

#### 11.4 SWBT's rate for Loop Conditioning.

SWBT will make "clean loops" available for all xDSL services and use by all xDSL providers. When a CLEC orders an xDSL loop, SWBT will make available for use on a nondiscriminatory basis loops that do not need conditioning. If no "clean loops" are available for use, then the conditioning charges stated below apply. SWBT's retail and/or advanced services affiliate shall not be given preferential access to clean loops, nor shall such clean loops be reserved exclusively for ADSL services.

The conditioning charges, listed below, are interim and are applicable to every xDSL loop greater than 12,000 feet in length but less than 17,500 feet in length, in which the CLEC requests the removal of bridged tap, load coils, and/or repeaters. The interim charges will be in effect only until the effective date of the Missouri Public Service Commission's order establishing permanent conditioning charges in Case No. TO-2000-322, TO-2001-439 or another appropriate case established by the Commission. Upon the effective date of the Missouri Public Service Commission's order establishing permanent conditioning rates, those permanent rates will replace the interim rates set forth below. The interim rates set forth below are subject to true up to the permanent rates established in Case No. TO-2000-322, TO-2001-439 or another appropriate case established by the Commission. Any refund or additional charges due as a result of true up shall be paid within thirty days of the effective date of the Commission's order adopting permanent rates. The time period subject to true up shall be limited to six months, retrospectively from the effective date of the Commission's final order adopting permanent conditioning rates, but shall not include any period prior to the effective date of this agreement with CLEC.

	<u>Nonrecurring</u> Initial	Additional (Same time & same location)
Removal of Repeater	\$ 0.00	\$ 0.00
Removal of Bridged Tap and Repeater	\$ 0.00	\$ 0.00
Removal of Bridged Tap	\$ 0.00	\$ 0.00
Removal of Bridged Tap & Load Coil	\$ 0.00	\$ 0.00
Removal of Load Coil	\$ 0.00	\$ 0.00

The conditioning charges, listed below, are interim and are applicable to every xDSL loop, at or in excess of 17,500 feet in length, in addition to the applicable rates for loops less than 17,500 feet but longer than 12,000 feet in length that requires the specific conditioning listed. The interim charges will be in effect only until the effective date of the Missouri Public Service Commission's order establishing permanent conditioning charges in Case No. TO-2000-322, TO-

2001-439 or another appropriate case established by the Commission. Upon the effective date of the Missouri Public Service Commission's order establishing permanent conditioning rates, those permanent rates will replace the interim rates set forth below. The interim rates set forth below are subject to true up to the permanent rates established in Case No. TO-2000-322, TO-2001-439 or another appropriate case established by the Commission. Any refund or additional charges due as a result of true up shall be paid within thirty days of the effective date of the Commission's order adopting permanent rates. The time period subject to true up shall be limited to six months, retrospectively from the effective date of the Commission's final order adopting permanent conditioning rates, but shall not include any period prior to the effective date of this Agreement with CLEC.

	<u>Nonrecurring</u>	
	Initial	Additional <sup>7</sup>
Removal of Repeater	\$ 0.00	\$ 0.00
Removal of Bridged Tap	\$ 0.00	\$ 0.00
Removal of Load Coil	\$ 0.00	\$ 0.00

- 11.5 SWBT will provide CLEC a monthly bill that includes all charges incurred by and credits and/or adjustments due to CLEC for those unbundled elements and other service offerings ordered, established, utilized, discontinued or performed pursuant to this Attachment.
- 11.6 Except as otherwise specifically provided elsewhere in this Agreement, the Parties will pay all rates and charges due and owing under this Attachment within thirty (30) days of receipt of an invoice. Except as otherwise specifically provided in this Agreement, interest on overdue invoices will apply at the six (6) month Commercial Paper Rate applicable on the first business day of each calendar year.

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<sup>7</sup> must be at same location and performed at the same time

**APPENDIX DA-RESALE****SWBT-PROVIDED DIRECTORY ASSISTANCE SERVICE**

This Appendix DA-Resale to Attachment 1: Resale sets forth the terms and conditions under which SWBT agrees to provide Directory Assistance Service (DA Service) for CLEC, but only upon CLEC's request therefor.

**1.0 Service**

- 1.1 DA Service consists of providing subscriber listing information (name, address, and published or Non-List telephone number or an indication of non-published status) to CLEC's customers who call DA according to current SWBT methods and practices or as subsequently modified.
- 1.2 Directory Assistance Call Completion (DACC) service consists of SWBT completing a call to the requested number on behalf of CLEC's end user, utilizing the Interactive Voice System (IVS) or having the operator complete the call. SWBT will provide DACC to CLEC's customers for local and intrastate intraLATA calls. In the event and to the extent that SWBT provides DACC service to its own customers for interstate intraLATA calls, it will provide such service to CLEC's customers.
- 1.3 SWBT agrees to provide DACC only in areas where SWBT can furnish Automatic Number Identification (ANI) from CLEC's customers to SWBT's switch and where CLEC obtains DA service from SWBT.
- 1.4 The Parties agree that, in the event of an emergency wherein an CLEC customer must reach a non-CLEC customer that has a non-published telephone number, the CLEC operator will contact SWBT's operator and request the assistance of a supervisor to the extent done by SWBT's operators.

**2.0 Definitions - The following terms are defined as set forth below:**

- 2.1 **Non-List Number** - A Telephone number that, at the request of the telephone subscriber, is not published in a telephone directory, but is available by calling a SWBT DA Operator.
- 2.2 **Non-Published Number** - A telephone number that, at the request of the telephone subscriber, is neither published in a telephone directory nor provided by a SWBT DA Operator.
- 2.3 **Published Number** - A telephone number that is published in a telephone directory and is available upon request by calling a SWBT DA Operator.

2.4 **IntraLATA Home NPA (HNPA)** - Where a LATA is comprised of one area code or Numbering Plan Area (NPA).

2.5 **IntraLATA Foreign NPA (FNPA)** - Where a single LATA includes two Numbering Plan Areas (NPAs). FNPA DA calls may be classified as interstate intraLATA or intrastate intraLATA DA calls.

### 3.0 **Call Branding/Rate Reference**

#### 3.1 Call Branding

3.1.1 The process by which an Operator, either live or recorded, will identify the DA provider as being CLEC. SWBT will offer Call Branding of DA in the name of CLEC.

3.1.2 CLEC will provide SWBT with the specific branding phrase to be used to identify CLEC. The standard phrase will be consistent with the general form and content currently used by the Parties in branding their respective services.

3.1.3 SWBT will brand Directory Assistance in the name of CLEC starting not later than thirty (30) days after the Effective Date of the Agreement and will complete implementation of this process in all SWBT Directory Assistance platforms not later than five (5) months after the Effective Date of the Agreement. In the interim, SWBT will, if allowed by federal and state law and regulatory rules, unbrand competitive LEC directory assistance calls that are branded by live operators. CLEC will not request interim unbranding of Directory Assistance for calls that are branded by automated systems until such time as SWBT's operator services platforms are capable of re-branding. The schedule is dependent upon the ability of SWBT's vendor to meet its current commitment; however, SWBT will use its best efforts to manage the vendor to meet said date.

3.1.4 An initial non-recurring charge will apply for loading CLEC's Directory Assistance Call Branding Announcement as well as a charge for each subsequent change to CLEC's Directory Assistance Call Branding Announcement as provided in Section 5.0 Pricing of Appendix DA-Resale.

#### 3.2 **Rate Reference**

3.2.1 SWBT Directory Assistance operators will provide Directory Assistance Rate Information upon request to CLEC's end users as required by Section 226(b)(1)(C) of the Act. Rate Reference information will be provided under the following terms and conditions:

3.2.2 CLEC will furnish Rate Reference information in a mutually agreed to format or media thirty (30) days in advance of the initial date when they are to be provided by SWBT. If CLEC does not provide the Rate information and branding phrase as required in this

Section, SWBT will brand the DA service provided to CLEC as SWBT DA service and quote SWBT rates. SWBT will no longer brand these calls as SWBT calls nor quote SWBT rates when the appropriate equipment or software is installed.

- 3.2.3 CLEC will inform SWBT, in writing, of any changes to be made to such Rate Reference Information ten (10) working days prior to the effective rate change date. CLEC acknowledges that it is responsible to provide SWBT updated Rate information in advance of when the Rates are to become effective.
- 3.2.4 In all cases when SWBT receives a rate request from an CLEC end user, SWBT will quote the Directory Assistance rates provided by CLEC, except as provided in section 3.2.2.
- 3.2.5 An initial non-recurring charge will apply for loading CLEC's Directory Assistance Rate information as well as a charge for each subsequent change to CLEC's Directory Assistance Reference information as provided in Section 5.0 Pricing of Appendix DA-Resale.

#### **4.0 Responsibilities of SWBT**

- 4.1 SWBT will perform DA Service for CLEC in those exchanges where CLEC elects to purchase such services from SWBT.
- 4.2 SWBT will provide and maintain its own equipment to furnish DA Services, including equipment necessary for routing calls and signals to the SWBT serving office.
- 4.3 SWBT will provide DA Service to CLEC customers using current and updated DA records and in accordance with SWBT's current methods, practices, and procedures or as subsequently modified.
- 4.4 SWBT will provide IntraLATA HNPA DA Service and intrastate IntraLATA FNPA DA Service to Customers who dial 1+411 or NPA+555-1212.
- 4.5 SWBT will include current CLEC customer listing information in SWBT's DA database.

#### **5.0 Pricing**

- 5.1 Rates to be charged to CLEC by SWBT for the DA Services provided pursuant to this Appendix are set forth in Appendix Services/Pricing to Attachment 1: Resale of this Agreement. In states where SWBT affords customers making calls to DA a monthly free call allowance, SWBT will afford CLEC's customers making calls to DA the same monthly free call allowance, and will not charge CLEC for such calls.

5.2 Pricing for branding of CLEC DA calls are as follows:

Call Branding

Rate per initial load/change per TOPS switch per brand	\$3,000.00
Rate per branded call:	\$0.0250

5.2.1 In the event that the Phraseology for branding DA calls is the same phraseology for branding OS calls, only one \$3,000.00 charge will apply per initial loading or subsequent change.

5.3 Pricing for rate quotations are as follows: Rate quotes will be provided by SWBT to callers requesting CLEC rates using the rate tables already loaded by SWBT based on information provided by CLEC. The parties agree that CLEC will reimburse SWBT \$2,200.00 for the initial loading costs per operator switch and \$1,000.00 per operator switch for any future CLEC requested modifications to the rate tables. These prices will not be subject to true-up.

**6.0 Liability**

6.1 Indemnification and limitation of liability provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions portion of the Agreement.

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

This Appendix is made by and between Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company (“SWBT”) and CD Telecommunications, LLC (“CLEC”). As provided in this Appendix, SWBT will provide CLEC nondiscriminatory access, in accordance with the Pole Attachment Act, the Telecommunications Act of 1996, and applicable rules, regulations, and commission orders, to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT and located in this state.

**ARTICLE 1: PARTIES**

1.01 Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company. Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company (“SWBT”) is a corporation chartered in the State of Texas. SWBT’s principal office is located at 350 McCullough, San Antonio, Texas 78215.

1.02 CD Telecommunications, LLC. (“CLEC”) is a limited liability company. CLEC maintains an office at Address: 607 State Highway 165, Suite 5, Branson, MO 65616. CLEC is more fully described in EXHIBIT II (“Identification of CLEC”).

