

selected by Applicant to perform make-ready work shall be deemed to be a person acting on Applicant's behalf while performing such work at Applicant's request.

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

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

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

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

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

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

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

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

3.37 Primary point of contact. The term "primary point of contact" refers to the persons designated by Applicant and SWBT, respectively, to coordinate arrangements for Applicant's access to SWBT's poles, ducts, conduits, and rights-of-way and records relating to such poles, ducts, conduits, and rights-of-way. SWBT's designated primary point of contact shall be the Utility Liaison Supervisor unless the parties have arranged for that function to be performed by a designated account representative who will serve as an intermediary between Applicant and the Utility Liaison Supervisor.

3.38 Rights-of-way. The term "rights-of-way" refers to all SWBT rights-of-way subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, rights-of-way are legal rights to pass over or through property of another party for limited purposes as defined in a statute, ordinance, easement, grant or other conveyance. Rights-of-way include but are not limited to (a) public rights-of-way which SWBT may occupy as permitted by law for the placement of its facilities (e.g., rights-of-way on, under, or over streets, highways, and other public roads) and (b) easements or servitudes granted by property owners or obtained through the exercise of eminent domain authority authorizing SWBT to pass over, place facilities on, and have rights of ingress and egress to the property of such property owners. Rights-of-way may also include easements which, at the time of land development or subdivision, were dedicated for use by public or private utilities and are being occupied, in whole or in part, by SWBT's facilities. Except as the context otherwise requires, the term "rights-of-way" as used in this Agreement refers only to rights-of-way owned or controlled by SWBT and does not include (a) cables and other telecommunications equipment buried or located on such rights-of-way, (b) public rights of way (which are owned by and subject to the control of governmental entities), or (c) any space which is owned and controlled by a third-party property owner and occupied by SWBT with permission from such owner rather than as a matter of legal right. As used in this Agreement, the term "right-of-way" may also include certain fee-owned or leased property acquired by SWBT for the specific purpose of installing poles, ducts, or conduits or burying underground cables which are part of SWBT's network distribution facilities.

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

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

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

3.42 State Commission. The term "State Commission" refers to the Texas Public Utility Commission.

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

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

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

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

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

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

ARTICLE 4: NATURE AND SCOPE OF AGREEMENT

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

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

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

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

4.03 No Effect on SWBT's Right to Abandon, Convey or Transfer Poles, Ducts, Conduits, or Rights-of-Way. Except as provided in subsections (a)-(d) of this section, nothing contained in this Agreement or any license subject to this Agreement shall in any way affect SWBT's right to abandon, convey, or transfer to any other person or entity SWBT's interest in any of SWBT's poles, ducts, conduits, or rights-of-way.

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

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

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

4.04 No Effect on SWBT's Rights to Manage its Poles, Ducts, Conduits, and Rights-of-Way. Subject to Applicant's rights under this Agreement and applicable federal and state laws, rules, regulations, and commission orders, including, but not limited to, 47 C.F.R. §1.1403 (requiring 60 days' notice of contemplated modifications), SWBT may (a) locate, relocate, move, replace, modify, maintain, and remove all poles, ducts, conduits, and rights-of-way subject to this Agreement at any time and in any manner as SWBT deems appropriate and (b) enter into new agreements or arrangements with other persons or entities permitting them to attach facilities to SWBT's poles or place facilities in or on SWBT's ducts, conduits, or rights-of-way.

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

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

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

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

ARTICLE 5: ACCESS TO RIGHTS-OF-WAY

5.01 Public Rights-of-Way. SWBT and Applicant agree that neither party has the right to restrict or interfere with the other party's lawful access to and use of public rights-of-way, including public rights-of-way which pass over property owned by either party. Except as otherwise specifically provided in this Agreement, SWBT and Applicant shall each be responsible for obtaining their own rights-of-way and permission to use real or personal property owned or controlled by any governmental body.

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

5.03 Access to Rights-of-Way Generally. Each pole attachment and conduit occupancy assignment or license made, issued, or subject to this Agreement shall include access to and use of all associated rights-of-way including, but not limited to, rights-of-way required by Applicant for ingress, egress, or other access to any sites where SWBT's poles or any part of SWBT's conduit system are located, but only to the extent, if any, that SWBT has the legal authority to grant such access and use. At locations where SWBT has access to third-party property pursuant to non-exclusive rights-of-way, SWBT shall not interfere with Applicant's negotiations with third-party property owners for similar access or with Applicant's access to such property pursuant to easements or other rights-of-ways obtained by Applicant from the property owner; provided, however, that neither party shall conduct activities on such right-of-way which interfere with the facilities of the other party or with the other party's access to and use of its own facilities. At locations where SWBT has obtained exclusive rights-of-way from third-party property owners or otherwise controls the right-of-way, SWBT shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Applicant and third parties on a nondiscriminatory, first-come, first-served basis, provided that the underlying agreement with the property owner permits SWBT to provide such access, and provided further that Applicant agrees to indemnify, on request defend, and hold SWBT harmless from any injury, loss, damage, claim, or liability arising out of or in connection with such access or use. Such access shall be granted, on a case-by-case basis, in the form of a license, sublicense, sub-easement, or other mutually acceptable writing. Except as otherwise agreed to by the parties, SWBT's charges for such access (obtained from SWBT rather than from the third-party property owner) shall include (a) a pro rata portion of the charges (including but not limited to one-time charges and recurring charges), if any, paid by SWBT to obtain the right-of-way plus (b) any other documented legal, administrative, and engineering costs incurred by SWBT in obtaining the right-of-way and processing Applicant's request for access. Applicant's pro rata portion of the charge paid by SWBT shall be negotiated on a case-by-case basis and shall take into account the size of the area used by Applicant and the number of users occupying the right-of-way.

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

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

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

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

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

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

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

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

- (d) Access to equipment rooms, equipment closets, mechanical rooms, telephone communications rooms, and similar areas located in buildings owned and controlled by third-parties shall be subject to access as provided in subsection (c); provided, however, that when any such room or space is leased to SWBT on an exclusive basis (as may be the case if the room or space will be used to house remote switching equipment, pair gain equipment, or other network equipment used to provide or support telecommunications services to customers at locations outside the building in which such room is located), access, if any, shall be also subject to facilities collocation tariffs, agreements, or arrangements.
- (e) Nothing contained in this section shall be construed as authorizing Applicant to occupy space owned or controlled by third parties or to utilize third-party facilities or property without permission or authority from the owner of such property, where such permission or authority is required. Neither this section nor any license or permission granted under or subject to this section shall be construed as a representation by

SWBT to Applicant that Applicant has the right to have access to or occupy any duct, conduit, or space owned and controlled by a third-party property owner or to utilize any telecommunications equipment owned or controlled by SWBT or any third party (including but not limited to owner- or tenant-owned cables, wires, and equipment located on the customer side of any network interface device).

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

ARTICLE 6: SPECIFICATIONS

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

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

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

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

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

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

- (a) No facilities shall be placed in SWBT's conduit system in violation of FCC regulations, including regulations relating to electrical interference. In addition, neither party shall place any facility in SWBT's conduit system which causes or may cause electrical interference with the facilities of the other party or joint users sufficient to jeopardize network integrity or degrade the quality of any communications services offered by either party or a joint user. If either party is notified by the other party or a joint user that its facilities are causing, or have the potential to cause, unacceptable levels of electrical interference, the party notified shall either correct the problem, remove the facility, or initiate good faith negotiations with the complaining party or joint user to resolve the issue.
- (b) Facilities placed in SWBT's conduit system shall not be designed to use the earth as the sole conductor for any part of the circuits.
- (c) Facilities placed in SWBT's conduit system and carrying more than 50 volts AC (rms) to ground or 135 volts DC to ground shall be enclosed in an effectively grounded sheath or shield.
- (d) No coaxial cable shall be placed in SWBT's conduit system unless such cable meets the voltage limitations of Article 820 of the National Electrical Code.

- (e) Coaxial cable placed in SWBT's conduit system may carry continuous DC voltages up to 1800 volts to ground where the conductor current will not exceed one-half ampere and where such cable has two separate grounded metal sheaths or shields and a suitable insulating jacket over the outer sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer sheath shall not exceed 200 microamperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.
- (f) The integrity of SWBT's conduit system and overall safety of personnel require that "dielectric cable" be used within SWBT's conduit system when a cable facility utilizes a duct or route shared in the same trench by any electric transmission facilities such as the facilities of a power utility.

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

- (a) Except as otherwise specifically agreed in this Agreement or licenses subject to this Agreement, Applicant's facilities shall enter SWBT's conduit system at locations consistent with the physical design specifications that SWBT applies to itself (typically through a manhole) or at such other designated locations agreed upon in writing (e.g., through the licensing process) by the parties in accordance with Section 6.03 (infrequent construction techniques and connectivity solutions).
- (b) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in SWBT's conduit or ducts.
- (c) Neither party shall circumvent the corrosion mitigation measures of the other party or joint users.
- (d) New construction splices in cables (including but not limited to fiber optic and twisted pair cables) shall be located in manholes, pull boxes or handholes.

6.07 Efficient Use of Conduit. To ensure efficient use of conduits, SWBT will, when cable diameters permit, install inner ducts in multiples that fully utilize duct space (typically three or four inner ducts in a full four-inch duct) as needed for SWBT's own business purposes and to accommodate Applicant and other joint users; provided, however, that SWBT will not be required to install inner duct in advance of need or in anticipation of potential future requests for access by Applicant and other joint users. In

addition, the parties shall, in accordance with SWBT's duct selection standards, install cables in inner duct when cable diameters permit.

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

- (a) Applicant shall not bore, make, or enlarge any hole in, or otherwise structurally modify or alter any manhole, handhole, duct, conduit, or other facility which is part of SWBT's conduit system except as provided in this Agreement, in licenses subject to this Agreement, or as mutually agreed upon by the parties in writing.
- (b) Nothing contained in subsection (a) shall be construed as precluding Applicant or qualified personnel acting on Applicant's behalf from reattaching cable racks or performing similar routine work which is minor in nature and associated with the placement and splicing of Applicant's cable.
- (c) Where Applicant's duct or facility physically connects with SWBT's conduit system, the section of Applicant's duct or facility which connects to SWBT's conduit system shall be installed by SWBT or its contractor at Applicant's expense (which will be SWBT's actual costs or the price charged SWBT by the contractor performing such work). SWBT will perform this work in an interval consistent with the intervals SWBT performs the same or similar types of work for itself. If SWBT's interval for beginning or completing this work does not meet Applicant's needs, Applicant may arrange for the work to be performed by an authorized contractor selected by Applicant from a list, jointly developed by Applicant and SWBT, of mutually agreed contractors qualified to perform such work. Work performed by an authorized contractor selected by Applicant to perform work under this subsection shall be performed in accordance with both parties' specifications and in accordance with both parties' standards and practices. Each party shall indemnify, on request defend, and hold the other party harmless from any injuries, losses, damages, claims, or liabilities resulting from the performance of work by the indemnifying party or by persons acting on the indemnifying party's behalf under this subsection.
- (d) SWBT will have the option to monitor the entrance and exit of Applicant's facilities into SWBT's conduit system and the physical placement of Applicant's facilities in and removal of such facilities from

any part of SWBT's conduit system. Notice requirements for such monitoring are addressed in Section 6.11 of this Agreement.

- (e) If Applicant constructs or utilizes a duct (other than a duct owned or controlled by SWBT) which is connected to SWBT's conduit system, the duct and all connections between that duct and SWBT's conduit system shall be sealed to prevent the entry of gases or liquids into SWBT's conduit system. If Applicant's duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids into SWBT's conduit system.

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

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

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

Applicant's behalf, for the safety of bystanders, and for insuring that all operations performed by persons acting on Applicant's behalf conform to current OSHA regulations and all other governmental rules, ordinances or statutes.

- (g) Neither Applicant nor any persons acting on Applicant's behalf shall engage in any conduct which damages public or private property in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, interferes with the use or enjoyment of such public or private property except as expressly permitted by the owner of such property, or creates a hazard or nuisance on such property (including but not limited to a hazard or nuisance resulting from any abandonment of Applicant's facilities, failure to remove such facilities or any construction debris from the property, failure to erect warning signs or barricades as may be necessary to exclude others from the premises or give notice to others of unsafe conditions on the premises while work performed on Applicant's behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).
- (h) Applicant shall promptly suspend activities on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way (other than sites owned or controlled by Applicant) if notified by SWBT that such activities create an unreasonable risk of injury to persons or property (including unreasonable risks of service interruptions). Applicant shall not resume such activities on or in the vicinity of SWBT's poles or rights-of-way until Applicant is satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified and shall not resume such activities within or in the vicinity of SWBT's conduit system until both Applicant and SWBT are satisfied that the work may safely proceed and that hazardous conditions at the site have been rectified. In the event that SWBT requires Applicant to suspend work activities and it is later determined that there was no reasonable basis for the work suspension, SWBT shall reimburse Applicant for actual costs resulting from the delay.
- (i) All personnel acting on Applicant's behalf shall, while working on or in SWBT's poles, ducts, conduits, or rights-of-way, carry with them suitable identification and shall, upon the request of any SWBT employee or representative, produce such identification.
- (j) Applicant and persons acting on Applicant's behalf are encouraged to report unsafe conditions on, within, or in the vicinity of SWBT's poles or conduit system to SWBT.

