00 noon, 3:00 pm, 6:00 pm, 10:30 pm.

Definition - % mechanized completions returned within 1 hours for EDI and LEX.

Calculation -  $(\# \text{ mechanized completions returned to CLEC within 1 hour} \div \text{Total completions}) * 100$

Report Structure - Reported for CLEC and all CLECs for the electronic interfaces (EDI and LEX). The 1 hour interval above is subject to change as the EDI polling time frame changes.

9.2.21 Measurement - Average Time to Return Mechanized Completions

Definition - Average time required to return a mechanized completion.

Calculation -  $\Sigma[(\text{Date and Time of Notice Of Completion Issued to the CLEC}) - (\text{Date and Time of Work Completion})]/(\text{\# of Orders Completed})$

Report Structure - Reported on CLEC and all CLECs for the electronic interfaces (EDI and LEX).

The standard interval for returning completion will be >97% received within 1 hour of order completion. The 1 hour interval is subject to change as the EDI polling time frame changes.

D. Held Orders

9.2.22 Measurement - % Company Missed Due Dates Due To Lack Of Facilities

Definition - % N,T,C orders with missed committed due dates due to lack of facilities

Calculation -  $\text{Total N,T,C orders with missed committed due dates due to lack of facilities} \div \text{Total N,T,C orders}$

Report Structure - Reported for CLEC, all CLECs and SWBT Retail for POTS, Specials and UNE. Reported for > 30 calendar days & > 90 calendar days. (Calculated monthly based on posted orders.)

9.2.23 Measurement - Delay Days for Missed Due Dates Due to Lack of Facilities

Definition - Average calendar days from due date to completion date on company missed orders due to lack of facilities.

Calculation -  $\Sigma(\text{Completion date} - \text{Committed order due date})/(\text{\# of posted orders})$

Report Structure - Reported for CLEC, all CLECs and SWBT Retail for POTS, Specials and UNE.

E. Flow Through

9.2.24 Measurement - Percent Flow Through

Definition - % of orders that completely flow through the order process to SWBT legacy systems and require no manual intervention on the part of SWBT than

analogous retail services, and automated provisioning to the extent that is provided for analogous retail services.

Calculation - (# of orders that completely flow through the order process to SWBT legacy systems and require no manual intervention on the part of SWBT ÷ total orders sent.

Report Structure - Reported for CLEC, all CLECs and SWBT for POTS (Broken out by Resale and UNE loop+Port), Specials (Resale and UNE loop+Port), and UNE)

### 9.3 Maintenance/Repair

#### A. Time To Restore

#### POTS & UNE POTS Loop and Port Combinations

#### 9.3.1 Measurement - Receipt To Clear Duration

Definition - Average duration of customer trouble reports from the receipt of the customer trouble report to the time the trouble report is cleared with the customer excluding subsequent, and all disposition code "13" reports (excludable).

Calculation -  $\Sigma[(\text{Date and time ticket is cleared with customer}) - (\text{Date and time ticket received})] \div \text{Total customer network trouble reports}.$

Report Structure - Broken out by Resale and UNE loop+Port. Reported for CLEC, all CLECs and SWBT retail by Residence and Business by:

- Out of Service - Dispatch
- Out Of Service - No Dispatch
- Affecting Service - Dispatch
- Affecting Service - No Dispatch

#### 9.3.2 Measurement - Standard Deviation of Receipt To Clear Intervals

Definition - Measure of the variation of the receipt to clear intervals around the mean receipt to clear interval.

Calculation -  $\sqrt{\Sigma(\text{individual receipt to clear interval} - \text{mean receipt to clear interval})^2 / (\text{number of trouble reports in the sample} - 1)}$

Report Structure - Broken out by Resale and UNE loop+Port. Reported for CLEC, all CLECs and SWBT retail by Residence and Business by:

- Out of Service - Dispatch
- Out Of Service - No Dispatch
- Affecting Service - Dispatch
- Affecting Service - No Dispatch

9.3.3 Measurement - % Out Of Service (OOS) < 24 Hours

Definition - % of OOS trouble reports cleared in less than 24 hours excluding subsequents, tickets received on Saturday or Sunday, no access and all disposition code "13" reports (excludable).