**ARTICLE 2: PURPOSE OF APPENDIX**

The Communications Act of 1934, as amended by the Telecommunications Act of 1996, states that each local exchange carrier has the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier on rates, terms, and conditions that are consistent with the Pole Attachment Act, 47 U.S.C. § 224, as amended by the Telecommunications Act of 1996. The primary purpose of this Appendix is to set forth the basic rates, terms, conditions, and procedures under which CLEC shall have access to SWBT’s poles, ducts, conduits, and rights-of-way. SWBT shall provide CLEC with nondiscriminatory access to poles, ducts, conduits, or rights-of-way owned solely or in part by it, or controlled by it, as the term “nondiscriminatory access” is defined in the Telecommunications Act of 1996. This Appendix is intended by the parties to implement, rather than abridge, their respective rights and remedies under federal and state law.

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

### ARTICLE 3: DEFINITIONS

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

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

3.03 Appendix. When capitalized, the term “Appendix” refers to this Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way. The term “Appendix” includes all appendices, attachments, and addenda to this Appendix.

3.04 Assigned. When used with respect to pole, duct, conduit, or right-of-way space, the term “assigned” refers to space that is occupied by, or has been designated for occupancy by, either party or by another telecommunications carrier, cable television system, provider of telecommunications services, governmental entity, or other person or entity having occupancy rights. Except as otherwise specifically provided in this Appendix, no person or entity shall have the right to occupy space assigned to another person or entity (other than on a temporary basis in the event of emergency) until the assignment has been released or lapsed. Assignment is further described in Article 8 of this Appendix.

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



authorized contractor by one SWBT construction district constitute approval of such authorized contractor for the area served by a different SWBT construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an authorized contractor shall, for the purposes of that job, be deemed to have been approved by all SWBT construction districts in which the work is to be performed.

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

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

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

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

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

3.11 Construction District. The term “construction district” refers to the SWBT organization responsible for outside plant construction in a specified geographic area. The term

“construction district” connotes responsibility for handling a function and not to the official name of the organization responsible for outside plant construction matters.

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

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

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

EXHIBIT I:	Pole and Conduit Attachment Rates
EXHIBIT II:	Identification of CLEC
EXHIBIT III:	Administrative Forms and Notices
SW-9433:	Pole Attachments
SW-9434:	Access Application and Make-Ready Authorization Work
SW-9435:	Conduit Occupancy
SW-9436A:	Notification of Surrender or Modification of Pole Attachment License by Licensee
SW-9436B:	Notification of Surrender or Modification of Conduit Occupancy License by CLEC
SW-9436C:	Notification of Unauthorized Attachments by CLEC
EXHIBIT IV:	Insurance Requirements
EXHIBIT V:	Nondisclosure Agreement

EXHIBIT VII: Notices to SWBT

EXHIBIT VIII: Identification of Utility Liaison Supervisor (ULS)

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

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

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

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

3.19 This Section Intentionally Left Blank

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

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

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

3.23 License. The term “license” refers to a written instrument confirming that SWBT has afforded CLEC or another joint user access to specific space on or within a pole, duct, conduit, or right-of-way owned or controlled by SWBT in accordance with applicable federal

and state laws and regulations. The term “license” includes licenses issued by SWBT pursuant to this Appendix and may, if the context requires, refer to licenses issued by SWBT prior to the date of this Appendix.

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

3.25 Maintenance duct. The term “maintenance duct” generally refers to a full-sized duct (typically three inches in diameter or larger) which may be used by SWBT and joint users (including CLEC) on a short-term basis for maintenance, repair, or emergency restoration activities. Maintenance ducts will be available, on a nondiscriminatory basis, to all persons and entities (including SWBT, CLEC, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located for (a) short-term emergency repairs as provided in Article 15 of this Appendix and (b) short-term non-emergency maintenance or repair activities as provided in Articles 12 and 13 of this Appendix. No more than one full-sized duct within any given conduit system cross-section shall be designated by SWBT as the maintenance duct. In those locations where, on the effective date of this Appendix, there is not a full-sized duct available to be used as a maintenance duct, SWBT will designate an inner duct, if one is available, as the maintenance duct although such inner duct may be too small to accommodate some of the cables occupying the conduit section in which such inner duct is located. The term “maintenance duct” does not include ducts and conduits extending from a SWBT manhole to customer premises. Maintenance ducts shall not be considered “available” (as defined in Section 3.06) for assignment to SWBT, CLEC, or joint users for purposes other than short-term use as contemplated in this section; provided, however, that SWBT may assign the duct currently designated as a maintenance duct if another suitable full-sized duct will be made available to serve as a replacement maintenance duct and may assign an inner duct currently designated as a maintenance duct if another inner duct will be made available to serve as a replacement maintenance duct. Maintenance duct designations may change from time to time and may or may not be reflected in SWBT’s outside plant records. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.

3.26 Make-ready work. The term “make-ready work” refers to all work performed or to be performed to prepare SWBT’s poles, ducts, conduits, and rights-of-way and related facilities for the requested occupancy or attachment of CLEC’s facilities. Make-ready work does not include the actual installation of CLEC’s facilities. “Make-ready work” includes, but is not limited to, clearing obstructions (e.g., by “rodding” ducts to ensure clear passage), the rearrangement, transfer, replacement, and removal of existing facilities on a pole or in a conduit system where such work is required to accommodate CLEC’s facilities (as contrasted from work performed on SWBT’s behalf in furtherance of SWBT’s own business needs, or convenience). “Make-ready work” may require “dig-ups” of existing facilities and may include the repair, enlargement or modification of SWBT’s facilities (including, but not limited to, conduits, ducts,

handholes and manholes), consolidating services into fewer cables, or the performance of other work required to make a pole, anchor, duct, conduit, manhole, handhole or right-of-way usable for the initial placement of CLEC's facilities.

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

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

3.29 Overlashing. The term "overlashing" refers to the practice of placing an additional cable or inner duct by lashing spinning wire over both existing cables and existing strands supporting those cables or inner ducts.

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

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

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

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

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

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

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

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

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

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

3.38 Rights-of-way. As used in this Appendix, the term “rights-of-way” refers generally to legal rights to pass over or use the land of another for limited purposes as defined in a statute, ordinance, easement, grant or other conveyance. Rights-of-way include, but are not limited to public rights-of-way authorizing SWBT to locate facilities on, under, or over public lands and roadways, servitudes created by private easements or obtained through the exercise of eminent domain authority enabling SWBT to pass over, place facilities on, and have rights of ingress and egress to the and of another. Rights-of-way also include easements which, at the time of land development or subdivision, were dedicated for use by public or private utilities and are being occupied, in whole or in part, by SWBT’s facilities.

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE 4: NATURE AND SCOPE OF AGREEMENT**

4.01 Scope of Agreement. This Appendix establishes procedures for grants of non-discriminatory access to SWBT poles, ducts, conduits, and rights-of-way located within this State, without regard to whether the site is located on public or private property.



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

4.03 No Effect on SWBT's Right to Abandon, Convey or Transfer Poles, Ducts, Conduits, or Rights-of-Way. Except as provided in subsections (a)-(b) of this section, nothing contained in this Appendix or any license subject to this Appendix 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 CLEC 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 CLEC has attached or placed facilities pursuant to this Appendix or (2) with respect to which CLEC 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) 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 CLEC's rights under this Appendix and licenses subject to this Appendix.

4.04 No Effect on SWBT's Rights to Manage its Facilities. Except to the extent expressly provided by the provisions of this Appendix and subject to the provisions of the Telecommunications Act of 1996 and other applicable laws, rules, and regulations, nothing contained in this Appendix shall be construed as limiting or interfering with SWBT's rights to:

- (a) locate, relocate, move, replace, modify, maintain, and operate its own facilities (including but not limited to SWBT's poles, ducts, conduits and rights-of-way, and any of SWBT's facilities attached thereto or located therein) at any time and in any manner which SWBT deems appropriate to serve its own customers, avail itself of new business opportunities, or otherwise meet its own business needs; or

- (b) enter into new agreements or arrangements with other persons or entities permitting them to attach or place their facilities on or in SWBT's poles, ducts, conduits, or rights-of-way,

provided, however, that such relocations, moves, replacements, modifications, maintenance, and operations or new agreements or arrangements shall not interfere with CLEC's pole attachment, right-of-way, or conduit occupancy use rights provided pursuant to this Appendix.

4.05 No Effect on CLEC's Rights to Manage its Own Facilities. This Appendix shall not be construed as limiting or interfering with CLEC's right to conduct its normal business operations in serving its customers or to avail itself of new business opportunities except to the extent expressly provided by the provisions of this Appendix or by the Telecommunications Act of 1996 or other applicable laws, rules or regulations.

4.06 No Right to Interfere with Facilities of Others. Except to the extent expressly provided by the provisions of this Appendix or by the Telecommunications Act of 1996 or other applicable laws, rules, or regulations, the provisions of this Appendix shall not be construed as authorizing either party to this Appendix, or persons acting on their behalf, to rearrange or interfere in any way with the facilities of the other party or joint users or with the use of or access to such facilities by the other party or joint users.

## **ARTICLE 5: ACCESS TO RIGHTS-OF-WAY**

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

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

5.03 Access to Associated Rights-of-Way. Each pole attachment and conduit occupancy license made under this Appendix shall include access to and use of all associated rights-of-way, including, but not limited to, rights-of-way required by CLEC for ingress, egress, or other access to any sites where SWBT's solely or partly owned or controlled poles, manholes, conduit, ducts, or other parts of SWBT's solely or partly owned or controlled conduit system are located, but only to the extent, if any, that SWBT has the legal authority to grant such access and use. SWBT also agrees to provide nondiscriminatory access to rights-of-way containing Controlled Environment Vaults (CEVs), huts, cabinets, and other similar structures to the extent

that collocation to such facilities is agreed or required by order of any court or governmental agency having jurisdiction over the subject matter. SWBT agrees that it shall place no restrictions on CLEC's ability to construct, maintain, and monitor its facilities at these sites that are more restrictive than those SWBT places on itself.

- (a) Although SWBT shall afford access to rights-of-way owned or controlled by it and permit CLEC to utilize SWBT's rights-of-way to the extent that SWBT has legal authority to do so, CLEC acknowledges that SWBT may not own or control certain rights-of-way to the extent necessary to permit CLEC full access to such rights-of-way. The following general principles shall be applied with respect to access to rights-of-way on third-party real estate:
  - (1) CLEC shall first attempt to obtain right-of-way directly from the property owner.
  - (2) If SWBT has legal authority to permit access by CLEC to a right-of-way on third-party property, SWBT will not restrict CLEC's use of the right-of-way.
  - (3) If CLEC has the right of eminent domain under state law, CLEC shall independently attempt to obtain the right-of-way it seeks through the exercise of that right.
  - (4) If CLEC is unable to obtain access to a right-of-way under paragraphs (1), (2), and (3) above, CLEC will request in writing that SWBT exercise its right of eminent domain to condemn the right-of-way for CLEC's use and SWBT shall respond to CLEC's written request within 45 days. SWBT shall exercise its right of eminent domain on CLEC's behalf only if permitted to do so under applicable state law, and only if CLEC agrees to bear all costs and expenses, including but not limited to legal fees arising out of or in connection with the condemnation proceedings.
- (b) SWBT and CLEC agree that dark fiber and unused four-wire copper cable are not considered "poles, conduits, and rights-of-way".

5.04 Access to Rights-of-Way Incident to the Use of CEVs and Similar Structures. SWBT will provide CLEC nondiscriminatory access, consistent with the requirements of the Pole Attachment Act and Telecommunications Act of 1996, and as provided in Sections 5.03 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 CLEC access to such structures.