- (k) Applicant shall establish sufficient controls and safeguards to assure compliance with all provisions of this section.

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

- (a) Except as may be mutually agreed upon by the parties in writing, Applicant shall not "rod" or clear any duct or inner duct in SWBT's conduit system other than a duct or inner duct assigned to Applicant. Following the assignment of a specific duct or inner duct to Applicant, Applicant may request that SWBT rod or clear the duct or inner duct. If the duct or inner duct cannot be cleared, SWBT will assign the next available duct or inner duct to Applicant. Applicant's request for assignment of the next available duct shall be in writing, may be transmitted to SWBT via fax or other transmission media mutually agreed upon by the parties, and shall be processed within the same intervals applicable to the processing of similar requests by SWBT's own personnel.
- (b) Personnel performing work within SWBT's conduit system on either party's behalf shall not climb on, step on, or otherwise disturb the cables, air pipes, equipment, or other facilities located in any manhole or other part of SWBT's conduit system.
- (c) Personnel performing work within or in the vicinity of SWBT's conduit system (including any manhole) on either party's behalf shall, upon completing their work, make reasonable efforts to remove all tools, unused materials, wire clippings, cable sheathing and other materials brought by them to the work site.
- (d) All of Applicant's facilities shall be firmly secured and supported in accordance with Bellcore and industry standards and any applicable construction standards adopted by SWBT and applicable to SWBT's own facilities.
- (e) Applicant's facilities shall be plainly identified with Applicant's name in each manhole with a firmly affixed permanent tag that meets the identification standards set by SWBT for its own facilities.
- (f) Manhole pumping and purging required in order to allow Applicant's work operations to proceed shall be performed by Applicant or its

contractor in accordance with the requirements of Sections 6.14 and 6.15 of this Agreement.

- (g) Planks or other types of platforms shall be supported only by cable racks.
- (h) Any leak detection liquid or device used by Applicant or personnel performing work on Applicant's behalf within or in the vicinity of SWBT's conduit system shall be of a type approved by SWBT and included on SWBT's then-current list of approved types of leak-detection liquids and devices; provided, however, that Applicant may use any type of leak detection liquid or device which meets Bellcore's published standards if SWBT has not provided Applicant SWBT's list of approved types of leak detection liquids or devices at least 60 days in advance of Applicant's work.
- (i) Applicant and its contractors shall be responsible for providing proper ventilation while work is being performed in SWBT's conduit system on Applicant's behalf. Except for protective screens, no temporary cover shall be placed over an open manhole unless it is at least four feet above the surface level of the manhole opening.
- (j) Smoking or the use of any open flame is prohibited in manholes, in any other portion of the conduit system, or within 10 feet of any open manhole entrance.
- (k) Artificial lighting, when required by Applicant, will be provided by Applicant. Only explosion-proof lighting fixtures shall be used.
- (l) Neither Applicant nor personnel performing work on Applicant's behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in SWBT's conduit system (including any manhole) during work operations performed within or in the vicinity of SWBT's conduit system.
- (m) Applicant shall comply with the standards set by SWBT for its own personnel restricting the use of spark producing tools, equipment, and devices (including but not limited to such tools as electric drills and hammers, meggers, breakdown sets, induction sets, and the like) in manholes and other portions of SWBT's conduit system, provided that such standards have been communicated in writing to Applicant at least 60 days in advance of the construction, installation, or placement of Applicant's facilities within SWBT's conduit system.

- (n) Cable lubricants used in conduit systems shall be of a type or types approved by SWBT and included on SWBT's then-current list of approved types of cable lubricants; provided, however, that Applicant may use any type of cable lubricant which meets Bellcore's published standards if SWBT has not provided Applicant SWBT's list of approved types of cable lubricants at least 60 days in advance of Applicant's work.

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

- (a) Applicant will notify SWBT not less than 48 hours in advance before entering SWBT's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the parties. The notice shall state the general nature of the work to be performed. As a courtesy, Applicant shall, when feasible, provide SWBT with 10 working days advance notice before entering SWBT's conduit system. SWBT shall, within 10 working days after the effective date of this Agreement, advise Applicant of the manner in which notices required by this section shall be given.
- (b) An authorized employee or representative of SWBT may be present as a construction inspector at any time when Applicant or personnel acting on Applicant's behalf enter or perform work within SWBT's conduit system. Such inspectors may inspect the performance and quality of the work and monitor the work for compliance with the terms, conditions, and specifications of this Agreement or, in the case of facilities modification, capacity expansion or make-ready work, the plans and specifications of the facilities modification, capacity expansion, or make-ready project. When SWBT inspectors are present, Applicant and its contractors shall have sole authority, responsibility, and control over the method or manner by which the work is to be performed. SWBT's inspectors may call violations to Applicant's attention but shall have no authority to direct or advise Applicant or personnel acting on Applicant's behalf concerning the method or manner by which the work is to be performed; provided, however, that nothing contained in this subsection shall relieve Applicant from complying with any requirements of this Agreement.
- (c) The parties contemplate that Applicant may need to perform operations in SWBT's conduit system other than during normal business hours and may on occasion require access to manholes on shorter notice than contemplated in subsection (a) above. Under these circumstances, Applicant shall notify SWBT as soon as is reasonably possible of its intent to enter and perform work in the conduit system and SWBT shall

not, without due cause and justification, insist on literal compliance with scheduling requirements of subsection (a). SWBT will establish procedures enabling SWBT to receive notices from Applicant under this subsection 24 hours a day, seven days a week.

- (d) Each party must obtain any necessary authorization from appropriate authorities to open manholes for such party's own conduit work and operations therein.
- (e) Applicant shall reimburse SWBT for costs associated with the presence of construction inspectors only as specified in APPENDIX I and only as permitted by applicable laws, rules, regulations, and commission orders. SWBT shall not charge Applicant for more than one such construction inspector per site at any given time.
- (f) If the presence of SWBT personnel at the site is requested by Applicant or, in Applicant's opinion, is integral to successful completion of the work, Applicant shall pay the costs of having such personnel present.

6.12 OSHA Compliance. The parties agree that:

- (a) Facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the Occupational Safety and Health Act (OSHA) and all rules and regulations promulgated thereunder;
- (b) All persons acting on such party's behalf shall, when working on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, comply with OSHA and all rules and regulations thereunder; and
- (c) Applicant shall establish appropriate procedures and controls to assure compliance with all requirements of this section.

6.13 Hazardous Substances. Applicant acknowledges that, from time to time, hazardous substances (as defined in Section 3.19 of this Agreement) may enter SWBT's conduit system and accumulate in manholes or other conduit facilities and that hazardous substances may be present at other sites where SWBT's poles, ducts, conduits, or rights-of-way are located.

- (a) Applicant may, at its expense, perform such inspections and tests at the site of any pole, duct, conduit, or right-of-way occupied by or assigned to Applicant as Applicant may deem necessary to determine the presence at such sites of hazardous substances. SWBT will assist Applicant, at

Applicant's request and expense, in the performance of such inspections and tests.

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

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

- (a) Facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way following the effective date of this Agreement shall be constructed, placed, maintained, repaired, and

removed in accordance with all applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws.

- (b) All persons acting on Applicant's or SWBT's behalf, including but not limited to the parties' employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations. Applicant and personnel acting on Applicant's behalf are expected to be familiar with their obligations under environmental laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Toxic Substance Control Act (15 U.S.C. §§ 2601-2629), the Clean Water Act (33 U.S.C. §§ 1251 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j).
- (c) The parties shall each establish appropriate procedures and controls to assure compliance with all requirements of this section.
- (d) From and after the effective date of this Agreement, neither party nor personnel acting on either party's behalf shall discharge or release hazardous substances onto or from the site of any SWBT pole, duct, conduit, or right-of-way. Neither Applicant nor SWBT nor personnel acting on either party's behalf shall discharge water or any other substance from any SWBT manhole or other conduit facility onto public or private property, including but not limited to any storm water drainage system, without first determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person. Applicant will be expected to test such water or substance for hazardous substances in accordance with then-applicable SWBT standards and practices.
- (e) Applicant and SWBT and all personnel performing work on Applicant's or SWBT's behalf shall, when working on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, comply with such additional standards, practices, and requirements as SWBT may from time to time adopt to comply with environmental laws, provided that such standards are communicated in writing to Applicant at least 60 days in advance of Applicant's work.

6.15 Compliance with Other Governmental Requirements (Including Aeronautical Navigation Safeguards). Facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the ordinances, rules, and regulations of any

governing body having jurisdiction of the subject matter (including but not limited to any valid ordinances, rules, and regulations requiring permits, certificates, licenses or the like). Applicant and SWBT shall comply with all statutes, ordinances, rules, regulations, and other laws requiring the marking and lighting of aerial wires, cables, and other structures to ensure that such wires, cables, and structures are not a hazard to aeronautical navigation.

6.16 Differences in Specifications. To the extent that there may be differences in the specifications, the most stringent specification will apply except as otherwise specifically provided by SWBT in writing. Applicant will consult with SWBT when Applicant is uncertain as to which specification is to be followed.

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

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

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

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

7.03 Access to Records Relating to SWBT's Poles, Ducts, Conduits, and Rights-of-Way. This section establishes procedures through which certain records and information relating to SWBT's poles, ducts, conduits, and rights-of-way will be made available to Applicant for planning and other purposes. Access to such records and information will be conditioned on Applicant's execution of a nondisclosure agreement equivalent in substance to the Nondisclosure Agreement attached to this Agreement as APPENDIX V or such other nondisclosure agreement as shall be mutually acceptable to

the parties, and no person acting on Applicant's behalf will be granted access to such records and information without first signing such a nondisclosure agreement. Applicant will reimburse SWBT for all reasonable costs incurred by SWBT in granting Applicant's requests for access to records and information under this section.

- (a) Applicant may, at any time after the effective date of this Agreement, request permission to inspect SWBT's pole and conduit maps and records, cable plat maps, and other plant location records, if any, recording or logging assignments of pole, duct, and conduit space. Applicant will be permitted to examine these records during regular business hours at a location where copies of such records are maintained or at such other location as may be mutually agreed upon by the parties. Access to such maps and records will be by appointment only, and SWBT will make such maps and records available for inspection by Applicant on two business days advance notice; provided, however, that Applicant will, as a courtesy, when feasible, provide SWBT with 10 business days advance notice of its intent to examine such records.
- (b) The access described in subsection (a) shall include the right to make copies, at Applicant's expense, except for cable plat maps, which shall be made available for inspection only. In all instances, such access shall include the ability to take notes and make drawings with references to those maps and records. No references to cable counts or circuit information may be included in any such copies, notes, or drawings. With respect to other cable-specific or customer-specific information, Applicant's copies, notes, or drawings may include only such information as needed for bona fide engineering and construction purposes (e.g., proposing cable consolidations and identifying plant discrepancies) and not for sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities. Applicant's copies, notes, and drawings may include estimates regarding the physical characteristics (such as size and weight) of cables when necessary to make engineering determinations regarding the capacity, safety, reliability, or suitability of SWBT's poles, ducts, conduits, and rights-of-way for Applicant's intended uses.
- (c) SWBT will provide Applicant the best information available from SWBT's current pole and conduit maps and records, cable plat maps, and other outside plant and construction records. SWBT represents that such records reflect approximate geographical locations of the facilities depicted and may not accurately reflect information such as:
 - (1) the exact location of the facilities depicted;

- (2) the physical size, characteristics, or condition of the facilities depicted;
- (3) the ducts or inner ducts presently occupied, assigned, or available within any particular conduit segment or manhole;
- (4) the arrangement of facilities attached to a pole, the position of facilities suspended between poles or their relationship to each other and to the ground, or the positioning of cables and other facilities housed within ducts, conduits, manholes or other portions of SWBT's conduit system; and
- (5) other information which must be assessed before it can be determined that space is available on or in a pole, duct, or conduit for the attachment or occupancy of Applicant's facilities or that the poles, ducts, or conduits depicted are suitable for Applicant's intended use.

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

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

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

ARTICLE 8: POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

8.01 Selection of Space. Applicant will select the space Applicant will occupy on SWBT's poles or in SWBT's conduit systems. Applicant's selections will be based on the same criteria SWBT applies to itself. To enable Applicant to make such selections in accordance with SWBT's criteria, SWBT will provide Applicant information about the network guidelines and engineering protocols used by SWBT in determining the placement of facilities on SWBT's poles and in SWBT's conduit systems. In conduit systems owned or controlled by SWBT, maintenance ducts (as defined in Section 3.25)

shall not be considered available for Applicant's use except as specifically provided elsewhere in this Agreement. All other ducts, inner ducts, sub-ducts, and partitioned conduits which are not assigned or occupied shall be deemed available for use by SWBT, Applicant, and third parties entitled to access under the Pole Attachment Act.