Calculation - Count of OOS trouble reports < 24 hours ÷ Total number of OOS trouble reports.

Report Structure - Reported for CLEC, all CLECs and SWBT retail. Broken out by Resale and UNE loop+Port.

Specials and UNE Specials Loop and Port Combination

9.3.4 Measurement - Mean Time To Restore

Definition - Average duration of network customer trouble reports from the receipt of the customer trouble report to the time the trouble report is cleared excluding no access and delayed maintenance.

Calculation -  $\Sigma[(\text{Date and time trouble report is cleared with the customer}) - (\text{date and time trouble report is received})] \div \text{Total network customer trouble reports.}$

Report Structure - Reported for CLEC, all CLECs and SWBT by DDS, DS1, DS3, Voice Grade Private Line (VGPL) and ISDN by dispatch and no dispatch. Broken out by Resale and UNE loop+Port.

9.3.5 Measurement - Standard Deviation of Mean Time To Restore Intervals

Definition - Measure of the variation of the mean time to clear intervals around the mean receipt to clear interval.

Calculation -  $\text{sqrt}[\Sigma(\text{individual time to restore interval} - \text{mean time to restore interval})^2 / (\text{number of trouble reports in the sample} - 1)]$

Report Structure - Reported for CLEC, all CLECs and SWBT retail by dispatch and no dispatch. Broken out by Resale and UNE loop+Port.

UNEs (Excludes UNE Loop and Port Combinations)

9.3.6 Measurement - Mean Time To Restore

Definition - Average duration of network customer trouble reports from the receipt of the customer trouble report to the time the trouble report is cleared excluding no access and delayed maintenance.

Calculation -  $\Sigma[(\text{Date and time trouble report is cleared with the customer}) - (\text{date and time trouble report is received})] \div \text{Total network customer trouble reports.}$

Report Structure - Reported for CLEC, all CLECs and SWBT by loop type [2-Wire Analog 8dB Loop, BRI (2-Wire Digital Loop), and PRI (DS1 Loop)], and switch port (Analog, Analog DID, BRI and PRI), and Dedicated Transport (all types in pricing schedule) by dispatch and no dispatch.

9.3.7 Measurement - Standard Deviation of Mean Time To Restore Intervals

Definition - Measure of the variation of the mean time to clear intervals around the mean receipt to clear interval.

Calculation -  $\sqrt{\Sigma(\text{individual time to restore interval} - \text{mean time to restore interval})^2 / (\text{number of trouble reports in the sample} - 1)}$

Report Structure - Reported for CLEC, all CLECs and SWBT by loop type [2-Wire Analog 8dB Loop, BRI (2-Wire Digital Loop), and PRI (DS1 Loop)], and switch port (Analog, Analog DID, BRI and PRI) and Dedicated Transport(all types in pricing schedule) by dispatch and no dispatch.

9.3.8 Measurement - Percent Out Of Service (OOS) < 24 Hours

Definition - Percent of OOS trouble reports cleared in less than 24 hours.

Calculation -  $(\text{Count of UNE OOS trouble reports} < 24 \text{ hours} \div \text{Total number of UNE OOS trouble reports}) * 100$

Report Structure - Reported for CLEC, CLECs and SWBT by "POTS like" loop (2-Wire Analog 8dB Loop).

B. Repeat Troubles

9.3.9 Measurement - Percent POTS & UNE POTS with Loop and Port Combinations Repeat Reports

Definition - Percent of customer trouble reports received within 10 calendar days of a previous customer report that were not caused by CPE or wiring excluding subsequent reports and all disposition code "13" reports (excludable).

Calculation - (Count of customer trouble reports, not caused by CPE or wiring and excluding subsequent reports, received within 10 calendar days of a previous customer report) ÷ (Count of total customer trouble reports not caused by CPE or wiring and excluding subsequent reports).

Report Structure - Reported for CLEC, all CLECs and SWBT retail. Broken out by Resale and UNE loop and Port Combination.

9.3.10 Measurement - Percent Specials and UNE Specials with Loop and Port Combination Repeat Reports

Definition - Percent of network customer trouble reports received within 30 calendar days of a previous customer report.