## **ARTICLE 6: SPECIFICATIONS**

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

6.02 Design to Minimize the Need for Access to SWBT's Poles, 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, consistent with considerations of safety, reliability, and or engineering practices, SWBT agrees to permit CLEC at its own expense to utilize the following techniques to avoid high or unusual expenditures: (a) placement of pole attachments on both the "field" side and "road" side of a pole; (b) placement of extension arms or stand-off brackets on poles; and (c) building conduit branches into SWBT's conduit systems. CLEC acknowledges that use of the above techniques will be rare, and will be permitted only on a case-by-case basis.

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

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

6.05 Additional Electrical Design Specifications: Conduit. The parties agree that, in addition to the specifications and requirements referred to in Sections 6.01-6.04 above, facilities

placed in SWBT's conduit system after the effective date of this Appendix shall meet all of 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) CLEC shall not circumvent the corrosion mitigation measures of SWBT or joint users.

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

- (a) Except as otherwise specifically agreed in this Appendix or licenses issued hereunder CLEC's facilities shall enter SWBT's conduit system at locations consistent with the physical design specifications that SWBT applies to itself (typically through a manhole) or at such other designated locations agreed upon in

writing (e.g., through the licensing process) by the parties in accordance with Section 6.03 (infrequent construction techniques and connectivity solutions).

- (b) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in SWBT's conduit or ducts.
- (c) The integrity of SWBT's conduit system and overall safety of personnel require that "dielectric cable" be used within SWBT's conduit system when a cable facility utilizes a duct or route shared in the same trench by any electric transmissions facility such as the facilities of a power utility.
- (d) New construction splices in cables (including but not limited to fiber optic and twisted pair cables) shall be located in manholes, pull boxes or handholes.

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

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

- (a) CLEC shall not bore, make, or enlarge any hole in, or otherwise structurally modify or alter any manhole, handhole, duct, conduit, or other facility which is part of SWBT's conduit system except as provided in this Appendix or licenses issued hereunder, or as mutually agreed upon by the parties in writing.
- (b) Nothing contained in subsection (a) shall be construed as precluding CLEC or qualified personnel acting on CLEC's behalf from reattaching cable racks or performing similar routine work which is minor in nature and associated with the placing and splicing of cable.
- (c) Where CLEC's duct or facility physically connects with SWBT's manhole the section of CLEC's facility which connects to SWBT's manhole shall be installed by SWBT or its contractor at CLEC's expense (which shall be SWBT's actual costs or the price charged SWBT by the contractor). SWBT will perform this work in an interval consistent with the intervals SWBT performs work for itself. If SWBT's interval for beginning or completing this work does not meet CLEC's needs, CLEC as an authorized contractor may perform the work itself or use

subcontractor(s) selected by CLEC from a list of mutually agreeable qualified “bidders” developed by SWBT and CLEC.

- (d) SWBT will have the option to monitor the entrance and exit of CLEC’s facilities into SWBT’s conduit system and the physical placement of CLEC’s facilities in SWBT’s conduit system. Notice requirements for, and expenses associated with, this monitoring are addressed in Section 6.11 of this Appendix.
- (e) If CLEC constructs or utilizes a duct connected to SWBT’s conduit system, the duct and all connections between that duct and SWBT’s conduit system shall be sealed to prevent the entry of gases or liquids into SWBT’s conduit system. If CLEC’s duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into SWBT’s conduit system.

6.09 General Requirements Relating to Personnel, Equipment, Materials, and Public Safety. The parties contemplate that CLEC, its contractors, and other persons acting on its behalf will perform work for CLEC on, within, and in the vicinity of SWBT’s poles, ducts, conduits, and rights-of-way. The provisions of this section are intended to protect the integrity of the networks, facilities and operations of SWBT, CLEC and joint users, to protect the health and safety of persons working on, within, or in the vicinity of SWBT’s poles, ducts, conduits, and rights-of-way, and to protect the public at large.

- (a) Neither party nor any person acting on such party’s behalf shall permit any person to climb on or work on SWBT’s poles or in the vicinity of SWBT’s poles, or enter SWBT’s manholes or work within or in the vicinity of SWBT’s conduit system, unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to the pole or conduit system and to perform the work safely.
- (b) Neither party nor any person acting on such party’s behalf shall permit any person acting on its behalf to perform any work on, within, or in the vicinity of SWBT’s poles, ducts, conduits, or rights-of-way without first verifying, to the extent practicable, on each date when such work is to be performed, that conditions at the work site (including but not limited to the physical condition of the pole or any part of SWBT’s conduit system) are sufficiently safe for the work to be performed. If CLEC or any person acting on CLEC’s behalf determines that the condition of the pole, duct, conduit, conduit system, or rights-of-way is not safe enough for the work to be performed, CLEC shall notify SWBT of the condition of the pole or conduit system in question and shall not proceed with the work until CLEC is satisfied that the work can be safely performed.

- (c) Neither party nor any person acting on such party's behalf shall knowingly permit defective equipment or materials to be used on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.
- (d) When CLEC or personnel performing work on its behalf are working on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way located within, under, over, adjacent to, or in the vicinity of streets, highways, alleys or other traveled rights-of-way, CLEC and all personnel performing work on CLEC's behalf shall follow procedures which CLEC deems appropriate for the protection of persons and property. CLEC and its contractors shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. CLEC or its designated contractor will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers, and property from danger. CLEC and its contractors shall have sole responsibility for the safety of all personnel performing work on CLEC's behalf, for the safety of bystanders, and for insuring that all operations conform to current OSHA regulations and all other governmental rules, ordinances or statutes.
- (e) Neither party nor any persons acting on such party's behalf shall engage in any conduct which damages public or private property in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way or creates a hazard or nuisance on such property (including but not limited to a hazard or nuisance resulting from any abandonment of or failure to remove its facilities or any construction debris from the property, failure to erect warning signs or barricades as may be necessary to give notice to others of unsafe conditions on the premises while work performed on its behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).
- (f) CLEC shall promptly suspend activities on, within, or in the vicinity of SWBT's poles, ducts, or conduits, if notified by SWBT that such activities create an unreasonable risk of injury to persons or property (including unreasonable risks of service interruptions). CLEC shall not resume such activities on or in the vicinity of CLEC's poles until CLEC is satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified and shall not resume such activities within or in the vicinity of SWBT's conduit system until both CLEC and SWBT are satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified. In the event that SWBT requires CLEC to suspend work activities and it is later determined that there was no reasonable basis for the work suspension, SWBT agrees to compensate CLEC for the cost resulting from the delay.
- (g) All personnel acting on CLEC's behalf shall, while working on or in SWBT's poles, ducts, conduits, or rights-of-way, carry with them suitable identification



and shall, upon the request of any SWBT employee or representative, produce such identification.

- (h) CLEC (and any person acting on CLEC's behalf) may report unsafe conditions on, within, or in the vicinity of SWBT's poles or conduit system to SWBT.

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

- (a) Except as may be mutually agreed upon by the parties in writing, CLEC shall not "rod" or clear any duct or inner duct in SWBT's conduit system other than a duct or inner duct assigned to CLEC. Following the assignment of a specific duct or inner duct to CLEC, CLEC may request that SWBT rod or clear the duct or inner duct. If the duct or inner duct cannot be cleared, SWBT shall assign to CLEC the next available duct or inner duct. CLEC's request for assignment of the next available duct shall be in writing, may be transmitted to SWBT via fax or other transmission media mutually agreed upon by the parties, and shall be processed within the same intervals applicable to the processing of similar requests by SWBT's own personnel.
- (b) Personnel performing work within SWBT's conduit system on either party's behalf shall not climb on, step on, or otherwise disturb the cables, air pipes, equipment, or other facilities located in any manhole or other part of SWBT's conduit system.
- (c) Personnel performing work within or in the vicinity of SWBT's conduit system (including any manhole) on either party's behalf shall, upon completing their work, make reasonable efforts to remove all tools, unused materials, wire clippings, cable sheathing and other materials brought by them to the work site.
- (d) All of CLEC's facilities shall be firmly secured and supported in accordance with Bellcore and industry standards and any applicable construction standards adopted by SWBT and applicable to SWBT's own facilities.
- (e) CLEC's facilities shall be plainly identified with CLEC's name in each manhole with a firmly affixed permanent tag that meets the identification standards set by SWBT for its own facilities.
- (f) Manhole pumping and purging required in order to allow work operations to proceed shall be performed in accordance with the requirements of Sections 6.14 and 6.15.

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

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

- (a) CLEC will notify SWBT not less than 48 hours in advance before entering SWBT's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the parties. The notice shall state the general nature of the work to be performed. As a courtesy, CLEC shall, when feasible, provide SWBT with 10 working days advance notice before entering SWBT's conduit system.
- (b) An authorized employee or representative of SWBT may be present at any time when CLEC or personnel acting on CLEC's behalf enter or perform work within SWBT's manhole.
- (c) The parties contemplate that CLEC may need to perform operations in SWBT's conduit system other than during normal business hours and may occasionally require access to manholes on shorter notice than contemplated in subsection (a) above. Under these circumstances, CLEC shall notify SWBT as soon as is reasonably possible of its intent to enter and perform work in the conduit system and SWBT shall not, without due cause and justification, insist on literal compliance with the scheduling requirements of subsection (a) in such circumstances. SWBT will establish procedures enabling SWBT to receive notices from CLEC under this subsection 24 hours a day, seven days a week.
- (d) Each party must obtain any necessary authorization from appropriate authorities to open manholes for such party's own conduit work and operations therein.
- (e) Where CLEC personnel, certified based on industry standards, perform installation, maintenance and similar routine work at SWBT sites, SWBT may, at its option, send one or more employees to review such work. CLEC and SWBT shall share the cost of a single SWBT employee reviewing the work during emergency and non-emergency situations. SWBT will not be compensated by CLEC for any additional employees reviewing the work. The SWBT employees assigned for review and inspection of CLEC personnel work must be available during all normal business hours for such assignments to minimize inconvenience to CLEC. If the work at SWBT sites is performed by a contractor agreed upon by CLEC and SWBT, SWBT shall be responsible for the costs of its employees sent to inspect the contractor's work. However, if the CLEC personnel perform work at the site of an interconnection point where the participation of SWBT personnel is integral for the successful completion of the work, CLEC is responsible for paying the costs of SWBT personnel reasonably needed for such work.

6.12 OSHA Compliance. Each party agrees:

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

6.13 Environmental Contaminants in SWBT's Conduit System. CLEC acknowledges that, from time to time, environmental contaminants may enter SWBT's conduit system and accumulate in manholes or other conduit facilities.

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

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

- (a) All persons acting on CLEC's or SWBT's behalf, including but not limited to CLEC's or SWBT's employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.

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

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

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

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

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

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

- (a) CLEC shall, after the effective date of this Appendix, have reasonable access to (1) SWBT's pole and conduit maps and records, (2) SWBT's cable plat maps, and, (3) in addition, other SWBT plant location records recording or logging assignments of pole, duct, and conduit space. CLEC shall be permitted to examine these records during regular business hours at a location where copies of such records are maintained or at such other location as may be mutually agreed upon by the parties. Access to such maps and records shall be by appointment only, and SWBT shall make such maps and records available for inspection by CLEC on two business days notice; provided, however, that CLEC shall, as a courtesy, whenever feasible, provide SWBT with additional advance notice (e.g., 10 business days) of its intent to examine such records.
- (b) The access described in subsection (a) shall include the right to make copies, at CLEC's expense, except for cable plat maps, which shall be made available for inspection only. In all instances, such access shall include the ability to take notes and make drawings with references to those maps and records. No references to cable counts or circuit information may be included in any such copies, notes, or drawings. With respect to other cable-specific or customer-specific information, CLEC 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. CLEC's copies, notes, and drawings may include estimates regarding the physical characteristics (such as size and weight) of cables when necessary to make engineering determinations regarding the capacity, safety, reliability, or suitability of SWBT's poles, ducts, conduits, and rights-of-way for CLEC's intended uses.