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

- (a) After Applicant's application for a pole attachment or conduit occupancy license has been received by SWBT, the pole, duct, and conduit space selected by Applicant in such application will be assigned to Applicant for a pre-occupancy period not to exceed 12 months. The assignment (and date and time of assignment) will be logged and recorded in the appropriate SWBT records. If such space has been provisionally assigned to Applicant as authorized below in subsection (b), the 12-month pre-occupancy assignment period will begin on the date the provisional assignment is recorded in SWBT's records or the date of SWBT's receipt of Applicant's notice of intent to occupy under subsection (b), whichever date first occurs.
- (b) SWBT shall, within 60 days after the effective date of this Agreement, adopt interim procedures which will enable pole, duct, and conduit space to be provisionally assigned to Applicant and other applicants prior to the submission of formal applications required pursuant to Section 9.02 of this Agreement. Where indicated below, the interim procedures will apply to the assignment of space to SWBT as well as to Applicant and other applicants. SWBT may, on 60 days advance notice to Applicant, revise such interim procedures if such procedures prove to be unworkable, in which event Applicant may challenge SWBT's decision in accordance with procedures available to Applicant under applicable federal and state laws and regulations. The procedures will enable Applicant and other applicants, by written notice, to advise SWBT of their intent to occupy unassigned space, which appears from SWBT's records, to be available for assignment. Upon receipt of such notice, SWBT shall date-and-time stamp the notice and provisionally assign the space selected by Applicant or such other applicant by logging and recording the assignment (and date and time of assignment) in the appropriate SWBT records, which records will be available for inspection as provided in Section 7.03 of this Agreement. Space provisionally assigned to Applicant or such other applicant will not be available for assignment to any other person or entity, including SWBT. Notwithstanding such provisional assignment, Applicant shall not

occupy such space without first obtaining a license, except as provided in Section 8.03. The following additional requirements shall apply.

- (1) Before giving SWBT notice of its intent to occupy unassigned space, Applicant shall make a good faith determination that it actually plans to occupy such space. The assignment process shall not be used by either party for the purpose of holding or reserving space which such party does not plan to use or for the purpose of precluding SWBT or any other person or entity from utilizing or having access to SWBT's poles, ducts, conduits, or rights-of-way.
- (2) With respect to unassigned conduit occupancy space, the notice must include all information required to enable SWBT and joint users, including other persons or entities which may from time to time seek space in the same ducts and conduits, to determine the specific space which Applicant desires to occupy. The notice must, therefore, include, at a minimum, the following information:
 - (i) the specific conduit sections, and each manhole, to be occupied;
 - (ii) the number of ducts, and number of inner ducts, to be occupied by Applicant within each conduit section;
 - (iii) the physical size (diameter) of the cables to be placed in such duct, if known, or the maximum and minimum sizes of the cables which may be placed if more than one size cable is being considered for the space to be occupied;
 - (iv) the anticipated use by Applicant of any infrequent construction techniques and connectivity solutions authorized under Section 6.03 to avoid high or unusual expenditures;
 - (v) Applicant's best estimates of the dates when Applicant plans to begin and complete construction at the sites specified in the notice;
 - (vi) if applicable, a conspicuous statement that Applicant intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement; and
 - (vii) if applicable, a conspicuous statement, as required by Section 5.06 of this Agreement, that the notice pertains to a building

entrance or building distribution duct or conduit or other space within a building.

- (3) With respect to unassigned pole space, such notice must include all information required to enable SWBT and other joint users, including other persons or entities seeking space on the same poles, to determine the specific space which Applicant desires to occupy. The notice must, therefore, include, at a minimum, the following information:
- (i) the specific poles to be occupied;
 - (ii) the specific space on each pole to be occupied, including the height (distance from the ground) of the attachment and the side (road or field) where the attachment is to be made;
 - (iii) the anticipated number and types of cables to be attached, together with the anticipated physical size (diameter) and weight (weight per foot) of such cables, and the anticipated number and types of strands, if any, to be used to support the cables, such information to be sufficient to give notice to SWBT and other joint users of the remaining space on the pole available and what facilities modification, capacity expansion, or make-ready work may be required of subsequent applicants as a result of the provisional assignment of space to Applicant;
 - (iv) the anticipated use by Applicant of any infrequent construction techniques and connectivity solutions authorized under Section 6.03 to avoid high or unusual expenditures;
 - (v) Applicant's best estimates of the dates when Applicant plans to begin and complete construction at the sites specified in the notice; and
 - (vi) if applicable, a conspicuous statement that Applicant intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement.
- (4) No later than 30 days after giving such notice, Applicant shall file an application under Section 9.02 or the provisional assignment will lapse.
- (5) As stated in Section 7.03(c), SWBT does not represent that its records accurately reflect the information necessary to enable

Applicant to rely upon a records-based assignment process. SWBT shall have no duty to verify that space provisionally assigned pursuant to this subsection is actually available.

- (c) Assignments made prior to the issuance of a license will be provisional assignments and will be subject to modification if it is subsequently determined that the space selected by or assigned to Applicant is already occupied or that a different assignment is required to comply with SWBT's standards for assigning pole, duct, and conduit occupancy space.
- (d) Applicant's obligation to pay semiannual pole attachment or conduit occupancy fees will commence from the date of assignment or provisional assignment, as logged and recorded in the appropriate SWBT records.
- (e) During the 12-month assignment period following the date space is assigned to Applicant and entered into the appropriate SWBT record, SWBT shall not occupy or use such space without Applicant's permission, shall not assign such space to any party other than Applicant, and shall not knowingly permit any party other than Applicant to occupy or use such space without Applicant's permission except as otherwise specifically provided in this Agreement. The assignment to Applicant will automatically lapse 12 months after the date the assignment has been entered into the appropriate SWBT record if Applicant has not occupied such assigned space within such 12-month period; provided, however, that if Applicant's failure to occupy the space within such 12-month period results from SWBT's failure to perform make-ready work on schedule, the parties shall negotiate a single extension of the assignment period, which extension shall not extend the assignment period beyond three months from the date of completion of SWBT's make-ready work; and, provided further, that if Applicant can demonstrate that its failure to occupy the space within such 12-month period results from the actions of SWBT or third parties other than persons acting on Applicant's behalf, or from acts of God, the assignment may be extended for a period no longer than three months from the date Applicant is first able to commence construction activities at the site involved. Assignments to third parties shall be subject to the same rules applicable to Applicant under this subsection. Extensions permitted under this subsection must be requested in writing before expiration of the original 12-month period and shall be recorded on the appropriate SWBT records available for inspection under Section 7.03.

- (f) SWBT may assign space to itself by making appropriate entries in the same records used to log assignments to Applicant and third parties. If SWBT assigns pole, duct, or conduit space to itself, such assignment will automatically lapse 12 months after the date the assignment has been entered into the appropriate SWBT record if SWBT has not occupied such assigned space within such 12-month period; provided, however, that if SWBT's failure to occupy the space within such 12-month period results from the actions of Applicant or third parties other than persons acting on SWBT's behalf, or from acts of God, SWBT's assignment may be extended for a period no longer than three months from the date SWBT is able to commence construction at the site involved. Extensions permitted under this subsection must be recorded before expiration of the original 12-month period on the appropriate SWBT records available for inspection under Section 7.03.
- (g) If facilities modifications, capacity expansions, or other make-ready work are required due to the assignment of space to either party under this section, the party to whom such space has been assigned will reimburse the person or entity incurring the costs for such facilities modifications, capacity expansions, or make-ready work if the party to whom such space has been assigned fails to occupy the assigned space within the 12-month assignment period or any extension thereof.
- (h) Except as provided in subsections (e)-(f) above, assignments shall not be extended, renewed, or sequentially repeated in any manner (other than by actual occupancy) that enables Applicant, SWBT, or any joint user to preclude access by others to unused pole attachment or conduit occupancy space for any period greater than 12 months after the date of initial assignment.
- (i) At Applicant's election, Applicant may file an application for access which specifically requests that the space sought by Applicant not be assigned to Applicant immediately and not be recorded immediately in the SWBT records available for inspection by other telecommunications carriers, cable television systems, or other providers of telecommunications services under Section 7.03 of this Agreement. In that event, the space sought by Applicant will not be assigned to Applicant and will remain available for assignment to others without restriction until such time as such space is formally assigned to Applicant in accordance with Applicant's written instructions and the assignment is recorded in the records available for inspection under Section 7.03. The assignment shall be made no later than the date of issuance to Applicant of a license confirming that Applicant has the right to occupy the space described in the license. In the event that Applicant

elects to proceed under this subsection, Applicant's obligation to pay pole attachment and conduit occupancy fees shall not commence until the date the assignment is recorded in the appropriate SWBT records and Applicant shall bear the risks that (1) the space sought by Applicant will be assigned to and occupied by another person or entity or (2) circumstances will occur which may require that SWBT reevaluate Applicant's application and repeat the field inspection portion of the pre-license survey at Applicant's expense.

- (j) Notices and applications including assignment requests will be date- and time-stamped on receipt. Because space will be selected and further assignments made based on entries logged and recorded in the appropriate SWBT records, the date and time of assignment will be the date and time when the assignment is recorded rather than the date and time of receipt of the application or notice requesting such assignment. Although SWBT's clerical personnel will promptly process assignment requests included in applications and notices transmitted to SWBT by mail, courier, fax, or other transmission media, SWBT shall not be liable for any failure by Applicant to obtain the space desired by Applicant due to delay in logging assignment requests. Applicant acknowledges that, to maximize the probability that Applicant will be assigned the space Applicant desires, Applicant should, when possible, submit applications and notices including assignment requests in person to SWBT at the site where the applicable records are maintained and should countersign the entry reflecting the assignment and time of assignment.

8.03 Immediate Occupancy. SWBT shall, within 60 days after the effective date of this Agreement, adopt interim procedures which will provide Applicant the ability to attach or place facilities on or in SWBT's poles, ducts, conduits, and rights-of-way on an immediate basis when such space is available for Applicant's use and no make-ready work or infrequent construction techniques or connectivity solutions are required. SWBT may, on 60 days advance notice to Applicant, revise or terminate such interim procedures if they prove to be unworkable, in which event Applicant may seek renegotiation of this Agreement or challenge SWBT's decision in accordance with procedures available to Applicant under applicable federal and state laws, regulations, and commission orders. The special procedures established under this section shall supplement, rather than replace, the regular assignment and licensing procedures set forth in Articles 8-10 of this Agreement, are intended to be used only under special circumstances (e.g., when the regular procedures allow insufficient time to meet customer service commitments or resolve non-routine construction or network contingencies), shall not be used on a routine basis, and shall be consistent with subsections (a)-(f) below.

- (a) Upon giving SWBT the notice required by this subsection, Applicant may immediately occupy space assigned or provisionally assigned to

Applicant pursuant to Section 8.02 of this Agreement. The notice shall be contained in either a notice of intent to occupy as provided in Section 8.02(b) or a license application under Section 9.02. Applicant shall not give such notice or occupy such space without first reviewing SWBT's records and determining that the records reflect that the space sought is available.

- (b) Applicant shall not occupy space, which has not been assigned or provisionally assigned to Applicant. The assignment must be recorded on the appropriate SWBT records, as provided in Section 8.02, prior to Applicant's occupancy. If Applicant subsequently determines that the records are inaccurate and that the space assigned to Applicant is not available, or that the space assigned is not suitable for Applicant's intended use, Applicant shall, within one business day, notify SWBT in writing that it no longer intends to occupy the space earlier assigned and is releasing the assignment. Except as otherwise provided in this subsection, Applicant shall not occupy other space on the pole or in the duct or conduit without first obtaining an assignment or provisional assignment of the space which Applicant will occupy. To avoid high or unusual expenditures resulting from unanticipated conditions at the site, Applicant may occupy space not assigned to Applicant subject to the following terms and conditions.
- (1) Applicant may occupy the next available space shown on SWBT's records as available at the time of Applicant's last review of the records. Applicant shall not knowingly occupy space occupied by or assigned to SWBT or any third party without consent of the party to whom the space has been assigned.
 - (2) Within one business day after occupying such space, Applicant shall submit to SWBT a written notice of intent to occupy or an application for the space occupied showing the reason for Applicant's use of the space occupied.
 - (3) Applicant shall bear the risk that space occupied by Applicant pursuant to this section was assigned to SWBT or a third party during the period between Applicant's last review of the records and Applicant's occupancy of such space. After occupying space not previously assigned to Applicant, Applicant shall review the records and promptly notify the affected party if Applicant determines that it has occupied space assigned to such party. At the request of the party to whom such space has been assigned, Applicant shall, within 24 hours, or within such other period of time mutually agreed to by the parties affected, remove its facilities from the space in question if

the parties affected cannot reach an acceptable alternative solution. SWBT and Applicant anticipate that all parties affected will act in good faith to work out acceptable solutions and that the parties affected will not insist on strict adherence to the 24-hour removal requirement unless there is a legitimate business need for compelling removal within such time period.