Calculation - (Count of network customer trouble reports received within 30 calendar days of a previous customer report) ÷ (Count of total network customer trouble reports).

Report Structure - Reported for CLEC, all CLECs and SWBT by DDS, DS1, DS3, Voice Grade Private Line (VGPL) and ISDN. Broken out by Resale and UNE loop and Port Combination.

9.3.11 Measurement - Percent UNEs (Excludes UNE Loop and Port Combinations) Repeat Reports

Definition - Percent of network customer trouble reports received within 30 calendar days of a previous customer report.

Calculation - (Count of network customer trouble reports received within 30 calendar days of a previous customer report) ÷ (Count of total network customer trouble reports).

Report Structure - Reported for CLEC, all CLECs and SWBT by loop type [2-Wire Analog 8dB Loop, BRI (2-Wire Digital Loop), and PRI (DS1 Loop)], and switch port (Analog, Analog DID, BRI and PRI) and Dedicated Transport (all types in pricing schedule).

C. Report Rate

9.3.12 Measurement - POTS & UNE POTS with Loop and Port Combinations Trouble Report Rate

Definition - The number of customer trouble reports not caused by CPE or wiring, CPE and disposition code "13" reports within a calendar month per 100 lines.

Calculation -  $\text{Count of customer trouble reports} \div (\text{total lines} \div 100)$

Report Structure - Reported for POTS Resale and UNE POTS loop and port combination by CLEC, all CLECs and SWBT retail. This measurement is only valid for line counts of 300,000 or greater. Broken out by Resale and UNE loop and Port Combination.

9.3.13 Measurement - Specials and UNE Specials with Loop and Port Combination Failure Frequency

Definition - The number of network customer trouble reports within a calendar month per 100 circuits.

Calculation -  $\text{Count of network trouble reports} \div (\text{Total circuits} \div 100)$

Report Structure - Reported for resale specials and UNE specials with loop and port combination for CLEC, all CLECs and SWBT by DDS, DS1, DS3, Voice Grade Private Line (VGPL) and ISDN. Broken out by Resale and UNE loop and Port Combination.

9.3.14 Measurement - UNEs (Excludes UNE Loop and Port Combinations) Trouble Report Rate

Definition - The number of network customer trouble reports within a calendar month per 100 UNEs.

Calculation -  $\text{Count of network trouble reports} \div (\text{Total UNEs} \div 100)$

Report Structure - Reported for CLEC, all CLECs and SWBT by loop type [2-Wire Analog 8dB Loop, BRI (2-Wire Digital Loop), and PRI (DS1 Loop)], and switch port (Analog, Analog DID, BRI and PRI) and Dedicated Transport (all types in pricing schedule)

D. Appointments Missed

9.3.15 Measurement - POTS & UNE POTS with Loop and Port Combinations Percent Missed Repair Commitments

Definition - Percent of trouble reports not cleared by the commitment time, excluding disposition code "13" reports.

Calculation -  $(\text{Count of trouble reports not cleared by the commitment time for company reasons} \div \text{Total trouble reports}) * 100$ .

Report Structure - Reported for CLEC, all CLECs and SWBT retail by dispatch and no dispatch. Broken out by Resale and UNE loop and Port Combination.

9.3.16 Measurement - UNEs (Excludes UNE Loop and Port Combinations) Percent Missed Repair Commitments

Definition - Percent of trouble reports not cleared by the commitment time for company reasons.

Calculation -  $(\text{Count of trouble reports not cleared by the commitment time for company reasons} \div \text{Total trouble reports}) * 100$

Report Structure - Reported for each CLEC, all CLECs and SWBT for "POTS type" loops (2-Wire Analog 8dB Loop)

E. No Access

9.3.17 Measurement - POTS & UNE POTS with Loop and Port Combinations Percent No Access

Definition - Percent of dispatched customer trouble reports with a status of "No Access" excluding disposition code "13" trouble reports.

Calculation -  $\text{Count of dispatched customer trouble reports with a status of "No Access"} \div \text{Total dispatched customer trouble reports}$ .

Report Structure - Reported for CLEC, all CLECs and SWBT retail. Broken out by Resale and UNE loop and Port Combination.