SWBT shall provide CLEC the best information available from SWBT's current pole and conduit maps and records, cable plat maps, and other outside plant and construction records. SWBT represents that such records reflect approximate geographical locations of the facilities depicted and may not accurately reflect information such as:

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

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

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

## **ARTICLE 8: POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS**

**8.01 Selection of Space.** SWBT must allow CLEC to select the space CLEC will occupy on poles or in conduit systems based upon the same criteria SWBT applies to itself and must provide CLEC information about the network guidelines and engineering protocols used by

SWBT in determining the placement of facilities on poles and in conduits. In conduit systems owned or controlled by SWBT, maintenance ducts (as defined in Section 3.25) shall not be considered available for CLEC's use except as specifically provided elsewhere in this Appendix. All other ducts, inner ducts, sub-ducts, and partitioned conduits which are not assigned or occupied shall be deemed available for use by SWBT, CLEC, and third parties entitled to access under the Pole Attachment Act.

8.02 Pole, Duct, and Conduit Space Assignments. Pole, duct, and conduit space selected by CLEC will be assigned to CLEC as provided in this section. Information received by SWBT in connection with this section shall be subject to the provisions of Article 27 of this Appendix (Confidentiality of Information).

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



without first obtaining a license. The following additional requirements shall apply.

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

specific space which CLEC desires to occupy. The notice must, therefore, include, at a minimum, the following information:

- (i) 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 CLEC;
  - (iv) the anticipated use by CLEC of any infrequent construction techniques and connectivity solutions authorized under Section 6.03 to avoid high or unusual expenditures;
  - (v) CLEC's best estimates of the dates when CLEC plans to begin and complete construction at the sites specified in the notice;
  - (vi) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital letters) or indication that CLEC intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix.
- (4) No later than 30 days after giving such notice, CLEC shall file an application under Section 9.02 or the provisional assignment shall lapse.
- (5) As stated in Section 7.03(b), SWBT does not represent that its records accurately reflect the information necessary to enable CLEC to rely upon a records-based assignment process. SWBT shall have no duty to verify that space provisionally assigned pursuant to this subsection is actually available until CLEC has formally applied for the space and SWBT has completed the pre-license survey.
- (c) Assignments made prior to the issuance of a license shall be provisional assignments and shall be subject to modification if it is subsequently determined that the space selected by CLEC is already occupied or that a different assignment

is required to comply with SWBT's standards for assigning pole, duct, and conduit occupancy space.

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

- (g) If facilities modifications, capacity expansions, or other make-ready work are required due to the assignment of space to CLEC or SWBT under this section, the party to whom such space has been assigned shall reimburse the person or entity incurring the costs for such facilities modifications, capacity expansions, or make-ready work, if the party to whom such space has been assigned fails to occupy the assigned space within the 12-month assignment period or any extension thereof.
- (h) Except as provided in subsections (e)-(f) above, assignments shall not be extended, renewed, or sequentially repeated in any manner (other than by actual occupancy) that enables CLEC, SWBT, or any 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 CLEC's election, CLEC may file an application for access which specifically requests that the space sought by CLEC not be assigned to CLEC immediately and not be recorded immediately in the SWBT records available for inspection by other telecommunications carriers, cable television systems, or other providers of telecommunications services under Section 7.03 of this Appendix. In that event, the space sought by CLEC will not be assigned to CLEC and will remain available for assignment to others without restriction until such time as such space is formally assigned to CLEC in accordance with CLEC's written instructions and the assignment is recorded in the records available for inspection under Section 7.03. The assignment shall be made no later than the date of issuance to CLEC of a license confirming that CLEC has the right to occupy the space described in the license. In the event that CLEC elects to proceed under this subsection, CLEC's obligation to pay pole attachment and conduit occupancy fees shall not commence until the date the assignment is recorded in the appropriate SWBT records and CLEC shall bear the risks that (1) the space sought by CLEC will be assigned to and occupied by another person or entity or (2) circumstances will occur which may require that SWBT reevaluate CLEC's application and repeat the field inspection portion of the pre-license survey at CLEC's expense.

8.03 Immediate Occupancy. SWBT shall, within 60 days after the effective date of this Appendix, adopt interim procedures which will provide CLEC the ability to attach or place facilities on or in SWBT's poles, ducts, conduits, and rights-of-way on an immediate basis when such space is available for CLEC's use and no make-ready work or infrequent construction techniques or connectivity solutions are required. SWBT may, on 60 days advance notice to CLEC, revise or terminate such interim procedures if they prove to be unworkable, in which event CLEC may seek renegotiation of this Appendix or challenge SWBT's decision in accordance with procedures available to CLEC under applicable federal and state laws, regulations, and commission orders. The special procedures established under this section shall supplement, rather than replace, the regular assignment and licensing procedures set forth in Articles 8-10 of this Appendix, are intended to be used only under special circumstances (e.g., when the regular

procedures allow insufficient time to meet customer service commitments or resolve non-routine construction or network contingencies), shall not be used on a routine basis, and shall be consistent with subsections (a)-(f) below.

- (a) Upon giving SWBT the notice required by this subsection, CLEC may immediately occupy space assigned or provisionally assigned to CLEC pursuant to Section 8.02 of this Appendix. The notice shall be contained in either a notice of intent to occupy as provided in Section 8.02(b) or a license application under Section 9.02. CLEC shall not give such notice or occupy such space without first reviewing SWBT's records and determining that the records reflect that the space sought is available.
- (b) CLEC shall not occupy space which has not been assigned or provisionally assigned to CLEC. The assignment must be recorded on the appropriate SWBT records, as provided in Section 8.02, prior to CLEC's occupancy. If CLEC subsequently determines that the records are inaccurate and that the space assigned to CLEC is not available, or that the space assigned is not suitable for CLEC's intended use, CLEC shall, within one business day, notify SWBT in writing that it no longer intends to occupy the space earlier assigned and is releasing the assignment. Except as otherwise provided in this subsection, CLEC shall not occupy other space on the pole or in the duct or conduit without first obtaining an assignment or provisional assignment of the space which CLEC will occupy. To avoid high or unusual expenditures resulting from unanticipated conditions at the site, CLEC may occupy space not assigned to CLEC subject to the following terms and conditions.
  - (1) CLEC may occupy the next available space shown on SWBT's records as available at the time of CLEC's last review of the records. CLEC shall not knowingly occupy space occupied by or assigned to SWBT or any third party without consent of the party to whom the space has been assigned.
  - (2) Within one business day after occupying such space, CLEC shall submit to SWBT a written notice of intent to occupy or an application for the space occupied showing the reason for CLEC's use of the space occupied.
  - (3) CLEC shall bear the risk that space occupied by CLEC pursuant to this section was assigned to SWBT or a third party during the period between CLEC's last review of the records and CLEC's occupancy of such space. After occupying space not previously assigned to CLEC, CLEC shall review the records and promptly notify the affected party if CLEC determines that it has occupied space assigned to such party. At the request of the party to whom such space has been assigned, CLEC shall, within 24 hours, or within such other period of time mutually agreed to by

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

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

## **ARTICLE 9: APPLICATIONS AND PRE-LICENSE SURVEYS**

9.01 Licenses Required. Except as otherwise specifically permitted in this Appendix, CLEC shall apply in writing for and receive a license before attaching facilities to specified SWBT poles or placing facilities within specified SWBT ducts or conduits, manholes, or handholes. License applications and information received by SWBT in connection with such

applications shall be subject to the provisions of Article 27 of this Appendix (Confidentiality of Information).

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

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

- (4) if applicable, a conspicuous notation that the space requested is not to be assigned (or billed) to CLEC until SWBT has received CLEC's written instruction to make such assignment or issued a license authorizing CLEC to occupy the space requested; and
  - (5) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital letters) or indication that CLEC intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix.
- (d) Facilities descriptions which apply to multiple pole attachments or conduit occupancies need only be described once on any form. Facilities descriptions shall include, at a minimum, the following information:
  - (1) the number and types of cables, including the physical size (diameter) and weight (weight per foot);
  - (2) the number and types of strands, if any, which will be used to support the cables, including the rated holding capacity expressed in thousand pound increments (e.g., 2.2M) of such strands; and,
  - (3) sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to SWBT's poles or placed in SWBT's conduit system.
- (e) When it appears to CLEC that facilities modification, capacity expansion, or make-ready work, may be required to accommodate CLEC's access requests, CLEC shall describe the facilities modification, capacity expansion or make-ready work which CLEC proposes. CLEC shall also describe its intent to use any infrequent construction techniques or connectivity solutions under Section 6.03 to avoid high or unusual expenditures and its reasons for the utilization of such techniques or solutions.
- (f) CLEC acknowledges that the poles along a particular pole line or route may include poles owned by firms (such as electric utilities) other than SWBT, that it may be necessary for SWBT to rearrange its facilities or perform other make-ready work on poles other than poles it owns or controls in order to accommodate CLEC's request for access to SWBT's poles and that, at the time an application is submitted, it may be difficult for CLEC to determine with certainty whether a particular pole is owned or controlled by SWBT or by another entity. Accordingly, the application shall, to the extent feasible, identify all poles utilized by SWBT (without regard to ownership) along the proposed route.



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

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

- (a) Before submitting a formal written application for access to SWBT's poles, ducts, conduits, and rights-of-way, CLEC 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 CLEC does not plan to use or for the purpose of precluding SWBT or any other provider of telecommunications services from using such poles, ducts, conduits, or rights-of-way.
- (b) CLEC shall only submit applications for access to poles, ducts, conduits, and rights-of-way which it plans to use within one year following the date access is granted and will use its best efforts to submit applications in an orderly manner in accordance with CLEC's needs. If CLEC contemplates the need to submit more than 10 applications within any 45-day period with respect to poles, ducts, conduits, and rights-of-way within the territory of any single SWBT construction district, CLEC shall give SWBT advance notice as promptly as is reasonably practicable.
- (c) No more than 300 poles (and their associated anchors and anchor/guy strands) shall be the subject of any single pole attachment license application.
- (d) No more than 20 manholes shall be the subject of any single conduit occupancy license application.

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

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

- (a) The field inspection portion of the pre-license survey, which includes the visual inspection of existing pole and conduit facilities, shall be performed by SWBT or its authorized representative. Primary purposes of the field inspection will be to enable SWBT to (1) confirm or determine the facilities modification, capacity expansion, and make-ready work, if any, necessary to accommodate CLEC's facilities; (2) plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare SWBT's poles, ducts, conduits, rights-of-way, and associated facilities for CLEC's proposed attachments or occupancy; and (3) estimate the costs associated with such facilities modification, capacity expansion, or make-ready work. SWBT may dispense with the field inspection if it appears that the information necessary to process CLEC's license application is already available from existing sources, including the application forms and such other information as may be available to SWBT. If CLEC has occupied the space requested before the issuance of a license, a post-installation inspection of CLEC's facilities may be performed, in place of the field inspection portion of the pre-license survey, to determine whether such facilities are in compliance with the specifications of Article 6 and other provisions of this Appendix. In performing such inspection, SWBT will not, without due cause and justification, repeat pre-occupancy survey work performed by CLEC.
- (b) The administrative processing portion of the pre-license survey (which includes processing the application and reviewing records) will be performed by SWBT.
- (c) Before performing any portion of the pre-license survey, SWBT shall obtain CLEC's written authorization to perform such work. Authorization may be given, when possible, when the application is submitted.