- (4) SWBT shall be entitled to recover from Applicant actual costs, if any, directly incurred by SWBT as a result of Applicant's decision under this subsection to occupy space subject to a valid prior assignment to SWBT. Applicant shall indemnify, on request defend, and save SWBT harmless from any injury, loss, damage, liability, or claim asserted against SWBT by any third party resulting from Applicant's decision under this subsection to occupy space assigned to such third party.
- (c) Nothing in this section authorizes Applicant to place its facilities on or in any pole, duct, or conduit space already occupied by the facilities of SWBT or a third party, even if the presence of such facilities is not reflected on SWBT's records.
- (d) Nothing in this section authorizes Applicant, without first obtaining SWBT's written authorization, to (1) place its facilities on any pole or in any duct or conduit that requires make-ready work (other than third-party make-ready work arranged directly by Applicant) or (2) utilize any infrequent construction technique or connectivity solution described in Section 6.03.
- (e) If Applicant has not done so already, within 24 hours after occupying space pursuant to this section, Applicant will submit to SWBT an application for the space occupied as provided in Section 9.02 of this Agreement. The application may be submitted by fax.
- (f) Applicant will bear all risks resulting from the possibility that assigned space which appears from the records to be available is not available or in suitable condition to be used by Applicant and shall indemnify, on request defend, and hold SWBT harmless from any injury, loss, damage, claim, or liability (including but not limited to third-party claims) resulting from Applicant's occupancy of space in violation of this section.

ARTICLE 9: APPLICATIONS AND PRE-LICENSE SURVEYS

9.01 Licenses Required. Except as otherwise specifically permitted in this Agreement, Applicant shall apply in writing for and receive a license before attaching facilities to specified SWBT poles or placing facilities within specified SWBT ducts, conduits, manholes, or handholes. License applications and information received by SWBT in connection with such applications shall be subject to the provisions of Article 28 of this Agreement (Confidentiality of Information).

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

- (a) To apply for a pole attachment license, Applicant shall submit to SWBT two signed copies of SWBT's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9433 ("Pole Attachments"). An application for a pole attachment license will not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that such forms will be deemed to be substantially complete if they contain the information specified in subsections (c)-(h) below, as applicable. Copies of Forms SW-9433 and SW-9434 are attached to this Agreement as parts of APPENDIX III.
- (b) To apply for a conduit occupancy license, Applicant shall submit to SWBT two signed copies of SWBT's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9435 ("Conduit Occupancy"). An application for a conduit occupancy license will not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that such forms will be deemed to be substantially complete if they contain the information specified in subsections (c)-(h) below, as applicable. Copies of Forms SW-9434 and SW-9435 are attached to this Agreement as parts of APPENDIX III.
- (c) Each application for a license under this Agreement shall include, at a minimum, the following information:

- (1) the poles, ducts, and conduits (including all manholes) along Applicant's proposed route to or within which Applicant desires to attach or place its facilities;
 - (2) a description of the facilities to be attached to SWBT's poles and a description of the facilities to be placed within each component of SWBT's conduit system (including but not limited to ducts, conduits, manholes, and handholes) along the proposed route;
 - (3) for poles, the proposed points of attachment;
 - (4) for building entrance or building distribution ducts or conduits or other space within a building, a conspicuous statement, as required by Section 5.06 of this Agreement, that the application pertains to a building entrance or building distribution duct or conduit or other space within a building;
 - (5) if applicable, a conspicuous notation that the space requested is not to be assigned (or billed) to Applicant until SWBT has received Applicant's written instruction to make such assignment or issued a license authorizing Applicant to occupy the space requested; and
 - (6) if applicable, a conspicuous statement that Applicant intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement.
- (d) Facilities descriptions which apply to multiple pole attachments or conduit occupancies need only be described once on any form. Facilities descriptions shall include, at a minimum, the following information:
- (1) the number and types of cables, including the physical size (diameter) and weight (weight per foot);
 - (2) the number and types of strands, if any, which will be used to support the cables, including the rated holding capacity expressed in thousand pound increments (e.g., 2.2M) of such strands; and
 - (3) sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to SWBT's poles or placed in SWBT's conduit system.
- (e) When it appears to Applicant that facilities modification, capacity expansion, or make-ready work may be required to accommodate

Applicant's access requests, Applicant shall describe the facilities modification, capacity expansion, or make-ready work, which Applicant proposes. Applicant shall also describe its plans, if any, to use any infrequent construction technique or connectivity solution authorized under Section 6.03 to avoid high or unusual expenditures and state its reasons for the use of such technique or solution.

- (f) Applicant acknowledges that the poles along a particular pole line or route may include poles owned by firms (such as electric utilities) other than SWBT, that it may be necessary for SWBT to rearrange its facilities or perform other make-ready work on poles other than poles it owns or controls in order to accommodate Applicant's request for access to SWBT's poles and that, at the time an application is submitted, it may be difficult for Applicant to determine with certainty whether a particular pole is owned or controlled by SWBT or by another entity. Accordingly, the application shall, to the extent feasible, identify all poles utilized by SWBT (without regard to ownership) along Applicant's proposed route.
- (g) Each application for a license under this Agreement shall be accompanied by a construction schedule showing Applicant's projected dates for beginning and completing construction at the sites specified in the application. Information on this schedule may be used by SWBT's engineering and outside plant construction personnel in scheduling work required to process Applicant's applications and scheduling such capacity expansions, make-ready work, and facilities modifications, if any, as may be necessary to accommodate Applicant's facilities.
- (h) Applicant may include multiple cables in a single license application and may provide multiple services (e.g., CATV and non-CATV services) under the same cable sheath or jacket. When both CATV and non-CATV services are provided under the same cable sheath or jacket, or CATV and non-CATV services are provided using different cables attached or lashed to the same strand or otherwise occupying the same space on a pole or the same duct or inner duct within a conduit, Applicant will so advise SWBT and SWBT shall, if permitted by law, adjust its charges to enable SWBT to charge Applicant the rate applicable to telecommunications carriers rather than the rate applicable to cable television systems solely to provide cable service.

9.03 Cooperation in the Application Process. The orderly processing of applications submitted by Applicant and other firms seeking access to SWBT's poles, ducts, conduits, and rights-of-way requires good faith cooperation and coordination between SWBT's personnel and personnel acting on behalf of Applicant and other firms seeking access. The parties therefore agree to the following transitional procedures which

will remain in effect during the term of this Agreement unless earlier modified by mutual agreement of the parties.

- (a) Before submitting a formal written application for access to SWBT's poles, ducts, conduits, and rights-of-way, the firm submitting the application shall make a good faith determination that it actually plans to attach facilities to or place facilities within the poles, ducts, conduits, or rights-of-way specified in the application. Applications shall not be submitted for the purpose of holding or reserving space which the applicant does not plan to use or for the purpose of precluding SWBT or any other provider of telecommunications or cable television services from using such poles, ducts, conduits, or rights-of-way.
- (b) Applicant shall only submit applications for access to poles, ducts, conduits, and rights-of-way which it plans to use within one year following the date access is granted and shall use its best efforts to submit applications in an orderly manner in accordance with Applicant's needs. If Applicant contemplates the need to submit more than 10 applications within any 45-day period with respect to poles, ducts, conduits, and rights-of-way within the territory of any single SWBT construction district, Applicant shall give SWBT advance notice as promptly as is reasonably practicable.
- (c) No more than 300 poles shall be the subject of any single pole attachment license application.
- (d) No more than 20 manholes shall be the subject of any single conduit occupancy license application.

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

9.05 Pre-license Survey. A pre-license survey (including a review of records and field inspection, if necessary) will be completed by SWBT after Applicant has submitted its written license application as specified in Section 9.02 of this Agreement. SWBT shall not, without due cause and justification, repeat pre-occupancy survey work performed by Applicant.

- (a) The field inspection portion of the pre-license survey, which includes the visual inspection of existing pole and conduit facilities, shall be performed by SWBT or its authorized representative. Primary purposes

of the field inspection will be to enable SWBT to (1) confirm or determine the facilities modification, capacity expansion, and make-ready work, if any, necessary to accommodate Applicant's facilities; (2) plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare SWBT's poles, ducts, conduits, rights-of-way, and associated facilities for Applicant's proposed attachments or occupancy; and (3) estimate the costs associated with such facilities modification, capacity expansion, or make-ready work. SWBT may dispense with the field inspection if it appears that the information necessary to process Applicant's license application is already available from existing sources, including the application forms and such other information as may be available to SWBT. If Applicant, pursuant to Section 8.03, has occupied the space requested before the issuance of a license, a post-installation inspection of Applicant's facilities may be performed, in place of the field inspection portion of the pre-license survey, to determine whether such facilities are in compliance with the specifications of Article 6 and other provisions of this Agreement. In performing such inspection, SWBT will not, without due cause and justification, repeat pre-occupancy survey work performed by Applicant.

- (b) The administrative processing portion of the pre-license survey (which includes processing the application and reviewing records) will be performed by SWBT.
- (c) Before performing any portion of the pre-license survey, SWBT shall obtain Applicant's written authorization to perform such work. Authorization may be given, when possible, when the application is submitted. No authorization shall be required for post-installation inspections of Applicant's facilities when installation has occurred, pursuant to Section 8.03, before the issuance of a license.

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

10.01 Response Within 45 Days. Within 45 days of Applicant's submission of a license application pursuant to Section 9.02 of this Agreement, or within such other period of time as may be mutually agreed upon in writing by the parties, SWBT shall respond to the application. The response shall state whether the application is being granted or denied. If denial is anticipated, or if SWBT personnel involved in the processing of Applicant's request for access become aware of hazardous substances at the site requested by Applicant, SWBT shall promptly advise Applicant and shall, at Applicant's request, discuss alternatives to denial and issues associated with the presence

of such hazardous substances. Additional state-specific response and notice requirements, if any, shall be addressed by an addendum to this Agreement.

- (a) If access is granted, SWBT shall, no later than 45 days after Applicant's submission of the license application, further advise Applicant in writing (1) what facilities modifications, capacity expansions, or make-ready work, if any, will be required to prepare SWBT's pole or conduit facilities, (2) provide Applicant an estimate of charges for such facilities modifications, capacity expansions, or make-ready work and (3) disclose to Applicant any hazardous substances known by SWBT to be present at the site.
- (b) SWBT may take into account issues of capacity, safety, reliability, and engineering when considering requests for access, provided the assessment of such factors is done in a nondiscriminatory manner. If access is denied, SWBT shall confirm the denial in writing by the 45th day after the receipt by SWBT of Applicant's completed application. A denial of access shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how such evidence and information relates to a denial of access for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. If Applicant in its completed application sets forth in writing specific proposals for expanding capacity, the denial statement shall specifically address such proposals.
- (c) Applicant agrees that if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific poles, ducts, or conduit facilities, Applicant shall promptly withdraw or amend its application, thereby minimizing the administrative burdens on SWBT of processing and responding to the application.
- (d) Notwithstanding the 45-day deadline, SWBT will, pursuant to Section 8.03 of this Agreement, make available to Applicant for immediate occupancy any pole, duct, or conduit space which is not currently assigned, not designated as a maintenance duct, and not subject to applicable make-ready requirements.
- (e) If SWBT fails to respond in writing within 30 days of SWBT's documented receipt of a license application pursuant to Section 9.02 of this Agreement, or within such other period of time as may be mutually agreed upon in writing by the parties, Applicant may by written notice inquire whether SWBT intends to deny Applicant's request for access. After such notice has been given and receipt by SWBT of a properly submitted license application has been confirmed, SWBT's failure to

respond in writing within 15 days after receipt of the notice shall be deemed to constitute approval of the request for access. In such event, Applicant shall be entitled to occupy the space requested without the formality of a license; provided, however, that nothing contained in this subsection shall authorize Applicant to occupy space already occupied or subject to a prior valid space assignment to SWBT or any third-party; and provided further that nothing in this subsection authorizes Applicant, without first obtaining SWBT's written authorization, to (1) place its facilities on any pole or in any duct or conduit that requires make-ready work (other than third-party make-ready work arranged directly by Applicant) or (2) utilize any infrequent construction technique or connectivity solution described in Section 6.03.

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

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

if SWBT were performing such installations for itself. If SWBT's intervals for beginning or completing inner duct installation do not meet Applicant's needs, Applicant may arrange for the inner duct installation to be performed by an authorized contractor selected by Applicant from a list, jointly developed and maintained by the parties, of contractors mutually approved as qualified to perform inner duct installations. Applicant may install the inner duct itself if Applicant is on the list of mutually approved contractors at the time the work is performed. When inner duct is installed in SWBT's conduit system by Applicant or an authorized contractor selected by Applicant, SWBT will provide the inner-ducting materials to be installed and Applicant shall bear all other installation expenses. Applicant shall give SWBT sufficient advance notice of the materials needed to enable SWBT to provide such materials to Applicant on a timely basis. Applicant shall return all unused materials, including unused inner duct and reels, to SWBT or purchase them from SWBT. Inner duct installed by Applicant or an authorized contractor selected by Applicant shall be installed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if the inner duct were being installed by SWBT or SWBT's contractors. Applicant shall indemnify, on request defend, and hold SWBT harmless for any injuries, losses, damages, claims, or liabilities directly resulting from the installation of inner duct by Applicant or any authorized contractor selected by Applicant under this subsection. Applicant shall not, without SWBT's prior written approval, arrange for inner duct installation to be performed by subcontractors who are not authorized contractors.