9.4 General

A. System Availability

9.4.1 Measurement - OSS Interface availability

Definition - Percent of time OSS interface is available compared to scheduled availability.

Calculation -  $(\# \text{ Scheduled system available hours} \div \text{unscheduled system unavailable hours}) * 100$

Report Structure - Reported on a company basis by interface for EASE, DATAGATE, VERIGATE, LEX, and EDI. The RAF will be reported by CLEC. When EBI is available SWBT will provide interface availability. When any new system is available, the parties will negotiate in good faith to develop associated performance measurements.

The following will be the standard for availability for all systems except EASE. EASE will have a parity measurement since SWBT uses EASE for its retail operation. Availability > 99% for Datagate, Verigate, LEX, EDI, and RAF applications. This availability measurement includes the front end applications and does not include the legacy systems. Parity applies for the legacy systems since SWBT uses the legacy systems in its retain operation.

B. Center Responsiveness

9.4.2 Measurement - LSC Grade Of Service (GOS)

Definition - % of calls answered by the LSC within a specified period of time.

Calculation -  $\text{Total number of calls answered by the LSC within a specified period of time} \div \text{Total number of calls answered by the LSC}$

Report Structure - Reported for all calls to the LSC by operational separation and SWBT retail (RSC and BSC).

9.4.3 Measurement - LSC Average Speed Of Answer

Definition - The average time a customer is in queue. The time begins when the customer enters the queue and ends when the call is answered by a SWBT representative.

Calculation -  $\text{Total queue time} \div \text{Total calls}$

Report Structure - Reported for all calls to the LSC by operational separation and

SWBT retail (RSC and BSC).

9.4.4 Measurement - LOC Grade Of Service (GOS)

Definition - % of calls answered by the LOC within a specified period of time.

Calculation - Total number of calls answered by the LOC within a specified period of time ÷ Total number of calls answered by the LOC

Report Structure - Reported for all calls to the LSC by operational separation and SWBT retail (Repair Bureau).

9.4.5 Measurement - LOC Average Speed Of Answer

Definition - The average time a customer is in queue. The time begins when the customer enters the queue and ends when the call is answered by a SWBT representative.

Calculation - Total queue time ÷ Total calls

Report Structure - Reported for all calls to the LOC for all CLECs and SWBT retail (Repair Bureau).

C. Billing Timeliness

9.4.6 Measurement - Billing Accuracy

Definition - This measurement will be performed to verify that the bill audit process includes both Wholesale (e.g. UNE and RESALE) and Retail/Access. The CABS Bill Audit process includes all Feature Groups including U for Unbundled Network Elements for CLECs. Specific Billing conditions for each Feature Group will be validated and the same CABS Billing System and Billing Process is used for all Feature Groups. The CRIS Bill Audit Process includes both Resale and Retail bills.

A sample of all types of products/services, class of service, usage (e.g. intraLATA toll plans) will be reviewed. The same CRIS Billing System and Billing Process is used for the both Resale and Retail except Resale has the extra step to access % discount table. The % discount table is updated/validated when the Interconnection Agreement is implemented.

Calculation - # errors detected in bill audit.

Report Structure - Reported for aggregate of SWBT and CLECs.

9.4.7 Measurement - Percent of Accurate and Complete Formatted Mechanized Bills

Definition - Measures the % of accurate and complete formatted mechanized bills via EDI.

Calculation -  $(\text{Count of accurate and complete formatted mechanized bills via EDI} \div \text{total \# of mechanized bills via EDI}) * 100$

Report Structure - Reported for CLEC, and all CLECs.

9.4.8 Measurement - Percent Of Billing Records Transmitted Correctly

Definition - Measures % of billing records transmitted correctly on the usage extract feed.

Calculation -  $(\text{Count of billing records transmitted correctly with complete information and proper formatting} \div \text{total billing records transmitted}) * 100$

Report Structure - Reported for CLEC, and all CLECs.

9.4.9 Measurement - Billing Completeness

Definition - % of service orders on the bill for the current bill period.

Calculation -  $(\text{Count of service orders included in current applicable bill period} \div \text{Total service orders in current applicable bill period}) * 100$

Report Structure - Reported for CLEC, all CLECs and SWBT.