## **ARTICLE 10: ISSUANCE AND DENIAL OF LICENSES**

### **(INCLUDING FACILITIES MODIFICATIONS, CAPACITY EXPANSIONS, AND MAKE-READY WORK)**

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

- (a) If access is granted, SWBT shall, no later than 45 days after CLEC's submission of the license application, further advise CLEC in writing (1) what facilities modifications, capacity expansions, or make-ready work, if any, will be required to prepare SWBT's pole or conduit facilities (2) provide CLEC an estimate of charges for such facilities modifications, capacity expansions, or make-ready work, (3) disclose to CLEC any hazardous substances known by SWBT to be present at the site.
- (b) If access is denied, SWBT will confirm the denial in writing by the 45th day after the receipt by SWBT of CLEC's completed application. The denial of access shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how such evidence and information relates to a denial of access for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. If CLEC in its completed application sets forth in writing specific proposals for expanding capacity, the denial statement shall specifically address such proposals.
- (c) CLEC agrees that if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific poles, ducts, or conduit facilities, CLEC shall promptly withdraw or amend its application, 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 Appendix, make available to CLEC for immediate occupancy any duct, conduit, or pole space not currently assigned, not designated as the maintenance duct, and not subject to applicable make-ready requirements. Availability shall be based on the appropriate SWBT records to be maintained by SWBT but which will be made available for viewing by CLEC on two business days notice as provided in Section 7.03 of this Appendix. CLEC will bear all risks resulting from the possibility that space which appears from the records to be available is not in suitable condition to be used by CLEC.
- (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 Appendix, or within such other period of time as may be mutually agreed upon in writing by the parties, CLEC may by written notice inquire whether SWBT intends to deny CLEC'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, CLEC shall be entitled to occupy the space requested without the formality of a license; provided, however, that nothing contained in this subsection shall authorize CLEC 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 CLEC, without first obtaining SWBT's written authorization, to (1) place its facilities on any pole or in any duct or conduit that requires make-ready work (other than third-party make-ready work arranged directly by CLEC) or (2) utilize any infrequent construction technique or connectivity solution described in Section 6.03.

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

- (a) SWBT agrees to modify its outside plant facilities to the extent that CLEC agrees to pay for the modification at cost, such as but not limited to cable consolidations, as long as such modifications are consistent with capacity, safety, reliability, and engineering considerations which SWBT would apply to SWBT if the work were performed for its own benefit. SWBT may recover from CLEC the costs of modifying its outside plant facilities for CLEC's space. SWBT may not require payment of the full amount in advance. CLEC will pay half of the contractors' costs after 50% completion of work, and the remainder at completion. To facilitate the sharing of costs by all parties benefiting from the modification, SWBT will establish a methodology whereby CLEC will be reimbursed on a pro rata basis for any portion of the facility later used by SWBT and other telecommunications providers, including, but not limited to, telecommunications carriers and cable television systems.
- (b) SWBT agrees, at its own expense, to install inner duct in a timely manner to accommodate CLEC's space needs in accordance with the same time interval SWBT provides to itself. If SWBT's interval for beginning or completing make-ready work does not meet CLEC's needs, CLEC, as a qualified contractor, may perform the inner-duct installation itself or utilize subcontractor(s) selected by CLEC from a list of mutually agreeable qualified "bidders" developed by SWBT and CLEC. When inner duct is installed by CLEC or an authorized contractor in SWBT's conduit system, SWBT shall provide the inner-ducting materials to be installed and CLEC shall bear all other installation expenses. CLEC shall give SWBT sufficient advance notice of the materials needed to enable SWBT to provide such materials to CLEC on a timely basis. CLEC shall return all unused materials, including unused inner duct and reels, to SWBT or purchase them from SWBT. Inner duct installed by CLEC or an authorized contractor shall be

installed in accordance with the same standards and practices which would be followed if the inner duct were being installed by SWBT or SWBT's contractors. CLEC will indemnify SWBT for damages, resulting from CLEC's self-provisioning of the inner-duct.

- (c) SWBT agrees to, remove cables at its expense that are retired or inactive (dead) to free-up requested duct and pole space, provided that such removal is reasonably feasible (i.e. cable pulls easily without incident). If a section of cable is "frozen" in a duct and would require excavation to remove, CLEC, at its option, may excavate the obstruction or request that SWBT excavate the obstruction. The excavation would be at CLEC's expense; removal of the remainder of the cable would be at SWBT's expense.

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

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

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

workload exceeds the capacity of the authorized contractors on the approved list to perform the make-ready work in a timely manner.

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

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

- (a) The notice shall be given in writing no later than 45 days after the receipt by SWBT of CLEC's completed application pursuant to Section 9.02 of this Appendix or within such other period of time as may be mutually agreed upon in writing by the parties.
- (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 EXHIBIT III.
- (c) CLEC 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 CLEC 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 CLEC's offer to perform the work. Authorization shall be accomplished by CLEC'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 CLEC'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 CLEC 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, CLEC shall notify SWBT in writing by the 20th day whether CLEC 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 CLEC to determine whether CLEC intends to withdraw its application. CLEC shall be deemed to have withdrawn its application if, in response to SWBT's inquiry, CLEC does not immediately sign and return the estimate to SWBT.
- (2) If CLEC 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 CLEC 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 CLEC's alternative written proposals, if any.

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. CLEC 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 CLEC's facilities to or in SWBT's poles, ducts, and conduits.

10.08 Reimbursement for the Creation or Use of Additional Capacity. CLEC acknowledges that as a result of make-ready work performed to accommodate CLEC's facilities, additional capacity may become available on SWBT's poles or in its conduit system. In such event, CLEC shall not have any preferential right to utilize such additional capacity in the future and shall not be entitled to any monies which may subsequently be paid to SWBT for the use of such additional capacity by any joint user; provided, however, SWBT must establish a methodology whereby CLEC is reimbursed on a pro-rata basis for any portion of the capacity later used by SWBT or another telecommunications provider, including, but not limited to, telecommunications carriers and cable television systems.

10.09 License and Attachment. After all required make-ready work is completed, SWBT will issue a license confirming that CLEC may attach specified facilities to SWBT's poles or place specified facilities in SWBT's conduit system. CLEC shall have access to attach or place only those facilities specifically described in licenses subject to this Appendix, and no

others, except as otherwise specifically provided in (a) Sections 8.03 and 12.03 or other provisions of this Appendix, (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 CLEC'S FACILITIES**

11.01 Responsibility for Attaching and Placing—Facilities. Each party shall be responsible for the actual attachment of its facilities to SWBT's poles and the actual placement of its 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 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 such personnel 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, CLEC shall provide SWBT with an updated construction schedule and shall thereafter keep SWBT informed of anticipated changes in the construction schedule. Construction schedules received by SWBT shall be subject to the provisions of Article 27 of this Appendix (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 that will be involved in the construction activities;
- (c) the estimated dates when construction will begin and end; and
- (d) the approximate dates when CLEC or personnel working on CLEC's behalf will be performing construction work in connection with the attachment of CLEC's facilities to SWBT's poles or the placement of CLEC's facilities in any part of SWBT's conduit system.



## **ARTICLE 12: USE AND ROUTINE MAINTENANCE OF CLEC'S FACILITIES**

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

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

12.03 Installation of Drive Rings and J-Hooks. CLEC 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 CLEC.
- (b) If attachment space has already been licensed to CLEC on a given SWBT pole, CLEC may install drive rings and J-hooks within the space assigned to CLEC (e.g., typically six inches above and six inches below CLEC's point of attachment on the pole if the point of attachment is in the center of the space assigned to CLEC) 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 CLEC's licensed attachment space.
- (c) CLEC's first choice for placement of drive rings and J-hooks shall be the licensed attachment space assigned to CLEC as provided in subsections (a) and (b) above; provided, however, that if attachment space already licensed to CLEC on a given SWBT pole is not adequate for CLEC's drive rings or J-hooks, CLEC may, when necessary, and without applying for or obtaining a new or amended license, install such drive rings and J-hooks above or below CLEC'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 CLEC's licensed attachment space as provided in this subsection.
- (d) If CLEC has not already been licensed attachment space on a given pole, CLEC may, when necessary, install drive rings and J-hooks on 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 prelicense 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 unless its specifically requested by CLEC 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 Appendix. 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, CLEC 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 such space by SWBT or other joint users. If the presence of such CLEC facilities in space not assigned to CLEC will block or preclude the use of assigned or otherwise assignable space by SWBT or other joint users, CLEC 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 and J-hooks in space assigned to CLEC without CLEC's approval and shall, at CLEC's request, promptly relocate the facilities in order to accommodate CLEC's facilities and bear all expenses associated with such relocation. If SWBT drive rings or J-hooks have been installed in space subsequently assigned to CLEC, 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 CLEC's request, relocate such facilities, if it is feasible to do so, as make-ready work.
- (g) CLEC shall, at the request of SWBT or another joint user, at CLEC'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, CLEC, 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 a 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 party 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 CLEC's Facilities. Promptly after the issuance of a license, CLEC shall provide SWBT with the name, title, business address, and business telephone number of the manager responsible for routine maintenance of CLEC's facilities and shall thereafter notify SWBT of changes to such information. The manager responsible for routine maintenance of CLEC's facilities shall, on SWBT's request, identify any contractor, subcontractor, or other person performing maintenance activities on CLEC's behalf at a specified site.

### **ARTICLE 13: MODIFICATION OF CLEC'S FACILITIES**

13.01 Notification of Planned Modifications. CLEC shall notify SWBT in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities attached to a 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 permitted under CLEC'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 CLEC occupy additional space on SWBT's poles (except on a temporary basis in the event of an emergency);
- (b) requires that CLEC occupy additional space (other than space in the maintenance duct in accordance with Sections 12.04, 13.03, and 15.02 of this Appendix) in any SWBT duct or conduit except on a temporary basis in the event of an emergency;

- (c) results in the facilities attached being different from those described as authorized attachments in CLEC's present application, current license, notice of intent to occupy, or license application and supplemental documentation (e.g., different duct or size increase causing a need to re-calculate storm loadings, guying, or pole class);
- (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 Appendix.

13.04 Replacement of Facilities and Spinning/Overlashing Additional Cables. CLEC 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 CLEC'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: REARRANGEMENT OF CLEC'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 its First Report and 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 Rearrangement of CLEC's Facilities at SWBT's Request. CLEC 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 another person or entity to seek access to SWBT's poles, ducts, conduits, or rights-of-way.

- (a) CLEC agrees that CLEC 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 CLEC 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 and rules, regulations and commission orders thereunder.
- (b) CLEC shall make all rearrangements of its facilities within 60 days after receiving written notification by SWBT of the required rearrangements. SWBT may request that such modification be made within a shorter period of time, in which event CLEC 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 CLEC;
  - (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 CLEC from advising SWBT, within 60 days from the date of the notice, of its desire to add to or modify its existing attachments.

## **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 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, and conduits 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 among the affected parties based upon the criteria set forth in Section 15.05 of this Appendix. The parties further agree that 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 plans and practices which will enable it to make such emergency repairs.

- (a) Nothing contained in this Appendix 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, CLEC, 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 party 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 a 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 party 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 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 has been assigned.

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

15.04 Reporting of Conditions Requiring Emergency Repairs. CLEC shall notify SWBT 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 SWBT's facilities and SWBT shall notify CLEC 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 CLEC'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, CLEC, 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 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 and 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 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 SWBT or CLEC reasonably believes that, due to the condition of either 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 SWBT's or CLEC's facilities, or SWBT's or CLEC's ability to meet its service obligations, SWBT or CLEC may unilaterally perform such limited corrective work as may be necessary to prevent or mitigate against the injury threatened. For example, if facilities have become detached or partially detached from a pole, or detached or partially detached from supporting racks or wall supports within a manhole, SWBT or CLEC may reattach them as provided in this section but shall not be obligated to do so.