- (c) SWBT shall, at its expense, remove cables that are retired or inactive (dead) to free-up requested duct and pole space, provided that such removal is reasonably feasible (i.e., cable pulls easily without incident). If a section of cable is "frozen" in a duct and would require excavation to remove, Applicant may, at its option, request that SWBT excavate the obstruction or, in the alternative, arrange for excavation of the obstruction to be performed by an authorized contractor selected by Applicant from a list, jointly developed and maintained by the parties, of contractors mutually approved as qualified to perform such excavations. Applicant may excavate the obstruction itself if Applicant is on the list of mutually approved contractors at the time the work is performed. Such excavations will be at Applicant's expense. Removal of the remainder of the cable will be at SWBT's expense. Excavation work performed by Applicant or an authorized contractor selected by Applicant shall be performed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if such excavation work were being performed by SWBT or

SWBT's contractors. Neither Applicant nor any authorized contractor selected by Applicant to perform excavation work under this subsection shall conduct facility excavation activities in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of the facilities. Applicant shall indemnify, on request defend, and hold SWBT harmless for any injuries, losses, damages, claims, or liabilities directly resulting from the performance of excavation work by Applicant or any authorized contractor selected by Applicant under this subsection. Applicant shall not, without SWBT's prior written approval, arrange for excavation work to be performed under this subsection by subcontractors who are not qualified contractors.

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

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

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

Authorization shall be accomplished by Applicant's signing the estimate and returning it to SWBT within the 20-day acceptance period.

- (d) Within the 20-day acceptance period, the parties may negotiate modifications of the make-ready work to be performed. If the parties reach agreement through negotiation, a new estimate shall be prepared and authorization shall be accomplished by Applicant's signing the revised estimate and returning it to SWBT within the original 20-day acceptance period, or within such period of time as may be mutually agreed upon by the parties.
- (e) If Applicant does not sign and return the estimate within the 20-day acceptance period, or within such other period of time as may be mutually agreed upon in writing by the parties, Applicant shall notify SWBT in writing by the 20th day whether Applicant is withdrawing its application, electing to perform the make-ready work itself as provided in subsection (c) or electing to treat SWBT's make-ready requirements as a denial of access.
 - (1) If no such notice is given by the 20th day, or such later date as may be mutually agreed upon by the parties, SWBT shall contact Applicant to determine whether Applicant intends to withdraw its application. Applicant shall be deemed to have withdrawn its application if, in response to SWBT's inquiry, Applicant does not immediately sign and return the estimate to SWBT.
 - (2) If Applicant timely notifies SWBT that it is electing to treat SWBT's make-ready requirements as a denial of access, SWBT shall, within 20 days after receiving the notice, provide Applicant with a written statement explaining its decision to grant access only if the specified make-ready work is performed. The statement shall be specific, shall include all relevant evidence and information supporting SWBT's decision to grant access only if the specified make-ready work is performed, and shall explain how such evidence and information relates to SWBT's decision for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. The statement shall also set forth the basis for SWBT's make-ready proposals and specifically address SWBT's rationale for rejecting Applicant's alternative written proposals, if any.

10.05 Performance of Make-ready Work. Except as otherwise specifically provided in Section 10.02 and in this section, make-ready work shall be performed by SWBT or by contractors, subcontractors, or other persons acting on SWBT's behalf and

shall be performed by SWBT in accordance with the same time intervals which would be applicable if SWBT were performing the work for itself.

- (a) Applicant and SWBT will mutually establish and maintain for each SWBT construction district lists of authorized contractors which may be selected by Applicant to perform make-ready work when SWBT's interval for beginning or completing such make-ready work does not meet Applicant's needs. At Applicant's request, Applicant will be included on such lists upon Applicant's demonstrating that (1) its personnel are qualified to perform such work in accordance with SWBT's specifications and (2) Applicant meets the financial responsibility (insurance and bonding) requirements generally applicable to contractors, subcontractors, and other vendors performing the same or similar work on SWBT's behalf or the self-insurance requirements of Section 23.02.
- (b) If SWBT's interval for beginning or completing make-ready work does not meet Applicant's needs, Applicant may (1) perform the make-ready work itself, if Applicant is on the applicable list of authorized contractors at the time the work is to be performed or (2) arrange for the work to be performed by an authorized contractor selected by Applicant from the applicable list of authorized contractors. Subject to the availability of personnel, Applicant may also request that SWBT perform the work on an expedited basis; provided, however, that make-ready work will not be performed on an expedited basis unless Applicant first approves any overtime or premium rates or charges associated with performance of the work on an expedited basis.
- (c) From time to time, additional contractors, subcontractors or other vendors may be jointly approved by Applicant and SWBT to perform specific make-ready work in the event that the work load exceeds the capacity of the authorized contractors on the approved list to perform the make-ready work in a timely manner.
- (d) Make-ready work performed by Applicant, by an authorized contractor selected by Applicant, or by a contractor, subcontractor, or other vendor jointly approved by the parties under subsection (c) shall be performed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if such excavation work were being performed by SWBT or SWBT's contractors. Neither Applicant nor authorized contractors selected by Applicant to perform make-ready work under this section shall conduct such work in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of SWBT's facilities.

Applicant and any authorized contractor selected by Applicant to perform make-ready work shall indemnify, on request defend, and hold SWBT harmless from any and all injuries, losses, damages, claims, or liabilities directly resulting from their activities under this section.

- (e) Nothing contained in this section authorizes Applicant, any authorized contractor selected by Applicant, or any other person acting on Applicant's behalf to consolidate SWBT's cables.

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

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

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

the Telecommunications Act of 1996, SWBT shall be entitled to recover from Applicant and third parties, to the full extent permitted by law, their pro-rata shares of such capacity expansion costs incurred by SWBT. To the extent that either party seeks to avail itself of this cost-saving mechanism, such party shall be responsible for maintaining adequate records documenting the costs subject to reimbursement, including but not limited to costs incurred for facilities modification and capacity expansion work performed directly by such party or contractors performing work on such party's behalf.

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

ARTICLE 11: CONSTRUCTION OF APPLICANT'S FACILITIES

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

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

- (a) the name, title, business address, and business telephone number of the manager responsible for construction of the facilities;
- (b) the names of each contractor and subcontractor which will be involved in the construction activities;
- (c) the estimated dates when construction will begin and end; and

- (d) the approximate dates when Applicant or personnel working on Applicant's behalf will be performing construction work in connection with the attachment of Applicant's facilities to SWBT's poles or the placement of Applicant's facilities in any part of SWBT's conduit system.

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

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

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

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

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

space as described in subsection (b) above. No additional attachment charges shall apply with respect to drive rings and J-hooks installed outside Applicant's licensed attachment space as permitted in this subsection.

- (d) If Applicant has not already been licensed attachment space on a given SWBT pole, Applicant may, when necessary, install drive rings and J-hooks to unassigned space on such pole without first obtaining a license for such attachment and shall, promptly following such installation, notify SWBT of the attachment. Such notification shall be made on a form to be developed by SWBT for this purpose and shall constitute an application for a license. Such application may be conditionally granted without a pre-license survey or other inquiry by SWBT, and SWBT shall not be required to process the application, log the attachment as an assignment in its outside plant records, or issue a permanent license for the attachment unless specifically requested by Applicant to do so; provided, however, that a conditionally granted application under this subsection shall be subject to revocation if it is subsequently determined that such attachment has been made in violation of subsection (e) of this section or other provisions of this Agreement. Drive-rings and J-hooks installed pursuant to this subsection are pole attachments and charges for such attachments shall be determined in accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders.
- (e) Notwithstanding the provisions of subsections (c)-(d) above, Applicant may not install drive rings and J-hooks in space assigned to SWBT or another joint user without the approval of SWBT or such other joint user and may not install drive rings and J-hooks in unassigned space in any manner which will block or preclude the subsequent occupancy or use of space by SWBT or other joint users. If the presence of Applicant's facilities in space not assigned to Applicant will block or preclude the use of assigned or otherwise assignable space by SWBT or other joint users, Applicant shall, on SWBT's request, promptly relocate the facilities in order to accommodate the facilities of other users and shall bear all expenses associated with such relocation.
- (f) SWBT may not install drive rings or J-hooks in space assigned to Applicant without Applicant's approval and shall, at Applicant's request, and at SWBT's expense, promptly relocate or, if necessary, remove, any drive rings or J-hooks installed in violation of this subsection. If SWBT drive rings or J-hooks have been installed in space subsequently assigned to Applicant, or if the presence of SWBT drive rings or J-hooks blocks or precludes the use of otherwise assignable space on SWBT's poles,

SWBT shall, at Applicant's request, relocate such facilities, if it is feasible to do so, as make-ready work.

- (g) Applicant shall, at the request of SWBT or another joint user, at Applicant's expense, promptly relocate or, if necessary, remove any drive rings and J-hooks placed on SWBT's poles other than as permitted in this section.

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

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

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

ARTICLE 13: MODIFICATION OF APPLICANT'S FACILITIES

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

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

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

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

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

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

ARTICLE 14: REQUIRED REARRANGEMENTS OF APPLICANT'S FACILITIES

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

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

- (a) Applicant agrees that Applicant will cooperate with SWBT and joint users in making such rearrangements as may be necessary to enable such changes to be made and that costs incurred by Applicant in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the parties in accordance with then applicable statutes, rules, regulations, and commission orders, including the Pole Attachment Act, rules, regulations, and commission orders thereunder.

- (b) Whenever feasible, SWBT shall give Applicant not less than 60 days prior written notice of the need for Applicant to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Applicant shall complete such rearrangements within the time prescribed in the notice; provided, however, that the date of removal may be extended upon request by Applicant, which request will not be unreasonably refused by SWBT, if Applicant advises SWBT of the reason for the need for the extension and proposes a reasonable completion date. SWBT may request that such modification be made within a shorter period of time, in which event Applicant shall not refuse to comply such request without due cause and justification. In determining due cause and justification, the following factors, among others, may be considered:
- (1) the circumstances under which the rearrangements are sought (e.g., street-widening project, request by a competing provider for access);
 - (2) the timeliness of SWBT's request to Applicant;
 - (3) the nature and number of rearrangements sought;
 - (4) the impact on the ability of the parties and joint users to meet customer service needs; and
 - (5) risks of service interruption to customers of the parties and joint users.
- (c) Nothing contained in this article shall preclude Applicant from advising SWBT, within 60 days from the date of the notice, of its desire to add to or modify its existing attachment.

ARTICLE 15: EMERGENCY REPAIRS AND POLE REPLACEMENTS

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

provisions of this article shall apply in the absence of more comprehensive agreements relating to emergency repairs.

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

- (a) Nothing contained in this Agreement shall be construed as requiring either party to perform any repair or service restoration work of any kind with respect to the other party's facilities or the facilities of joint users.
- (b) Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any person or entity (including but not limited to SWBT, Applicant, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located; provided, however, that a person or entity using the maintenance duct for emergency repair activities shall immediately notify SWBT of such use and must either vacate the maintenance duct within 30 days or, with SWBT's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance duct. The parties agree not to exceed 30 days' use except in unusual emergencies that may require longer than 30 days to rectify.
- (c) If necessary, other unoccupied ducts or inner ducts may be used on a short-term basis when the maintenance duct is unavailable. Any such use shall be subject to the same rules applicable to the maintenance duct and shall be subject to the rights of any party or joint user to whom such duct or inner duct has been assigned.

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

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

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

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

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

- (a) Before performing any corrective work involving facilities of the other party, SWBT or Applicant shall first attempt to notify the other party.

After such notice has been given, the parties shall coordinate corrective work.

- (b) When an emergency situation exists such that advance notice and coordination are not practicable, either party may perform corrective work without first giving notice to the other party and shall promptly notify the other party of the corrective work performed and the reason why notice was not given.

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

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

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

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

part for SWBT and third parties, Applicant shall only reimburse SWBT for Applicant's share of the costs.

ARTICLE 16: INSPECTION BY SWBT OF APPLICANT'S FACILITIES

16.01 SWBT's Right to Make Periodic or Spot Inspections. SWBT shall have the right, but not the duty, to make periodic or spot inspections at any time of any or all facilities attached to SWBT's poles or placed within SWBT's poles, ducts, conduits, or rights-of-way. Inspections of Applicant's facilities may be conducted for the purpose of determining whether facilities attached to SWBT's poles or placed in SWBT's conduit system are in compliance with the terms of this Agreement and conform to licenses subject to this Agreement. Charges for inspections shall be allocated among all parties benefiting from the inspection in accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders. When an inspection is conducted for the specific purpose of auditing or investigating Applicant's compliance with this Agreement, SWBT may charge Applicant for inspection expenses only if the inspection reflects that Applicant is in substantial noncompliance with the terms of this Agreement. If the inspection reflects that Applicant's facilities are not in compliance with the terms of this Agreement, Applicant shall bring its facilities into compliance promptly after being notified of such noncompliance and shall notify SWBT in writing when the facilities have been brought into compliance.