9.4.10 Measurement - Billing timeliness

Definition - Percent of bills released on time by bill type (i.e. paper, Bill Plus, EDI, BDT).

Calculation -  $(\text{Count of bills released on time} \div \text{Total number of bills released}) * 100$

Report Structure - Reported for CLEC, all CLECs and SWBT.

9.5 Operator Services and Directory Assistance

9.5.1 Measurement - Directory Assistance Grade Of Service

Definition - % of directory assistance calls answered < 1.5, < 2.5, > 7.5, > 10.0, > 15.0, > 20.0, and > 25.0 seconds.

Calculation -  $(\text{Count of calls answered within "x" seconds} \div \text{Total calls answered}) * 100$

Report Structure - Reported for the aggregate of SWBT and CLECs. IF SWBT changes its OS/DA platform to differentiate between CLECs and itself, SWBT will provide this measurement broken out by CLEC and itself.

9.5.2 Measurement - Directory Assistance Average Speed Of Answer

Definition - The average time a customer is in queue. The time begins when the customer enters the queue and ends when the call is answered by a SWBT representative.

Calculation -  $\Sigma(\text{Date and time customer answered by SWBT representative} - \text{Date and time customer enters queue}) \div \text{Total calls}$

Report Structure - Reported for the aggregate of SWBT and CLECs. IF SWBT changes its OS/DA platform to differentiate between CLECs and itself, SWBT will provide this measurement broken out by CLEC and itself.

9.5.3 Measurement - Operator Services Grade Of Service

Definition - % of directory assistance calls answered < 1.5, < 2.5, > 7.5, > 10.0, > 15.0, > 20.0, and > 25.0 seconds.

Calculation -  $(\text{Count of calls answered within "x" seconds} \div \text{Total calls answered}) * 100$

Report Structure - Reported for the aggregate of SWBT and CLECs. IF SWBT changes its OS/DA platform to differentiate between CLECs and itself, SWBT will provide this measurement broken out by CLEC and itself.

9.5.4 Measurement - Operator Services Average Speed Of Answer

Definition - The average time a customer is in queue. The time begins when the customer enters the queue and ends when the call is answered by a SWBT representative.

Calculation -  $\Sigma(\text{Date and time customer answered by SWBT representative} - \text{Date and time customer enters queue}) \div \text{Total calls}$

Report Structure - Reported for the aggregate of SWBT and CLECs. IF SWBT changes its OS/DA platform to differentiate between CLECs and itself, SWBT will provide this measurement broken out by CLEC and itself.

9.6 Interconnect/Unbundled Elements and Combos

9.6.1 Measurement – Mean Network Performance Parity

SWBT agrees to provide to CLEC testing data available to SWBT. SWBT agrees to negotiate in good faith to provide reports and jointly develop the measurements for this category. Either party may bring this issue to the commission via the dispute resolution process.

9.6.2 Measurement – Standard Deviation of Network Performance Parity

SWBT agrees to provide to CLEC testing data available to SWBT. SWBT agrees to negotiate in good faith to provide reports and jointly develop the measurements for this category. Either party may bring this issue to the commission via the dispute resolution process.

9.6.3 Measurement - Availability of STP Links

Definition. – This measurement will provide the number of minutes or seconds the STP link was unavailable on an incidence basis.

Report Structure – The following will be reported by incidence for SWBT, CLEC, and all CLECs.

9.6.4 Measurement – Database accuracy

SWBT agrees to provide CLEC data available to SWBT. The parties agree to continue to negotiate in good faith to develop measurements for database accuracy. Either party may bring this issue to the commission via the dispute resolution process.

9.6.5 Measurement – Mean time for database query

SWBT agrees to provide CLEC data available to SWBT. The parties agree to continue to negotiate in good faith to develop measurements for database queries. Either party may bring this issue to the commission via the dispute resolution process.

9.6.6 Measurement – Mean Time for database updates

SWBT agrees to provide CLEC data available to SWBT. The parties agree to continue to negotiate in good faith to develop measurements for database updates. Either party may bring this issue to the commission via the dispute resolution process.