- (a) Before performing any corrective work involving facilities, SWBT or CLEC shall 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, SWBT or CLEC may perform corrective work without first giving notice to the other, and shall promptly notify the other of the corrective work performed and the reason why notice was not given.

15.07 Emergency Pole Replacements. CLEC agrees to 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 CLEC to notify CLEC of the emergency and to determine whether CLEC 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, CLEC 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 CLEC is unable to respond to the emergency situation immediately, CLEC 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 CLEC's behalf.

15.08 Expenses Associated with Emergency Repairs. Each party shall bear all reasonable expenses arising out of or in connection with any emergency repairs of its facilities and transfers or rearrangements of its 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) CLEC agrees to reimburse SWBT for the costs incurred by SWBT for work performed by SWBT on CLEC'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 CLEC and in part for SWBT and third parties, CLEC shall only reimburse SWBT for CLEC's share of the costs.



**ARTICLE 16: INSPECTION BY SWBT OF CLEC'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 CLEC's facilities attached to SWBT's poles or placed within SWBT's ducts, conduits, or rights-of-way. Such inspection 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 Appendix and licenses hereunder, SWBT may charge CLEC for inspection expenses only if the inspection reflects that CLEC is in substantial noncompliance with the terms of this Appendix. If the inspection reflects that CLEC's facilities are not in compliance with the terms of this Appendix, CLEC 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 CLEC the results of any inspection of CLEC's facilities performed under Section 16.01 of this Appendix.

**ARTICLE 17: TAGGING OF FACILITIES AND  
UNAUTHORIZED ATTACHMENTS**

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

17.02 Removal of Untagged or Unauthorized Facilities. Subject to the provisions of subsections (a)-(c) 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 CLEC, if SWBT determines that such facilities are not the subject of any 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 CLEC or any other firm, are authorized by any license subject to this Appendix, 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 which are subject to a current license granted to CLEC under this Appendix, or if the facilities are otherwise lawfully

present on SWBT's poles or in SWBT's conduit system, SWBT shall give written notice to CLEC requesting CLEC to tag or mark the facilities within 60 days and CLEC shall either tag the facilities within 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 CLEC disclaims ownership of or responsibility for the facilities, CLEC shall disclose to SWBT the identity of the owner or other party thought by CLEC to be responsible for the facilities.

17.03 Updating of Plant Location Records. CLEC 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, if any, recording or logging assignments of pole, duct, and conduit space.

#### **ARTICLE 18: REMOVAL OF CLEC'S FACILITIES**

18.01 Responsibility for Removing Facilities. CLEC shall be responsible for and shall bear all expenses arising out of 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) CLEC shall give SWBT, when practicable, 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, telephone number of the manager responsible for the removal of the facilities, and the estimated dates when the removal of the facilities will begin and end.
- (b) CLEC 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 CLEC.
- (c) Except as otherwise agreed upon in writing by the parties, CLEC 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 operations, provided that such standards have been communicated in writing to CLEC at least 10 days in advance of the removal of CLEC's facilities.
- (d) CLEC shall be solely responsible for the removal of its own facilities 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 CLEC'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 CLEC no longer intends to occupy space on a pole or in a conduit CLEC 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 CLEC'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, CLEC shall remove from SWBT's poles, ducts, conduits, and rights-of-way any of CLEC's facilities which are no longer in active use; provided, however, that CLEC shall not be required to remove such facilities when due cause and justification exists for allowing them to remain in place. CLEC 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. CLEC 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 Appendix. CLEC 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 CLEC) in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

18.03 Removal Following Termination of License. CLEC 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. Except as provided in Section 18.02, CLEC 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 CLEC 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 Appendix and not by this subsection.

18.05 Notice of Completion of Removal Activities. CLEC 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 CLEC's facilities have been removed, pull mandrels (slugs) have been pulled if required by Section 18.01(b) of this Appendix, CLEC has plugged all previously occupied ducts at the entrances to SWBT's manholes as required by Section 18.01(c) of this Appendix, and the notice required by this section has been given.

18.06 Notice of SWBT's Intent to Remove Facilities. If CLEC fails to remove its facilities from SWBT's poles or conduit system, in accordance with the provisions of Sections 18.01 and 18.05 of this Appendix, SWBT may remove such facilities 60 days after giving CLEC written notice of its intent to do so. The notice shall state:

- (a) the date when SWBT plans to commence removal of CLEC's facilities, and that CLEC may remove the facilities at CLEC'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 CLEC'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.

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

18.08 Reattachment or Subsequent Attachment Following Removal. After CLEC'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 CLEC has first submitted new applications for the facilities and complied with the provisions of this Appendix.

18.09 Termination of Licenses After Removal of Facilities. CLEC agrees to provide written notice to SWBT when it ceases to use facilities attached to SWBT's poles or placed in any part of SWBT's conduit system. Upon the giving of such notice and the removal of such facilities, CLEC's license with respect to such facilities and the space occupied by those facilities shall terminate.

## **ARTICLE 19: RATES, FEES, CHARGES, AND BILLING**

19.01 Rates and Administrative Fees. The following rates and administrative fees shall apply during the terms of the parties' Interconnection Agreement and shall not be increased or decreased except as provided herein or by Commission order.

- (a) Rates for Pole Attachments and Conduit Occupancy. In accordance with the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, CLEC shall pay SWBT rates of \$2.35 per year per pole attachment and \$0.40 per duct foot per year for conduit occupancy, until such time as the Federal Communications Commission promulgates amended rules governing pole attachment and conduit occupancy rates. Conduit occupancy rates apply to manhole occupancy, calculated to the

center point of the manhole. Pole attachment and conduit occupancy rates charged by SWBT to CLEC under this Appendix will then be adjusted in accordance with the FCC's rules on a going-forward basis.

- (b) **Administrative Fees.** As provided by the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, SWBT shall be allowed to charge administrative fees to CLEC. The amount charged by SWBT to CLEC for administrative fees shall be identical to the amount charged by SWBT to CATV providers. Further, in accordance with the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, if the FCC promulgates rules governing the assessment of administrative fees, those rules shall apply to administrative fees charged by SWBT to CLEC on a going-forward basis.
- (c) **Partial Duct and Inner Duct Occupancy Rates.** SWBT's rates for partial duct and inner duct occupancy shall be determined in accordance with the Pole Attachment Act and applicable rules, regulations, and Commission orders thereunder. Partial duct and inner duct rates shall be standardized rather than determined on a case-by-case basis which requires individual analysis of conduit sections occupied. If two or more cable facilities occupy a duct that has not been subdivided by inner duct, a half-duct occupancy rate will apply for each cable facility placed in the duct. A half-duct occupancy rate will apply to the first facility placed by CLEC in a previously unoccupied duct that has not been subdivided by inner duct if the presence of CLEC's cable facility does not render the other half of the duct unusable by others. A half-duct rate shall apply to each inner duct occupied. If the FCC promulgates rules governing rates for partial duct and inner duct occupancy, those rules shall apply, on a going forward basis, to partial duct and inner duct occupancy rates charged to CLEC by SWBT under this Appendix.

19.02 This section intentionally left blank.

19.03 Semiannual Attachment and Occupancy Fees. SWBT's semiannual fees for attachments to SWBT's poles and occupancy of SWBT's ducts and conduits are specified in Exhibit I. For all attachments to SWBT's poles and occupancy of SWBT's ducts and conduits, CLEC agrees to pay SWBT's semiannual charges as specified in Exhibit I.

19.04 Billing for Attachment and Occupancy Fees. Semiannual attachment and occupancy fees under this Appendix and licenses issued hereunder shall be payable in advance. Fees for pole attachments shall be based on the number of pole attachments for which licenses have been issued as of the date of billing by SWBT, shall be determined in accordance with the schedule of charges set forth in Exhibit I, and shall be payable semiannually in advance. Fees for conduit occupancy shall be based on the number of duct feet subject to occupancy by CLEC

under licenses issued as of the date of billing by SWBT, shall be determined in accordance with the schedule of charges set forth in Exhibit I, and shall be payable semiannually in advance. Pole attachment and conduit occupancy space assigned to CLEC prior to the issuance of a license shall be billed in the same manner as if a license had been issued.

- (a) Bills shall be submitted to CLEC 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 CLEC's facilities (in accordance with Article 18) and shall be retroactively adjusted as a credit on the next semiannual bill.

19.05 Pre-license Survey Fees. With respect to pre-license surveys conducted by SWBT pursuant to Section 9.05 of this Appendix, SWBT may charge CLEC cost-based pre-license survey fees pursuant to such methodologies as shall be approved by the Missouri Public Service Commission following the filing by SWBT of any required study providing cost justification for the imposition of pre-license survey fees.

19.06 Make-Ready Charges. CLEC agrees to pay make-ready charges, if any, as specified in this section. SWBT may recover from CLEC the costs of make-ready work performed by SWBT or persons acting on SWBT's behalf. SWBT may not require payment of the full amount in advance. CLEC will pay half of SWBT's make-ready charges after 50% completion of work, and the remainder at completion. Bills and invoices submitted by SWBT to CLEC for make ready charges shall be due and payable 30 days after the date of the bill or invoice.

19.06A Charges for Work Performed by SWBT Employees. Except as otherwise specifically required by applicable commission orders, SWBT's charges to CLEC for work performed by SWBT employees pursuant to this Appendix 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 Appendix, CLEC 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.

19.07 Due Date for Payment. For all fees and charges other than make ready charges, each bill or invoice submitted by SWBT to CLEC for any fees or charges under this Appendix 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. CLEC agrees to pay each such bill or invoice on or before the stated due date.

## **ARTICLE 20: PERFORMANCE AND PAYMENT BONDS**

20.01 Bond May Be Required. SWBT may require CLEC, authorized contractors, and other persons acting on CLEC'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 Appendix only as provided in subsections (a)-(b) of this section. Bonds shall not be required for entities meeting all self-insurance requirements of Section 22.02 of this Appendix.

- (a) If CLEC elects to perform facilities modification, capacity expansion, or make-ready work under Section 6.08(c) or Sections 10.02-10.05 of this Appendix, SWBT may require CLEC, authorized contractors, and other persons acting on CLEC'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 CLEC, authorized contractors, or other persons acting on CLEC'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 CLEC to secure obligations arising under this Appendix in the absence of due cause and justification.
- (c) If a bond or similar form of assurance is required of CLEC, an authorized contractor, or other person acting on CLEC's behalf, CLEC 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 canceled, changed or materially altered without first providing SWBT 60 days written notice.
- (d) SWBT may communicate directly with the issuer of any bond issued 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.

## **ARTICLE 21**

(RESERVED)

**ARTICLE 22: INSURANCE**

22.01 Insurance Required. CLEC shall comply with the insurance requirements specified in this section.

- (a) Unless CLEC has provided proof of self-insurance as permitted in Section 22.02 below, CLEC shall obtain and maintain in full force and effect, for so long as this Appendix remains in effect, insurance policies specified in Exhibit IV of this Appendix. 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) Exclusions from coverage or deductibles, other than those expressly permitted in EXHIBIT IV, must be approved in writing by SWBT.
- (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 CLEC's behalf shall be required to meet the same insurance requirements applicable to contractors performing similar work on SWBT's behalf. CLEC 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 CLEC and authorized contractors) meeting the self-insurance requirements set forth in Section 22.02 of this Appendix.

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

- (a) CLEC shall submit to SWBT adequate proof (as determined by SWBT) that the companies insuring CLEC are providing all coverages required by this Appendix. CLEC's insurers shall provide SWBT with certifications that the required coverages will not be canceled, changed, or materially altered (e.g., by increasing deductibles or altering exclusions from coverages) 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 Exhibit IV and SWBT is satisfied that such person or entity will be able to meet its liability obligations under this Appendix.