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

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

ARTICLE 17: TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

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

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

- (a) Before removing any such untagged or unmarked facilities, SWBT shall first attempt to determine whether the facilities are being used by Applicant or any other firm, are authorized by any license subject to this Agreement, or are otherwise lawfully present on SWBT's poles or in SWBT's conduit system.
- (b) SWBT shall not remove untagged or unmarked facilities which are thought to be operational without first making reasonable efforts to (1) determine the identity of the owner or other person or entity thought to be responsible for the facilities and (2) give advance written notice to such person or entity.
- (c) If the facilities appear to be facilities of Applicant described in a current license or application subject to this Agreement, or if the facilities appear to be facilities of Applicant otherwise lawfully present on SWBT's poles or in SWBT's conduit system, SWBT shall give written notice to Applicant requesting Applicant to tag or mark the facilities within 60 days and Applicant shall either tag the facilities within the 60-day period, advise SWBT in writing of its schedule for tagging the facilities, or notify SWBT in writing that it disclaims ownership of or responsibility for the facilities. If Applicant disclaims ownership of or responsibility for the facilities, Applicant shall disclose to SWBT the identity of the owner or other person or entity, if any, thought by Applicant to be responsible for the facilities.
- (d) If the facilities appear to be facilities used by Applicant but not subject to a current license granted under this Agreement, the provisions of Sections 17.05-17.12 shall apply.

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

17.04 Updating of Plant Location Records. Applicant shall furnish SWBT, upon request, with such information as may from time to time be necessary for SWBT to

correct and update SWBT's pole and conduit maps and records, cable plat maps, and other plant location records recording or logging assignments of pole, duct, and conduit space.

17.05 Notice to Applicant. If any of Applicant's facilities for which no license is presently in effect are found attached to SWBT's poles or anchors or within any part of SWBT's conduit system, SWBT, without prejudice to other rights or remedies available to SWBT under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Applicant advising Applicant that no license is presently in effect with respect to the facilities and that Applicant must, within 60 days, respond to the notice as provided in Section 17.06 of this Agreement.

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

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

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

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

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

17.10 Fees and Charges. This section applies to fees and charges with respect to Applicant's facilities placed on or in SWBT pole, duct, or conduit space, which has not been assigned to Applicant. Applicant shall be liable to SWBT for all fees and charges associated with any such unauthorized pole attachments or conduit occupancy for which it is responsible. Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from SWBT's poles or conduit system and shall include, but not be limited to, all fees and charges which would have been due and payable if Applicant and its predecessors had continuously complied with all applicable SWBT licensing requirements. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. The parties shall engage in good faith discussions to reach a mutually agreed determination as to the amount due and owing. In some cases, it may be impractical, unduly difficult, or uneconomical to determine the actual amount of fees which would have been due and payable if all licensing requirements had been met. Therefore, if the parties, through good faith discussions fail to reach agreement on the amount due and owing, and if the amount due

and owing cannot be determined due to Applicant's inability to provide the information required to determine the correct amount, the amount owing with respect to each unauthorized attachment or occupancy shall be equal to three times the annual attachment and occupancy fees in effect on the date Applicant is notified by SWBT of the unauthorized attachment or occupancy. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Applicant shall rearrange or remove its unauthorized facilities at SWBT's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to SWBT or another joint user, and shall pay SWBT for all costs incurred by SWBT in connection with any facilities rearrangements, modifications, or replacements necessitated as a result of the presence of Applicant's unauthorized facilities.

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

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

ARTICLE 18: REMOVAL OF APPLICANT'S FACILITIES

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

- (a) When practicable, Applicant shall give SWBT at least 30 days' advance notice in writing of its intent to remove facilities from any part of SWBT's conduit system and the proposed method of removal. The notice shall include the locations of the facilities to be removed, the name and telephone number of the manager responsible for removal of

the facilities, and the estimated dates when removal of the facilities will begin and end.

- (b) Applicant shall, if requested by SWBT to do so, place a pull mandrel (slug) through all or any specified part of the duct which was occupied by Applicant.
- (c) Except as otherwise agreed upon in writing by the parties, Applicant must, after removing its facilities, plug all previously occupied ducts at the entrances to SWBT's manholes (if SWBT would itself plug the ducts under the same circumstances) in accordance with the standards set by SWBT for its own operations, provided that such standards have been communicated in writing to Applicant at least 60 days in advance of the removal of Applicant's facilities.
- (d) Applicant shall be solely responsible for the removal of its own facilities from SWBT's poles, ducts, conduits, and rights-of-way and for (1) paying all persons and entities which provide materials, labor, access to real or personal property, or other goods or services in connection with the removal of Applicant's facilities from SWBT's poles, ducts, conduits, or rights-of-way and (2) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.
- (e) When Applicant no longer intends to occupy space on a SWBT pole or in a SWBT duct or conduit, Applicant will provide written notification to SWBT that it wishes to terminate the license with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Applicant's facilities, the license shall terminate and the space shall be available for reassignment.

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

on any public or private property (other than property owned or controlled by Applicant) in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

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

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

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

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

18.07 Removal of Facilities by SWBT; Notice of Intent to Remove. If Applicant fails to remove its facilities from SWBT's poles, ducts, or conduits in accordance with the provisions of Sections 18.01-18.06 of this Agreement, SWBT may remove such facilities and store them at Applicant's expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to Applicant for any injury, loss, or damage resulting from such actions. SWBT shall give

Applicant not less than 60 days prior written notice of its intent to remove Applicant's facilities pursuant to this section. The notice shall state:

- (a) the date when SWBT plans to commence removal of Applicant's facilities, and that Applicant may remove the facilities at Applicant's sole cost and expense at any time before the date specified;
- (b) SWBT's plans with respect to disposition of the facilities removed; and
- (c) that Applicant's failure to remove the facilities or make alternative arrangements with SWBT for removal and disposition of the facilities shall constitute an abandonment of the facilities and of any interest therein.

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

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

ARTICLE 19: RATES, FEES, CHARGES, AND BILLING

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

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

19.03 Pole Attachment and Conduit Occupancy Fees. Until such time as the FCC authorizes the charging of different rates to cable television systems and telecommunications carriers, SWBT's annual rates for access to poles, ducts, conduits, and rights-of-way shall be the same for cable television systems and telecommunications carriers. For all attachments to SWBT's poles and occupancy of SWBT's ducts and

conduits, Applicant will pay SWBT's semiannual pole attachment and conduit occupancy fees as specified in APPENDIX I. Pole attachment and conduit occupancy fees shall be assessed and billed with respect to (a) occupied space whether or not subject to a current license and (b) assigned space as well as occupied space. Fees for pole attachments shall be based on the number of Applicant's pole attachments as of the date of billing by SWBT and shall be calculated in accordance with applicable FCC rules, regulations, and orders. Fees for conduit occupancy shall be based on the number of duct feet occupied by or assigned to Applicant as of the date of billing by SWBT and shall be calculated in accordance with applicable FCC rules, regulations, and orders.

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

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

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

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

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

19.08 Contract Administration Fee. Subject to applicable commission orders, SWBT may charge Applicant a one-time contract administration fee as provided in APPENDIX I. This fee, if applicable, shall be assessed for work performed in the initial processing of this Agreement and shall be non-refundable upon acceptance of this Agreement by SWBT.

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

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

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

(a) Interest on past due bills and invoices shall accrue at the rate of 12% per annum, or the maximum rate allowed by law, whichever is less.

(b) Applicant's failure to pay SWBT's fees and charges shall be grounds for terminating this Agreement and licenses subject to this Agreement.

- (c) If Applicant fails to pay, when due, any fees or charges billed to Applicant under this Agreement, and any portion of such fees or charges remains unpaid more than 15 calendar days after the due date, SWBT may send Applicant a written notice advising Applicant that this Agreement, or specified licenses subject to this Agreement, may be terminated if such fees or charges are not paid within 15 calendar days after the date of the notice. Applicant must remit to SWBT all such unpaid fees or charges, whether disputed or undisputed, within 15 days after the date of the notice. If Applicant pays disputed fees under protest, and it is later determined that such fees or any portion thereof should be refunded, the portion of fees to be refunded shall be refunded with interest at the rate of 12% per annum or the maximum rate allowed by law, whichever is less.
- (d) Applicant may dispute any fees or charges billed by SWBT to Applicant under this Agreement by invoking the dispute resolution procedures set forth in Article 30 of this Agreement.
- (e) If Applicant does not dispute such fees or charges and any portion of such undisputed fees or charges remains unpaid 30 calendar days after the date of the notice, SWBT may, to the extent permitted by the Pole Attachment Act and applicable rules, regulations, and commission orders, terminate this Agreement and licenses subject to this Agreement, suspend the processing of pending applications for access to SWBT's poles, ducts, conduits, and rights-of-way located in this State, and refuse to accept further applications for access until such undisputed fees or charges, together with accrued interest thereon, have been paid in full.

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

- (a) Upon written notice to Applicant, SWBT may change, on a going-forward basis, the amounts of any rates, fees or charges assessed under this Agreement. Pole attachment and conduit occupancy rates shall not be increased more than once annually.
 - (1) The notice shall state the effective date of the changes, which, in the event of a rate increase, shall be no earlier than the 60th day after the notice is given.

- (2) The changes shall be effective on the effective date stated in the notice unless stayed or prohibited by a court or agency of competent jurisdiction.
- (3) The changes shall be reflected on the first semiannual bill issued on or after the effective date specified in the notice.
- (b) If the rates, fees and charges set forth in the notice are not acceptable to Applicant, Applicant may, notwithstanding any other provisions of this Agreement, at Applicant's option (1) seek the renegotiation of this Agreement, (2) terminate this Agreement, or (3) seek relief through the dispute resolution process or before a court or agency of competent jurisdiction.

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

ARTICLE 20: PERFORMANCE AND PAYMENT BONDS

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

- (a) If Applicant elects to perform make-ready or facilities modification work under Section 6.08(c) or Sections 10.02-10.05 of this Agreement, SWBT may require Applicant, authorized contractors, and other persons acting on Applicant's behalf to execute bonds equivalent to those which would be required by SWBT if the work had been performed by contractors, subcontractors, or other persons selected directly by SWBT. No bonds

shall be required of Applicant, authorized contractors, or other persons acting on Applicant's behalf except in those situations where a bond would be required if the work were being performed on SWBT's behalf.

- (b) No other bond shall be required of Applicant to secure obligations arising under this Agreement in the absence of due cause and justification.
- (c) If a bond or similar form of assurance is required of Applicant, an authorized contractor, or other person acting on Applicant's behalf, Applicant shall promptly submit to SWBT, upon request, adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing SWBT 60 days written notice.
- (d) SWBT may communicate directly with the issuer of any bond required by SWBT pursuant to this section to verify the terms of the bond, to confirm that the bond remains in force, and to make demand on the issuer for payment or performance of any obligations secured by the bond.

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

ARTICLE 21: INDEMNIFICATION

21.01 Risks Associated with Outside Plant Operations. The parties acknowledge that SWBT's outside plant facilities include thousands of miles of pole lines, conduits, and rights-of-way located on public and private property throughout SWBT's service area, that SWBT cannot control or continuously monitor activities that occur at these

sites, and that the risks associated with outside plant operations and facilities are not similar to the risks associated with operations occurring inside SWBT's central offices and other secure SWBT buildings and structures. The parties further acknowledge that the presence of multiple firms on or in poles, ducts, conduits, and rights-of-way owned or controlled by SWBT requires that liability risks be fairly allocated between the parties and that it is the parties' intent to allocate such risks in a just, reasonable, and nondiscriminatory manner which addresses known risks associated with the outside plant environment and activities and conditions at outside plant locations.

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

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

21.04 Indemnities Excluded. Except as otherwise specifically provided in this article, neither party (as an "indemnifying party") shall be required to indemnify or defend the other party (as an "indemnified party") against, or hold the indemnified party

harmless from, any suit, claim, demand, loss, damage, liability, fine, penalty, or expense arising out of:

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

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

claims arising from or in any way connected with any injury, sickness, disease, or death of any employee of the indemnifying party or any person acting on the indemnifying party's behalf attributable or allegedly attributable to occurrences or conditions on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. EXCEPT AS PROVIDED ABOVE IN SUBSECTIONS 21.04(c)-(d), THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL ARISE EVEN IF THE INJURY, SICKNESS, DISEASE, OR DEATH WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.