9.6.7 Measurement – Mean PDD for calls routed to CLEC OS/DA Platform

Definition – This measurement will provide the delay for the caller from the time the caller requests OS/DA to the time the call is routed to the correct trunk group to reach the CLEC OS/DA platform.

Report Structure – CLEC and SWBT will jointly develop a sampling process to determine the PDD for customized routed calls. Either party may bring this issue, if no agreement is reached to the commission, via the dispute resolution process.

9.6.8 When Electronic Jeopardy Notification and order acknowledgment is implemented between the parties, SWBT will provide the mean and standard deviation for time to provide jeopardies or other mutually acceptable measurement.

**10.0 Applicability of Other Rates, Terms and Conditions**

10.1 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 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 FGA**

## APPENDIX FGA

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

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

### I. DEFINITIONS

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

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

## **II. UNDERTAKING OF THE PARTIES**

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

## **III. ADMINISTRATION OF REVENUE DISTRIBUTION**

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

## **IV. MINUTES OF USE (MOU'S) DEVELOPMENT**

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

**V. TERMINATING MOU'S DEVELOPMENT**

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

**VI. ORIGINATING MOU'S DEVELOPMENT**

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

**VII. CALCULATION OF REVENUE DISTRIBUTION**

- A. The amount of premium or non-premium revenues due each party each month will be equal to the sum of Originating and Terminating premium or non-premium revenue for each end office. These revenues will be calculated by the Primary Company by multiplying each of the Secondary Company's effective interstate and/or intrastate FGA switched access tariff rate elements (except the Local Transport element described below) by the appropriate MOU calculation under Sections 4.2.A. and B. above. These switched access tariff rate elements will not exceed the switched access tariff rate elements for SWBT.
- B. Local Transport (or its equivalent under the Secondary Company's tariff and called Transport in this agreement) compensation will be determined for each company by multiplying each of the Secondary Company's Transport rates by the appropriate MOUs (as calculated under Sections 4.2.A. and B. above) by the Secondary company's percentage ownership of facilities agreed on by the Parties and set out in Exhibit B, which is attached hereto and made a part hereof.

**VIII. REVENUE DISTRIBUTION AMOUNTS, MONTHLY STATEMENTS AND PAYMENTS**

- A. The Primary Company each month will calculate and prepare a monthly compensation statement reflecting the revenue distribution amounts for FGA, both EAS and non-EAS, access service due the Secondary Company.
- B. The monthly compensation statement will show, for each Secondary Office, separately:
  - 1. The total number of non-premium or premium terminating MOUs and revenue.
  - 2. The total number on non-premium or premium originating MOUs and revenues.
  - 3. The total compensation due the Secondary Company, by rate element.
  - 4. The number of terminating MOUs recorded by the Primary Company.
  - 5. The number of originating MOUs estimated by the Primary Company pursuant to Section 4.3 contained herein.
  - 6. The number of access lines used to prorate originating usage pursuant to Section 4.3 contained herein.
  - 7. The percent ownership factor, if any, used to prorate Local Transport revenues.
  - 8. Adjustments for uncollectibles.
- C. Within sixty (60) Calendar days after the end of each billing period, the Primary Company will remit the compensation amount due the Secondary Company. Where more than one compensation amount is due, they may be combined into a single payment.

**IX. MISCELLANEOUS PROVISIONS**

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

**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.

**EXHIBIT A**

**EAS LOCATIONS FOR ORIGINATING AND TERMINATING  
FEATURE GROUP A ACCESS SERVICE**

Primary Office Company

Secondary Office Company

CLLI CODE    NPA-NXX

CLLI CODE    NPA-NXX    ACCESS LINE

**EXHIBIT B**

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

**SECONDARY OFFICE COMPANY**

CLLI CODE	NPA-NXX	Access Line	% Ownership of Transport Facilities	LATA
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## **APPENDIX HOST**

## APPENDIX HOST

This Appendix sets forth the terms and conditions under which SWBT will perform hosting responsibilities for CLEC for: (1) the provision of billable message data and/or access usage data received from such CLEC for distribution to the appropriate billing and/or processing location via SWBT's in-region network or via the nationwide Centralized Message Distribution System (CMDS); or (2) billable message data and/or access usage data received from other Local Exchange Carriers (LECs) or CLECs or from CMDS to be distributed to such CLEC. This Appendix covers hosting in region (i.e., Missouri, Arkansas, Kansas, Oklahoma and Texas) and hosting out of region. Hosting out of region is only available to an CLEC that is a Full Status Revenue Accounting Office (RAO) company.