**22.03 Licensing Contingent on Proof of Insurance.** All insurance required in accordance with Exhibit IV, or self-insurance as permitted in Section 22.02, must be in effect before SWBT will issue pole attachment or conduit occupancy licenses under this Appendix and shall remain in force until all of CLEC's facilities have been removed from SWBT's poles, ducts, conduits, and rights-of-way.

**22.04 Failure to Obtain or Maintain Coverage.** CLEC's failure to obtain and maintain the required levels and types of insurance coverage required under this Appendix may be grounds for termination of this Appendix and licenses subject to policies of insurance required under this Appendix will be canceled or changed in any manner which will result in CLEC's failure to meet the requirements of this Appendix, SWBT may terminate this Appendix and all licenses subject to this Appendix not less than 60 days after giving CLEC written notice of its intention to do so, and such termination shall be effective on the termination date specified in the notice unless CLEC 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 the policy in effect with the required coverages.

## **ARTICLE 23**

(RESERVED)

## **ARTICLE 24: TERMINATION OF AGREEMENT OR LICENSES; REMEDIES FOR BREACHES**

**24.01 Termination of Appendix Due to Non-Use of Facilities.** CLEC shall, by written notice to SWBT, terminate this Appendix if CLEC ceases to do business in this State, or ceases to make active use of SWBT's poles, ducts, conduits, and rights-of-way in this State.

**24.02 Limitation, Termination, or Refusal of Access Due to Certain Material Breaches.** CLEC's access to SWBT's poles, ducts, conduits, and rights-of-way will 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 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 CLEC violates this provision; provided, however, that such limitation, termination or refusal will be limited to CLEC'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 CLEC to adopt suitable controls to prevent further violations, and shall be subject to review, at CLEC's request, pursuant to the dispute resolution procedures set forth in this Appendix (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 CLEC invokes dispute resolution procedures or seeks review before a court, agency, or other tribunal having jurisdiction over 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.

24.03 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Appendix 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 24.02 and subsection (c) of this section, the complaining party shall not be entitled to pursue any remedies available under this Appendix 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 Appendix, 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).

## ARTICLE 25

(RESERVED)

**ARTICLE 26**

(RESERVED)

**ARTICLE 27: CONFIDENTIALITY OF INFORMATION**

27.01 Information Provided by CLEC to SWBT. Except as otherwise specifically provided in this Appendix, all company-specific and customer-specific information submitted by CLEC to SWBT in connection with this Appendix (including but not limited to information submitted in connection with CLEC'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 CLEC and shall be subject to the terms set forth in this article. Confidential or Proprietary information specifically includes information or knowledge related to CLEC's review of records regarding a particular market area, or relating to assignment of space to CLEC in a particular market area, and further includes knowledge or information about the timing of CLEC'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 CLEC and aggregated by SWBT in a manner that does not directly or indirectly identify CLEC).

27.02 Access Limited to Persons with a Need to Know. Confidential or Proprietary information provided by CLEC to SWBT in connection with this Appendix 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 to 28.06.

27.03 Permitted Uses of CLEC's Confidential or Proprietary Information. SWBT and persons acting on SWBT's behalf, except for personnel involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities, may utilize CLEC'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 Appendix 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.

27.04 Access by Third Parties. Information reflecting the assignment of pole attachment and conduit occupancy space to CLEC 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 in and required by Section 7.03 of this Appendix.

27.05 Defense of Claims. In the event of a dispute between SWBT and any person or entity, including CLEC, concerning SWBT's performance of this Appendix, 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 CLEC in connection with this Appendix 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 CLEC'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 the 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 CLEC notice of the subpoena or order and the opportunity to protect the Proprietary or Confidential Information.

27.06 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 CLEC'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 CLEC'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 CLEC notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

27.07 Other Uses of Confidential Information. No other uses of Confidential or Proprietary information received from CLEC pursuant to this Appendix are authorized or permitted without CLEC's express written consent.

## ARTICLE 28

(RESERVED)

**ARTICLE 29**

(RESERVED)

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

SOUTHWESTERN BELL TELEPHONE, L.P., d/b/a SOUTHWESTERN BELL TELEPHONE COMPANY

By: \_\_\_\_\_  
Signature of SWBT's Authorized Officer/Employee:

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

\_\_\_\_\_  
Position/Title of SWBT's Authorized Officer/Employee

\_\_\_\_\_  
Date

CD TELECOMMUNICATIONS, LLC

By: \_\_\_\_\_  
Signature of CLEC's Authorized Officer/Employee

\_\_\_\_\_  
Name of CLEC's Authorized Officer/Employee (Printed or Typed)

\_\_\_\_\_  
Title of CLEC's Authorized Officer/Employee

\_\_\_\_\_  
Date

**INTERIM APPENDIX HFPL  
High Frequency Portion of the Loop**

**1.0 INTRODUCTION**

- The rates, terms and conditions in this optional appendix are interim and will be in effect only until the effective date of the Missouri Public Service Commission's order establishing permanent rates, terms and conditions in Case No. TO-2001-440 or another appropriate case established by the Missouri Public Service Commission to investigate the permanent rates, terms and conditions for Line Sharing. Upon the effective date of the Missouri Public Service Commission's order establishing permanent rates, terms and conditions, those permanent rates, terms and conditions will replace the interim rates, terms and conditions contained in this optional appendix.
- 1.1 This Interim Appendix sets forth terms and conditions for providing the High Frequency Portion of the Loop (HFPL) by the applicable Incumbent Local Exchange Carrier (ILEC) and Competitive Local Exchange Carrier (CLEC). In order to take advantage of this interim offer, the CLEC must currently have an effective Interconnection Agreement or Interim Interconnection Agreement in that state with appropriate rates, terms, and conditions for ordering the xDSL loops.
  - 1.2 The interim prices at which ILEC agrees to provide CLEC with DSL and HFPL are contained in the applicable Appendix and/or the applicable Commission ordered tariff where stated. The rates for loop conditioning will be governed by existing interconnection agreements.
  - 1.3 ILEC agrees to provide CLEC with access to UNEs (including HFPL offerings) in accordance with the rates, terms and conditions set forth in this Interim Appendix HFPL and the general terms and conditions applicable to UNEs under this Appendix, for CLEC to use in conjunction with its desired xDSL technologies and equipment to provide xDSL services to its end user customers.
  - 1.4 The Parties acknowledge and agree that they are entering into the terms of this Interim Appendix in order to allow CLECs to promptly begin offering services using HFPL in Missouri.
  - 1.5 The Parties further acknowledge and agree that the term of the underlying Agreement shall not apply to this Interim Appendix HFPL. Rather, the rates, terms, and conditions set forth in this Interim Appendix shall be effective upon signing. The rates, terms, and conditions are subject to, and shall be replaced by,

the terms of the final Interconnection Appendix(s) negotiated and/or arbitrated by the Parties in each state under Sections 251/252 of the Act upon approval by each state commission of the final, negotiated Interconnection Appendix(s) between the Parties or upon issuance of a final order in any arbitration proceeding (subject to any appeals and associated judicial review. In the event that this Interim Appendix HFPL is in place at the time of issuance of the final Order in the arbitration proceeding, the Parties shall meet within thirty (30) days following issuance of a final Order(s) by the state commission(s) in such arbitration proceeding(s) and expend diligent efforts to arrive at an agreement on terms and conditions which comply with the final Order(s). The rates, terms and conditions of this Interim Appendix are not available in any state where the regulatory commission already has established the rates, terms and conditions for the provision of the HFPL to any CLEC through arbitration or other proceeding.

- 1.6 The results of the arbitration shall be effective the date the state commission(s) order(s) becomes final, unless the order(s) is stayed pending appeal.
- 1.7 The Parties acknowledge and agree that relevant Commission-approved performance measures and/or penalties shall apply under the terms of this Interim Appendix. Nothing in this Interim Appendix shall constitute a waiver by either Party of any positions it may have taken or will take in the Section 251/252 negotiations and subsequent arbitration proceeding(s), if any, or any other regulatory or judicial proceeding.

## **2.0 DEFINITIONS**

- 2.1 For purposes of this Appendix, a “loop” is defined as a transmission facility between a distribution frame (or its equivalent) in a central office and the loop demarcation point at an end user customer premises.
- 2.2 For purposes of this Appendix, a “subloop” is defined as any portion of the loop from ILEC’s F1/F2 interface to the demarcation point at the customer premise that can be accessed at a terminal in ILEC’s outside plant. An accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable without removing a splice closure to reach the wire within. The Parties recognize that this is only one form of subloop (defined as the F1/F2 interface to the customer premise) as set forth in the FCC’s Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC’s Supplemental Order issued In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999) (“the UNE Remand Order”). Additional subloop types may be negotiated and agreed to by the Parties



consistent with the UNE Remand Order. Subloops discussed in this Appendix will be effective in accordance with the dates set out in the UNE Remand Order.

- 2.3 The term “Digital Subscriber Line” (“DSL”) describes various technologies and services. The “x” in “xDSL” is a place holder for the various types of DSL services, including, but not limited to ADSL (Asymmetric Digital Subscriber Line), HDSL (High-Speed Digital Subscriber Line), IDSL (ISDN Digital Subscriber Line), SDSL (Symmetrical Digital Subscriber Line), UDSL (Universal Digital Subscriber Line), VDSL (Very High-Speed Digital Subscriber Line), and RADSL (Rate-Adaptive Digital Subscriber Line).
- 2.4 “High Frequency Portion of the Loop” (“HFPL”) is defined as the frequency above the voice band on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voice band transmissions. The FCC’s Third Report and Order in CC Docket No.98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999) (the “Line Sharing Order”) references the voice band frequency of the spectrum as 300 to 3000 Hertz (and possibly up to 3400 Hertz) and provides that DSL technologies which operate at frequencies generally above 20,000 Hertz will not interfere with voice band transmission. ILEC shall only make the HFPL available to CLEC in those instances where ILEC also is providing retail POTS (voice band circuit switched) service on the same local loop facility to the same end user.
- 2.5 A loop technology that is “presumed acceptable for deployment” is one that either complies with existing industry standards, has been successfully deployed by another carrier in any state without significantly degrading the performance of other services, or has been approved by the FCC, any state commission, or an industry standards body.
- 2.6 A “non-standard xDSL-based technology” is a loop technology that is not presumed acceptable for deployment under Section 2.5 of this Appendix.
- 2.7 A “Splitter” is a device that divides the data and voice signals concurrently moving across the loop, directing the voice traffic through copper tie cables to the switch and the data traffic through another pair of copper tie cables to multiplexing equipment for delivery to the packet-switched network. The Splitter may be directly integrated into the Digital Subscriber Line Access Multiplexer (DSLAM) equipment or may be externally mounted.
- 2.8 “Digital Subscriber Line Access Multiplexer” (“DSLAM”) is a piece of equipment that links end-user DSL connections to a single high-speed packet switch, typically ATM or IP.