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

21.07 Claims Brought Against Either Party by Vendors, Suppliers, Customers, and other Persons in Privity of Contract with the Other Party. The parties acknowledge that neither party controls the contractual relationships between the other party and vendors, suppliers, customers, and other persons in privity of contract with the other party and that nothing contained in this Agreement shall create any contractual or other liability of either party to any vendor, supplier, customer, or other person or entity in privity of contract with the other party. Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, or

expenses of every kind and character, made, brought, or sought against the indemnified party by any vendor, supplier, or customer of the indemnifying party or by any other person or entity in privity with the indemnifying party; provided, however, that this section shall apply only to suits, claims, demands, losses, damages, liabilities, or expenses related to the subject matter of this Agreement or Applicant's use of SWBT's poles, ducts, conduits, or rights-of-way. The indemnifying party may not, as a defense to any obligations of the indemnifying party under this section, assert that the indemnified party's claims against the indemnifying party are barred by any tariff or contract limitation of liability applicable to the indemnifying party's vendor, supplier, or customer or to such other person in privity of contract with the indemnifying party. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not limited to indemnities for claims against either party arising out of or in connection with the failure by the other party to meet its obligations (including but not limited to contract and tariff obligations) to such other party's customers and suppliers. EXCEPT AS PROVIDED ABOVE IN SUBSECTIONS 21.04(c)-(d), THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL ARISE EVEN IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.

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

COMMITTED BY ANY EMPLOYEE OF THE INDEMNIFYING PARTY OR ANY OTHER PERSON ACTING ON THE INDEMNIFYING PARTY'S BEHALF OR AROSE FROM ANY NEGLIGENT ACT OR ACTS COMMITTED BY ANY EMPLOYEE OF THE INDEMNIFYING PARTY OR OTHER PERSON ACTING ON THE INDEMNIFYING PARTY'S BEHALF, IF SUCH NEGLIGENT ACT OR ACTS ARE THE SOLE PRODUCING CAUSE OF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE SUIT, CLAIM, DEMAND, LOSS, DAMAGE, LIABILITY, FINE, PENALTY, OR EXPENSE FOR WHICH INDEMNITY IS REQUESTED.

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

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

- (a) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the violation or breach, by any employee of the indemnifying party or other person acting on the indemnifying party's behalf, of (1) any federal, state, or local environmental statute, rule, regulation, ordinance,

or other law or (2) any provision or requirement of this Agreement dealing with hazardous substances or protection of the environment.

- (b) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of the indemnifying party, or by any person acting on the indemnifying party's behalf, while present on, within, or in the vicinity of any SWBT pole, duct, conduit, or right-of-way. Indemnities provided by this subsection include but are not limited to indemnities arising out of or in connection with the release or discharge of water and other substances from SWBT's manholes or other conduit facilities.
- (c) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the removal or disposal of any hazardous substances by the indemnifying party or by any person acting on the indemnifying party's behalf, or arising out of or in connection with the subsequent storage, processing or other handling of such hazardous substances by any person or entity after they have been removed by the indemnifying party or persons acting on the indemnifying party's behalf from the site of any SWBT pole, duct, conduit, or right-of-way. For the purposes of this subsection, any person or entity removing or disposing of hazardous substances at the request of the indemnifying party or at the request of any person acting on the indemnifying party's behalf, and any person or entity subsequently receiving, storing, processing, or otherwise handling such hazardous substances shall be considered to be a person acting on the indemnifying party's behalf.
- (d) Except as otherwise specifically provided in this section, neither party shall be required to indemnify or defend the other party against, or hold the other party harmless from any loss, damage, claim, demand, suit, liability, fine, penalty or expense for which the other party may be liable under any federal, state, or local environmental statute, rule, regulation, ordinance, or other law.

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

- (a) claims for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on SWBT due to the placement or presence of Applicant's facilities on or within SWBT's poles, ducts, conduits, or rights-of-way; or
- (b) claims based on the violation by Applicant of any third party's intellectual property rights, including but not limited to claims for copyright infringement, patent infringement, or unauthorized use or transmission of television or radio broadcast programs or other program material.

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

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

presence or activities of SWBT's employees or other personnel acting on SWBT's behalf on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

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

21.15 Assertion of Limitation of Liability Defenses. Each party shall diligently assert the limitation of liability provisions of any applicable tariff or contract in any case involving injury, loss, or damage to any customer of such party for which the other party is not exempt from indemnification liabilities to the indemnified party under this Agreement.

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

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

ARTICLE 22: LIABILITIES AND LIMITATIONS OF LIABILITY

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

22.02 LIMITATIONS OF LIABILITY IN GENERAL. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTIONS 21.16 AND 22.05, NEITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DAMAGES ATTRIBUTABLE, IN WHOLE OR IN PART, TO ANY NEGLIGENT ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT, WHETHER ARISING IN CONTRACT OR TORT, SHALL EXCEED IN THE AGGREGATE FOR ANY CALENDAR YEAR THE GREATER OF \$250,000, OR THE TOTAL AMOUNT CHARGED BY SWBT TO APPLICANT UNDER THIS AGREEMENT FOR THE CALENDAR YEARS WHEN

THE ACTS OR OMISSIONS GIVING RISE TO LIABILITY OCCURRED. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED AS LIMITING EITHER PARTY'S LIABILITY FOR ACTS OR OMISSIONS CONSTITUTING WILLFUL OR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE BY SUCH PARTY.

22.03 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION LIMITS EACH PARTY'S LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH NEGLIGENT (INCLUDING GROSSLY NEGLIGENT) ACTS OR OMISSIONS OF SUCH PARTY BUT DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR INTENTIONAL MISCONDUCT.

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

on SWBT's behalf, cable cuts by persons other than SWBT's employees or persons acting on SWBT's behalf, or other causes beyond SWBT's control which occur at sites subject to this Agreement.

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

- (a) Each party (the "responsible party"), and persons acting on behalf of the responsible party, shall exercise due care to avoid damaging the facilities of the other party (the "injured party"). In the event such damage occurs, the responsible party or persons acting on behalf of the responsible party shall immediately report such damages to the injured party, and the injured party shall promptly make such arrangements as may be necessary to restore service to its customers using the facilities affected.
- (b) The responsible party shall reimburse the injured party for the actual costs incurred by the injured party for repair of facilities damaged by the willful misconduct, grossly negligent acts, grossly negligent omissions, and negligent acts (but not negligent omissions other than grossly negligent omissions) of employees of the responsible party.
- (c) The responsible party shall reimburse the injured party for the actual costs incurred by the injured party for repair of facilities damaged by the willful misconduct, grossly negligent acts or omissions, and negligent acts (but not negligent omissions other than grossly negligent omissions) of independent contractors acting on the responsible party's behalf; provided, however, that the injured party shall be limited to recovery of those costs which cannot be recovered from the independent contractor causing the damage. The responsible party shall not be liable to the injured party under this section until the injured party's claims against the independent contractor causing the damage have been adjudicated or settled and the amount of the injured party's claim against the responsible party is determinable.
- (d) NEITHER PARTY SHALL BE REQUIRED BY THIS SECTION TO REIMBURSE THE OTHER PARTY FOR COSTS INCURRED AS A RESULT OF NEGLIGENT OMISSIONS OTHER THAN GROSSLY NEGLIGENT OMISSIONS COVERED BY SUBSECTIONS (c)-(d) OF THIS SECTION.

- (e) THIS SECTION LIMITS, BUT DOES NOT EXCLUDE, THE RESPONSIBLE PARTY'S LIABILITY TO THE INJURED PARTY FOR DAMAGES CAUSED BY NEGLIGENT (INCLUDING GROSSLY NEGLIGENT) ACTS OF THE RESPONSIBLE PARTY AND PERSONS ACTING ON THE RESPONSIBLE PARTY'S BEHALF.

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

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

ARTICLE 23: INSURANCE

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

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

SWBT's behalf. Applicant shall be responsible for securing compliance by its contractors with this requirement and shall be liable to SWBT for any damages resulting from its failure to do so.

- (d) Self-insurance shall be permitted for persons and entities (including but not limited to Applicant and authorized contractors) meeting the self-insurance requirements set forth in Section 23.02.

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

- (a) Applicant shall submit to SWBT adequate proof (as determined by SWBT) that the companies insuring Applicant are providing all coverages required by this Agreement. Applicant's insurers shall provide SWBT with certifications that required coverages will not be cancelled, changed or materially altered (e.g., by increasing deductibles or altering exclusions from coverage) except after 30 days written notice to SWBT.
- (b) SWBT will accept certified proof of a person or entity's qualification as a self-insurer for Workers' Compensation and Employers Liability, where self-insurance is permitted, upon receipt of a current copy of a Certificate of Authority to Self-insure issued by the Workers' Compensation Commission of this State. SWBT will accept self-insurance by a person or entity in lieu of other Commercial General Liability and Automobile Liability Coverage if such person or entity warrants that its net worth, as shown by its most recent audited financial statement with no negative notes, is at least 10 times the minimum liability limits set forth in APPENDIX IV and SWBT is satisfied that such entity will be able to meet its liability obligations under this Agreement.
- (c) Applicant shall be responsible for determining whether contractors and other persons present on Applicant's behalf on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way meet the self-insurance requirements of this subsection. Applicant may accept certified proof of any such person's or entity's qualification as a self-insurer for Workers' Compensation and Employers Liability, where self-insurance is permitted, upon receipt of a current copy of a Certificate of Authority to Self-insure issued by the Workers' Compensation Commission of this State. Applicant may accept proof of self-insurance by a person or entity in lieu of other Commercial General Liability and Automobile Liability Coverage if such person or entity warrants that its net worth, as shown by its most recent audited financial statement with

no negative notes, is at least 10 times the minimum liability limits set forth in APPENDIX IV and Applicant is satisfied that such entity will be able to meet its liability obligations with respect to activities performed on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

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

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

ARTICLE 24: ASSIGNMENT OF RIGHTS

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

- (a) SWBT may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Applicant's consent, to any entity controlling, controlled by, or under common control with SWBT or which acquires or succeeds to ownership of substantially all of SWBT's assets.
- (b) Applicant may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without SWBT's consent, to: any telecommunications carrier or cable system operator which (1) is entitled to access to SWBT's poles, ducts, conduits, and rights-of-way under the Pole Attachment Act and (2) controls, is controlled by, or is under common control with Applicant or acquires and succeeds to ownership of substantially all of Applicant's assets; provided, however,

that such assignment shall not be effective until Applicant has given SWBT written notice of the assignment pursuant to Section 24.03 and guaranteed the performance of Applicant's assignee or successor. Applicant's assignee or successor shall assume all outstanding obligations of Applicant under this Agreement, including but not limited to all liabilities and contingent liabilities of Applicant arising out of or in connection with this Agreement.

- (c) Applicant may, ancillary to a bona fide loan transaction between Applicant and any lender, and without SWBT's consent, grant security interests or make collateral assignments in substantially all of Applicant's assets, including Applicant's rights under this Agreement, subject to the express terms of this Agreement. In the event Applicant's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire Applicant's assets through public or private sale or through an Agreement with Applicant, Applicant's lender or the third party acquiring Applicant's rights under this Agreement shall assume all outstanding obligations of Applicant under the agreement and provide proof satisfactory to SWBT that such lender or third party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by Applicant's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Applicant's lender or such third party shall succeed to all rights and remedies of Applicant under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Applicant is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Applicant under the Agreement, including liability to SWBT for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third party succeeds to the rights of Applicant under the Agreement, as applicable.
- (1) In the event Applicant or Applicant's lender requests that SWBT, in connection with a bona fide loan transaction between Applicant and Applicant's lender, sign any additional consents, or make other accommodations to protect such lender's interest, Applicant or Applicant's lender shall reimburse SWBT for all expenses incurred by SWBT in connection with such requests and accommodations, including but not limited to in-house or outside legal expenses incurred by SWBT in processing the request.

- (2) In the event Applicant or Applicant's lender desires that SWBT provide notices to Applicant's lender or permit Applicant's lender, in the event of a breach, to cure any default or termination event if Applicant fails to do so, Applicant shall notify SWBT's authorized agent, as designated in Article 29 of this Agreement, that such notices may be sent to Applicant's lender as well to Applicant. Nothing contained in this subsection shall be construed as imposing any duty on SWBT in favor of Applicant's lender, and this section shall not be construed to provide Applicant's lender or any other third parties with any rights, claims, causes of action of any kind. Applicant waives any and all claims or causes of action, of every kind and character, past, present, or future, arising out of or in connection with the giving of any notice to Applicant's lender pursuant to this section or any failure to give such notice.
- (d) Either party may assign or transfer rights or obligations under this Agreement on such terms and conditions as are mutually acceptable to the other party and with such other party's prior written consent, which consent may be withheld only for due cause and justification.
- (e) No assignment or transfer by Applicant of rights under this Agreement, licenses subject to this Agreement, or authorizations granted under this Agreement shall be effective until Applicant, its successors, and assigns have complied with the provisions of this article, secured SWBT's prior written consent to the assignment or transfer, if necessary, and given SWBT notice of the assignment or transfer pursuant to Section 24.03.
- (f) Except as otherwise expressly provided in this article, neither this Agreement, nor any licenses or authorizations subject to this Agreement, shall inure to the benefit of Applicant's successors or assigns without SWBT's prior written consent.