### I. DEFINITIONS

- A. Access Usage Record (AUR) - a message record which contains the usage measurement reflecting the service feature group, duration and time of day for a message which is subsequently used by a LEC to bill access to an Interexchange Carrier (IXC).
- B. Bellcore Client Company Calling Card and Third Number Settlement (BCC CATS) System - nationwide system used to produce information reports that are used in the settlement of LEC or CLEC revenues recorded by one BCC (or LEC or CLEC within the territory of that BCC) and billed to a customer of another BCC (or LEC or CLEC within the territory of that BCC) as described in accordance with the Bellcore Practice BR 981-200-110.
- C. Billable Message Record - a message record containing details of a completed call which has been carried by a LEC over its facilities or by CLEC over its facilities and such record is to be used to bill an end user.
- D. Centralized Message Distribution System (CMDS) - the national network of private line facilities used to exchange Exchange Message Record (EMR) formatted billing data between a company originating a message and the company billing for a message.
- E. Exchange Message Record (EMR) - industry standard message format as described in accordance with the Bellcore Practice BR 010-200-010 which was developed to facilitate the exchange of telecommunications message information.
- F. Full Status Revenue Accounting Office (RAO) - an CLEC or LEC that is responsible for formatting EMR records, and for editing and packing of such detail records into files for distribution.

- G. In-Region Hosting - includes the transport, using Hosting Company network, of (1) billable message record data for LEC or CLEC transported messages and/or access usage record data that originate in a region and are delivered by the CLEC to SWBT at a mutually agreed upon location within the territory of SWBT to be sent to another LEC or CLEC for billing; and (2) billable message record data and/or access usage data received from CMDS or another LEC or CLEC to be delivered to the CLEC for billing to its end user located within the five state territory of SWBT.
- H. Out-of-Region Hosting - includes the transport, using the national CMDS network, of (1) billable message record data for LEC or CLEC transported messages and/or access usage record data that originate out of region and are delivered by the CLEC to SWBT and are to be sent to another LEC or CLEC for billing; and (2) billable message record data and/or access usage data received from CMDS or another LEC or CLEC to be delivered to the CLEC for billing to its end user located outside SWBT's five state territory.
- I. Non-Full Status Revenue Accounting Office (RAO) - An CLEC or LEC that has assigned responsibility to SWBT for editing, sorting and placing billing message record detail and/or access usage record detail into packs for distribution.

## **II. RESPONSIBILITIES OF THE PARTIES**

- A. All data forwarded from CLEC must be in the industry standard EMR format in accordance with Bellcore Practice BR 010-200-010. The CLEC is responsible to ensure all appropriate settlement plan indicators are included in the message detail, i.e., the Bellcore Client Company Calling Card and Third Number Settlement (BCC CATS) System. The CLEC acknowledges that the only message records subject to this Hosting Appendix are those that arise from LEC or CLEC transported billable messages and/or access usage records to be used by a LEC or CLEC for the purpose of billing access to an IXC.
- B. When CLEC delivers billable message data and/or access usage data to SWBT which must be forwarded to another location for billing purposes, SWBT will accept data from the CLEC, perform edits to make message detail and access usage records consistent with CMDS specifications, and use its in region data network to forward this data to the appropriate billing company or to access the national CMDS network in order to deliver this data to the appropriate billing and/or processing company.

If CLEC is not a Full Status RAO Company, SWBT will also sort billable message detail and access usage record detail by Revenue Accounting Office, Operating Company Number or Service Bureau and split data into packs for invoicing prior to using its in region network to forward this data to the

appropriate billing company or to access the national CMDS network in order to deliver such data to the appropriate billing company.

- C. For billable message data and/or access usage data received by SWBT for delivery to an CLEC location, SWBT will use its in region data network to receive this data from other LECs or CLECs or from CMDS in order to deliver such billable message data and/or access usage data to the agreed upon billing CLEC location.