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

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

24.04 Assignment Shall Not Relieve Applicant of Prior Obligations. Except as otherwise expressly agreed by SWBT in writing, no assignment permitted by SWBT under this Agreement shall relieve Applicant of any obligations arising under or in

connection with this Agreement, including but not limited to indemnity obligations under Article 21 of this Agreement or the interconnection agreement, if any.

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

24.06 Satisfaction of All Other Licensing Requirements. Applicant's assignee or successor must, within 60 days following the assignment, provide proof satisfactory to SWBT that such assignee or successor has complied or will comply with all licensing requirements established under this Agreement, including but not limited to requirements that such assignee or successor verify, to the best of its information and belief, as provided in Section 17.03, that all facilities owned or used by such assignee or successor and presently attached to SWBT's poles or placed within any portion of SWBT's conduit system within this State have been disclosed to SWBT and are subject to existing licenses and that such assignee or successor has complied with the insurance requirements set forth in Article 23 of this Agreement.

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

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

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

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

25.01 Termination Due to Non-Use of Facilities or Loss of Required Authority. Applicant shall, by written notice to SWBT, terminate this Agreement and all licenses subject to this Agreement if Applicant ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if Applicant is cable television system having access to SWBT's poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in this State (if Applicant is a telecommunications carrier which does not also have authority to provide cable television service in this State), or ceases to make active use of SWBT's poles, ducts, conduits, and rights-of-way in this State. Applicant shall, by written notice to SWBT, terminate individual licenses subject to this Agreement if (a) Applicant ceases to utilize the pole attachment or conduit occupancy space subject to such licenses or (b) Applicant's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated for reasons of safety or any other lawful reason by any federal, state, or local governmental authority or third-party property owner having authority to revoke, deny, or terminate such use or access. Responsibility for terminating this Agreement or individual licenses under the circumstances set forth in this section shall be a contractual obligation imposed on Applicant, and the failure by Applicant to terminate this Agreement or individual licenses pursuant to this section shall be a material breach of this Agreement.

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

refusal of access may be stayed or suspended by agreement of the parties or by order of the tribunal having jurisdiction over the parties' dispute.

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

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

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

(b) Except as provided in Section 25.02 and subsection (c) of this section, the complaining party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given and (1) the breaching party fails to cure the breach within 30 days of such notice, if the breach is one which can be cured within 30 days, or (2) the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure; provided, however, that nothing contained in this section shall preclude either party from invoking the dispute resolution procedures set forth in Article 30 of this Agreement, or any complaint or dispute resolution procedures offered by the FCC or State Commission, at any time.

(c) Nothing contained in this section shall preclude either party from filing a complaint or bringing suit in any court, agency, or other tribunal of competent jurisdiction to restrain or enjoin any conduct of the other party which threatens the complaining party with irreparable injury, loss or damage without first giving the notice otherwise required by subsection (b).

25.04 Remedies for Breach. Subject to the provisions of this article and the dispute resolution procedures of Article 30, either party may terminate this Agreement in the event of a material breach by the other party or exercise any other legal or equitable right which such party may have to enforce the provisions of this Agreement. Except as otherwise specifically provided in Section 30.07, in any action based on an alleged breach

of this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred by such party, including but not limited to reasonable attorneys' fees.

ARTICLE 26: FAILURE TO ENFORCE

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

ARTICLE 27: EFFECTIVE DATE, TERM, AND ELECTIVE TERMINATION

27.01 Effective Date. This Agreement shall be effective as of the _____ day of _____, 199____, or, if this Agreement has been entered into as an appendix, attachment, or exhibit to an interconnection agreement between the parties, the date of approval by the State Commission of the interconnection agreement, whichever date first occurs.

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

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

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

(a) Applicant may terminate this Agreement with or without cause.

(b) The parties acknowledge that the Pole Attachment Act, 47 U.S.C. §224(e), as added by the Telecommunications Act of 1996, expressly directs the FCC to promulgate new regulations governing charges to telecommunications carriers for access to poles, ducts, conduits, and rights-of-way and that such new regulations are to take effect five years after the date of enactment of the Telecommunications Act of 1996 (that is, February 8, 2001). The parties further acknowledge that due to nondiscrimination requirements, it is desirable that formal attachment agreements establishing rates, terms, and conditions of access be revised

simultaneously, to the extent possible. Accordingly, the parties agree that SWBT may terminate this Agreement only for cause during the period beginning with the effective date of this Agreement through February 8, 2001. Thereafter, SWBT may terminate this Agreement with or without cause, subject to the provisions of subsection (d) and Section 27.05 below.

- (c) The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current term of this Agreement or six months after the date the notice is given.
- (d) The elective termination of this Agreement by SWBT under this section shall not require immediate removal of Applicant's facilities from poles, ducts, conduits, and rights-of-way owned or controlled by SWBT and shall be subject to the provisions of Section 27.05 below; provided, however, that Applicant shall, within 60 days after the effective date of the termination, either initiate negotiations for continued access to SWBT's poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Article 18 of this Agreement.

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

ARTICLE 28: CONFIDENTIALITY OF INFORMATION

28.01 Information Provided by Applicant to SWBT. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Applicant to SWBT in connection with this Agreement (including but not limited to information submitted in connection with Applicant's applications for the assignment of pole attachment and occupancy space and for pole attachment and conduit occupancy licenses) shall be deemed to be "confidential" or "proprietary" information of Applicant and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Applicant's review of records regarding a particular market area, or relating to assignment of space to Applicant in a particular market area, and further includes knowledge or information about the timing of Applicant's request for or review

of records or its inquiry about SWBT facilities. This article does not limit the use by SWBT of aggregate information relating to the occupancy and use of SWBT's poles, ducts, conduits, and rights-of-way by firms other than SWBT (that is, information submitted by Applicant and aggregated by SWBT in a manner that does not directly or indirectly identify Applicant).

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

28.03 Permitted Uses of Applicant's Confidential Information. Notwithstanding the provisions of Sections 28.01 and 28.02 above, SWBT and persons acting on SWBT's behalf may utilize Applicant's confidential or proprietary information for the following purposes: (a) posting information, as necessary, to SWBT's outside plant records; (b) placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SWBT's poles, ducts, conduits, and rights-of-way and any SWBT facilities located on, within, or in the vicinity of such poles, ducts, conduits, and rights-of-way; (c) performing SWBT's obligations under this Agreement and similar agreements with third parties; (d) performing SWBT's general obligations to afford nondiscriminatory access to telecommunications carriers and cable television systems under the Pole Attachment Act; (e) determining which of SWBT's poles, ducts, conduits, and rights-of-way are (or may in the future be) available for SWBT's own use, and making planning, engineering, construction, and budgeting decisions relating to SWBT's poles, ducts, conduits, and rights-of-way; (f) preparing cost studies; (g) responding to regulatory requests for information; (h) maintaining SWBT's financial accounting records; and (i) complying with other legal requirements relating to poles, ducts, conduits, and rights-of-way.

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

28.05 Defense of Claims. In the event of a dispute between SWBT and any person or entity, including Applicant, concerning SWBT's performance of this Agreement, satisfaction of obligations under similar agreements with third parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, SWBT may utilize confidential or proprietary information submitted by

Applicant in connection with this Agreement as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that SWBT shall not disclose Applicant's proprietary or confidential information without first, at SWBT's option: (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Applicant's information; (b) seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing Applicant notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

28.06 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding SWBT from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that SWBT shall not disclose Applicant's proprietary or confidential information without first, at SWBT's option: (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Applicant's information; (b) seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing Applicant notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

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

ARTICLE 29: NOTICES

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

- (a) Such notice may be delivered to Applicant's duly authorized agent or attorney in person or by agent or courier receipted delivery.
- (b) Such notice may be mailed to Applicant's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.

(c) Applicant may authorize delivery of the notice by telephonic document transfer to the Applicant's duly authorized agent or attorney. Notice by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed given on the following day.

(d) Notices to Applicant shall be sent to the authorized agent or attorney designated below:

Name: Richard Petty
Title: Vice President, Regulatory
Firm: Omniplex Communications Group, LLC
Address: 707 Spirit 40 Park Drive, Suite 120
City/State/Zip: Chesterfield, MO 63005

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

(a) Such notice may be delivered to SWBT's duly authorized agent or attorney in person or by agent or courier receipted delivery.

(b) Such notice may be mailed to SWBT's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.

(c) SWBT may authorize delivery of the notice by telephonic document transfer to SWBT's duly authorized agent or attorney. Notice by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed given on the following day.

(d) On the effective date of this Agreement, and until further notice to Applicant, SWBT's duly authorized agent shall be the Utility Liaison Supervisor ("ULS") designated in APPENDIX VIII.

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

ARTICLE 30: DISPUTE RESOLUTION

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

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

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

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

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

- (d) Discussions and correspondence among the representatives as provided by this section are for purposes of settlement, are exempt from discovery and production, and shall not be admissible in arbitration, judicial, regulatory, or other proceedings in any forum.

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

- (a) If agreed to by the parties, the dispute shall be referred to the nearest office of the American Arbitration Association, or such other mediator as may be selected by agreement of the parties, for mediation, that is, an informal, non-binding conference or conferences between the parties in which a mediator will seek to guide the parties to a resolution of the dispute.
- (b) If the dispute is referred to the American Arbitration Association, the parties are free to select any mutually acceptable panel member from the list of mediators at the American Arbitration Association. If the parties cannot agree or have no particular choice of a mediator and simply request that the American Arbitration Association assign a mediator to the dispute, then a list and resumes of available mediators, numbering one more than there are parties, will be sent to the parties, each of whom may strike one name leaving the remaining name as the mediator. If more than one name remains, the designated mediator shall be selected by the Administrator of the American Arbitration Association from the remaining names.
- (c) Mediation sessions shall be private.
- (d) All records, reports or other documents considered by the mediator shall be confidential.
- (e) The parties agree that the mediator shall not be compelled to divulge confidential materials or to testify about the mediation in arbitration, regulatory, judicial, or other proceedings in any forum.
- (f) The parties agree to maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial, or other proceeding:
 - (1) views expressed or suggestions made by the other party with respect to a possible settlement of the dispute;

- (2) admissions made by the other party during the mediation proceedings;
 - (3) proposals made or views expressed by the mediator; or
 - (4) the fact that the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.
- (g) Subsections (e) and (f) of this section shall apply to anything said, done or occurring in the course of the mediation, including any private caucus or discussions between the mediator and any party or counsel before or after the joint mediation session. There shall be no stenographic record of the mediation process, except to memorialize a settlement record.
- (h) The mediation process shall be considered settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views, and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views, and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of its having been used in connection with this settlement process.

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

- (a) Either party may demand such arbitration in accordance with the procedures set out in the Commercial Arbitration Rules.
- (b) Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this subsection.

- (1) Each party may submit in writing to any other party, and such other party shall so respond, to a maximum of any combination of 35 of the following: interrogatories, document production requests, and requests for admissions. The interrogatories, document production requests, and requests for admissions shall not have subparts.
- (2) Additional discovery may be permitted upon mutual agreement of the parties or upon order of the arbitrator on a showing of good cause.
- (c) The arbitrator shall control the scheduling so as to process the matter expeditiously. The times set forth in this subsection shall apply unless extended upon mutual agreement of the parties or by the arbitrator on a showing of good cause.
 - (1) The arbitration hearing shall commence within 60 days of the demand for arbitration and shall be held, in the absence of agreement by the parties to a different venue, in Dallas, Texas.
 - (2) The parties shall submit written briefs five days before the hearing.
 - (3) The arbitrator shall rule on the dispute by issuing a written opinion within 30 days after the close of hearings.
 - (4) The arbitrator shall have no authority to order punitive or consequential damages.
 - (5) Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

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

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

30.08 No Abridgment of Rights under the Communications Act of 1934 or the Pole Attachment Act. Nothing contained in this article shall abridge the rights of either party to seek relief from the FCC with respect to any dispute subject to the jurisdiction of the FCC under the Communications Act of 1934 or the Pole Attachment Act, or from the State Commission with respect to any dispute subject to its jurisdiction, except that the

parties may not seek relief from the FCC or the State Commission with respect to any dispute that has already been resolved by mediation under Section 30.05 or by binding arbitration under Section 30.06.

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

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

ARTICLE 32: GENERAL PROVISIONS

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

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

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

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

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

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

32.07 Force Majeure. Except as otherwise specifically provided in this Agreement, neither party will be liable for any delay or failure in performance of any part

of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the party claiming excusable delay or other failure to perform; provided, however, that Force Majeure will not include acts of any governmental authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs, the party whose performance fails or is delayed because of such Force Majeure condition will give prompt notice to the other party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

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

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

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

[] Applicant desires to have access to SWBT's poles, ducts, conduits, and rights-of-way on terms that are not less favorable than those obtained by firms participating in interconnection arbitration proceedings before the State Commission. Applicant also desires to have access to SWBT's poles, ducts, conduits, and rights-of-way to the full extent permitted under the FCC's First Interconnection Order in CC Docket No. 96-98. SWBT is entering into this Agreement for