### III. BASIS OF COMPENSATION

- A. CLEC agrees to pay SWBT a per record charge for billable message records and/or access usage records that are received from CLEC and destined for delivery to another location for billing, at the rates listed below:

Per Record Charge

Full Status RAO Company

Hosting Company Network \$0.002

National CMDS Network \$0.005

Non-Full Status RAO Company

Hosting Company Network \$0.007

National CMDS Network \$0.010

- B. As part of this per record charge, SWBT will provide Confirmation and/or Error Reports and any Intercompany Settlement (ICS) Reports, such as the Bellcore Client Company Calling Card and Third Number Settlement System (BCC CATS), as needed.
- C. CLEC agrees to pay SWBT a per record charge for billable message records and/or access usage records which are entered on a magnetic tape or data file for delivery to the CLEC, at the rate listed below:

Per Record Charge

\$0.003

### IV. LIABILITY

- A. Any failure to populate accurate information in accordance with Section II.A. above, will be the responsibility of the CLEC.
- B. SWBT will not be liable for any costs incurred by the CLEC when the CLEC is transmitting data files via data lines and a transmission failure results in the non-receipt of data by SWBT.
- C. SWBT SHALL NOT BE LIABLE IN ANY EVENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY

**DAMAGES RESULTING FROM, OR ARISING OUT OF, OR IN CONNECTION WITH, THIS APPENDIX.**

- D. SWBT shall not be liable for any losses or damages arising out of errors, interruptions, defects, failures, or malfunction of the services provided hereunder, including any and all 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 Appendix shall in no event exceed the amount of charges made for the 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.
- E. The CLEC agrees to release, defend, indemnify, and hold harmless SWBT from any and all losses, damages, or other liability, including attorney fees, that it may incur as a result of claims, demands, or other suits brought by any party that arise out of the use of this service by the CLEC, its customers or end users. The CLEC shall defend SWBT against all end user claims just as if CLEC had provided such service to its end users with its own employees.
- F. The CLEC also agrees to release, defend, indemnify and hold harmless SWBT from any claim, demand or suit that asserts any infringement or invasion of privacy or confidentiality of any person(s), caused or claimed to be caused, directly or indirectly, by SWBT employees and equipment associated with provision of this service. This includes, but is not limited to suits arising from disclosure of any customer specific information associated with either the originating or terminating numbers used to provision this service.

**VI. 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 CLEC WHEN THIS DATA IS ACCESSED AND USED BY A THIRD PARTY.

**VII. 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**

**INW**

**(Inward Assistance Operator Services)**

## **APPENDIX INW**

### **INWARD ASSISTANCE OPERATOR SERVICES**

This Appendix sets forth the terms and conditions under which Southwestern Bell Telephone Company ("SWBT") agrees to provide Inward Assistance Operator Services for Competitive Local Exchange Carrier (CLEC) operators requiring the services and assistance as outlined below. These terms and conditions are reciprocal and also define the method for CLEC to provide Inward Assistance Operator Services for SWBT.

#### **I. SERVICES**

The Inward Assistance Operator will provide the following assistance or services when reached by an operator dialing the appropriate Toll Center Code in addition to the inward code 121:

General Assistance on calls where an attempt to connect the call is required by a local operator.

Busy Line Verification (BLV) service and Busy Line Verification/Interrupt (BLV/I) service.

#### **II. DEFINITIONS**

- A. **GENERAL ASSISTANCE** - A service in which an operator calls the Inward Assistance operator seeking assistance in dialing a number. The assistance could be required, for example, for attempting to dial a number where a 'no ring' condition has been encountered.
- B. **BUSY LINE VERIFICATION** - A service in which an operator asks the Inward Assistance operator to determine the condition of a telephone line.
- C. **BUSY LINE VERIFICATION/ INTERRUPT** - A service in which an operator asks the Inward Assistance operator to interrupt a conversation in progress, to determine if one of the parties is willing to speak to the caller requesting the interrupt.

#### **III. RESPONSIBILITIES OF THE PARTIES**

- A. It is the responsibility of the CLEC to order the necessary facilities to interconnect with SWBT's TOPS Host Operator switches in the various tandem locations throughout SWBT territory.