**3.0 GENERAL TERMS AND CONDITIONS RELATING TO THE HIGH FREQUENCY PORTION OF THE LOOP**

- 3.1 ILEC will provide a HFPL for CLEC to deploy xDSL technologies presumed acceptable for deployment or non-standard xDSL technologies as defined by state or federal regulatory agencies, including but not limited to FCC rules. For the purposes of this interim agreement, ADSL, RADSL, and G.Lite, are presumed acceptable. ILEC will not impose limitations on the transmission speeds of xDSL services; provided, however, ILEC does not guarantee transmission speeds, available bandwidth nor imply any service level. Consistent with the Line Sharing Order, CLEC may only deploy xDSL technologies on the HFPL that do not interfere with analog voice band transmission.
- 3.2 ILEC shall not deny CLEC's request to deploy any xDSL technology over the HFPL that is presumed acceptable for deployment pursuant to state or federal rules unless ILEC has demonstrated to the state commission in accordance with FCC orders that CLEC's deployment of the specific technology will significantly degrade the performance of other advanced services or traditional voice band services.
- 3.3 In the event the CLEC wishes to introduce a technology on the HFPL that has been successfully deployed by any carrier elsewhere but not otherwise approved by an industry standards body, the Federal Communications Commission or any state commission, the CLEC will provide documentation describing that action to ILEC and the state commission before or at the time of its request to deploy such technology within ILEC.
- 3.4 In the event the CLEC wishes to introduce a technology on the HFPL that is not presumed acceptable for deployment pursuant to federal or state rules, the burden is on the CLEC to demonstrate that its proposed deployment meets the threshold for a presumption of acceptability and will not, in fact, significantly degrade the performance of other advanced services or traditional voice band services.
- 3.5 Liability
- 3.5.1 Notwithstanding any other provision of this Appendix, each Party, whether a CLEC or ILEC, agrees that should it cause any non-standard xDSL technologies to be deployed or used in connection with or on ILEC facilities, the Party ("Indemnifying Party") will pay all direct costs associated with any damage, service interruption or other telecommunications service degradation, or damage to the other Party's ("Indemnitee") facilities.

- 3.5.2 Where CLEC or ILEC claims that a deployed service is significantly degrading the performance of its advanced service or traditional voiceband services, that carrier must notify the deploying carrier and allow the deploying carrier a reasonable opportunity to correct the problem. Where the carrier whose services are being degraded does not know the precise cause of the degradation, it must notify each carrier that may have caused or contributed to the degradation.
- (a) Where the degradation asserted remains unresolved by the deploying carrier(s) after a reasonable opportunity to correct the problem, the carrier whose services are being degraded must establish before the relevant state commission that a particular technology deployment is causing the significant degradation.
  - (b) Any claims of network harm presented to the deploying carrier(s) or, if subsequently necessary, the relevant state commission, must be supported with specific and verifiable information.
  - (c) Where a carrier demonstrates that a deployed technology is significantly degrading the performance of other advanced services or traditional voice band services before the relevant state commission, the carrier deploying the technology shall discontinue deployment of that technology and migrate its customers to technologies that will not significantly degrade the performance of other such services.
  - (d) Where the only degraded service itself is a known disturber, and the newly deployed technology satisfies at least one of the criteria for a presumption that it is acceptable for deployment under this Appendix, the degraded service shall not prevail against the newly-deployed technology.
- 3.6 Indemnification: Indemnification for this Appendix shall be governed by the indemnification provisions in this Interconnection Agreement.

#### **4.0 UNBUNDLED xDSL-CAPABLE LOOP OFFERINGS**

- 4.1 The CLEC has the option of collocating a DSLAM in ILEC's Remote Terminal ("RT") at the fiber/copper interface point, pursuant to collocation terms and conditions. When the CLEC collocates its DSLAM at ILEC RTs, ILEC will provide CLEC with unbundled access to subloops to allow CLEC to access the copper wire portion of the loop.
- 4.2 Where the CLEC is unable to obtain spare copper loops necessary to provision a DSL service, and ILEC has placed a DSLAM in the RT, ILEC must unbundle and provide access to its packet switching. ILEC is relieved of this unbundling

obligation if it permits a requesting carrier to collocate its DSLAM in ILEC's remote terminal, on the same terms and conditions that apply to its own DSLAM and there is room in the RT for CLEC to collocate its DSLAM. The rates set forth in the Interconnection Agreement shall apply to this subloop.

- 4.2.1 When ILEC is the provider of the retail POTS analog voice service on the same loop to the same end-user, HFPL access will be offered on loops that meet the loop requirements as defined in CLEC's underlying Interconnection Agreement. The CLEC will provide ILEC with the type of technology it seeks to deploy, at the time of ordering, including the PSD of the technology the CLEC will deploy. If the technology does not have a PSD mask, CLEC shall provide ILEC with a technical description of the technology (including power mask) for inventory purposes. ILEC shall use PSD mask information solely for inventory purposes.
- 4.2.2 xDSL technologies may only reside in the higher frequency ranges, preserving a "buffer zone" to ensure the integrity of voice band traffic.
- 4.3 When ILEC traditional retail POTS services are disconnected ILEC will notify the CLEC that the POTS is being disconnected. The CLEC will determine whether the broadband service will be converted from a Line Sharing Circuit, or HFPL, to a full stand alone UNE loop or disconnected. ILEC will not take any action until 3 business days after providing the notice to CLEC. All appropriate recurring and nonrecurring charges for the reconfiguration/disconnect shall apply. Upon request of either Party, the Parties shall meet to negotiate terms for such notification and disconnection.
- 4.4 ILEC shall be under no obligation to provide multi-carrier or multi-service line sharing arrangements as referenced in FCC 99-35, paragraph 75.
- 4.5 HFPL is not available in conjunction with a combination of network elements known as the platform or UNE-P (including loop and switch port combinations) or unbundled local switching or any arrangement where ILEC is not the retail POTS provider.
- 4.6 ILEC shall be under no obligation to provision xDSL capable loops in any instance where physical facilities do not exist. ILEC shall be under no obligation to provide HFPL where ILEC is not the existing retail provider of the traditional, analog voice service (POTS). This shall not apply where physical facilities exist, but conditioning is required. In that event, CLEC will be given the opportunity to evaluate the parameters of the xDSL or HFPL service to be provided, and determine whether and what type of conditioning should be performed at its request. CLEC shall pay ILEC for any conditioning performed at its request, pursuant to Section 7.1.

- 4.7 For each HFPL, CLEC shall at the time of ordering, notify ILEC as to the PSD mask of the technology the CLEC intends to deploy on the loop. If and when a change in PSD mask is made, CLEC will immediately notify ILEC. Likewise, ILEC will disclose to CLEC upon request information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops ILEC will use this formation for the sole purpose of maintaining an inventory of advanced services present in the cable sheath. If the technology does not fit within a national standard PSD mask (but still remains in the HFPL only), CLEC shall provide ILEC with a technical description of the technology (including power mask) for inventory purposes.
- 4.8 In the event that ILEC determines there are excessive disturbers, ILEC will disclose to the requesting CLEC information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops, including the specific reason for the denial, within 48 hours of the denial.
- 4.9 ILEC will not deny a requesting CLEC's right to deploy new xDSL technologies that do not conform to the national standards and have not yet been approved by a standards body (or otherwise authorized by the FCC, any state commission or which have not been successfully deployed by any carrier without significantly degrading the performance of other services) if the requesting CLEC can demonstrate to the Commission that the loop technology will not significantly degrade the performance of other advanced services or traditional voice band services.
- 4.10 ILEC shall not impose its own standards for provisioning xDSL services, through Technical Publications or otherwise, until and unless approved by the Commission or the FCC prior to use. However, ILEC may publish non-binding Technical Publications to communicate current standards and their application as set forth in Paragraph 72 of FCC Order 99-48 (rel. March 31, 1999), FCC Docket 98-147.

## **5.0 HFPL: SPLITTER OWNERSHIP AND RESPONSIBILITIES**

- 5.1 Splitter ownership:
- 5.1.1 Option 1: CLEC will own and have sole responsibility to forecast, purchase, install, inventory, provision and maintain splitters. When physically collocating, splitters shall be installed in the CLECs collocation arrangement area (whether caged or cageless) consistent with ILEC's standard collocation practices and

procedure. When virtually collocated, ILEC will install, provision and maintain splitters under the terms of virtual collocation.

5.1.2 Option 2: Without waiving its right to decline to provide splitters under any other prices, terms, and conditions, ILEC agrees to own, purchase, install, inventory, provision, maintain and lease splitters in accordance with the terms set forth herein, at a minimum for the length of time this interim appendix is effective. ILEC will determine where such ILEC-owned splitters will be located in each central office. ILEC owned splitters will be placed in a common area accessible to CLECs if space is available, or may be placed in proximity to the MDF. When placed in common areas accessible to CLECs, CLECs will have test access at the line side of the splitter. Any service-intrusive test performed by either party shall be coordinated with both the customer as well as the other party. Upon CLEC's request, ILEC will perform testing and repair at the ILEC-owned splitter on behalf of CLEC. In the event that no trouble is found at the time of testing by ILEC, CLEC shall pay ILEC for such testing at the rates set forth in the interconnection agreement with the parties. CLEC will not be permitted direct physical access to the MDF or the IDF for testing. Upon the request of either Party, the Parties shall meet to negotiate terms for additional test access capabilities.

5.1.2.1 ILEC will agree to lease such splitters a line at a time subject to the following terms and conditions:

5.1.2.1.1 Forecasts: CLEC will provide ILEC with a forecast of its demand for each central office prior to submitting its first LSR for that individual office and then every January and July thereafter (or as otherwise agreed to by both parties). CLEC's failure to submit a forecast for a given office may affect provisioning intervals. In the event CLEC fails to submit a forecast in a central office which does not have available splitter ports, ILEC shall have an additional ten (10) business days to install CLEC's line sharing order after such time as the additional splitter equipment is installed in the ILEC central office. For requests for ILEC provided splitters in offices not provisioned in the initial deployment, all such requests, including forecasts, must be made in the CLEC's collocation application. Installation intervals will be consistent with the collocation intervals for the applicable state.

5.1.2.1.2 Forecast Penalties: No forecast penalties will be levied pursuant to this interim agreement. ILEC will manage the capacity of the splitter and all facilities related to provision of HFSL in a reasonable and nondiscriminatory manner.

- 5.1.2.2 Splitter provisioning will use standard ILEC configuration cabling and wiring in ILEC locations. Connecting Block layouts will reflect standard recognizable arrangements and be wired out in contiguous 100 pair complements, and numbered 1-96. All arrangements must be consistent with ILEC's Operational Support Systems ("OSS"). ILEC will consider use of other CLEC-recommended splitters as new splitter technologies are introduced.
- 5.1.2.3 Splitter technology will adhere to established industry standards for technical, test access, common size, configurations and shelf arrangements.
- 5.1.2.4 All ILEC-owned splitter equipment will be compliant with applicable national standards and NEBS Level 1.
- 5.1.2.5 From time to time, ILEC may need to replace or repair ILEC-owned splitters or splitter cards, which necessitate a brief interruption of service. In the event that service interruption is anticipated by ILEC, ILEC shall notify CLEC.
- 5.1.2.6 ILEC retains the sole right to select ILEC-owned splitter equipment and installation vendors.
- 5.2 When physically collocated, splitters will be placed in traditional collocation areas as outlined in the physical collocation terms and conditions in this Appendix or applicable Commission-ordered tariff. In this arrangement, the CLEC will have test access to the line side of the splitter when the splitter is placed in an area commonly accessible by CLECs. It is recommended that the CLEC provision splitter cards that provide test port capabilities. When virtually collocated, ILEC will install the splitter in a ILEC bay and ILEC will access the splitter on behalf of the CLEC for line continuity tests. Additional testing capabilities (including remote testing) may be negotiated by the Parties.
- 5.3 Splitter provisioning will use standard ILEC configuration cabling and wiring in ILEC locations. Connecting Block layouts will reflect standard recognizable arrangements that will work with ILEC Operations Support Systems ("OSS").
- 5.4 Splitter technology needs to adhere to established industry standards for technical, test access, common size, configurations and shelf arrangements.
- 5.5 All splitter equipment must be compliant with applicable national standards and NEBS Level 1.

**6.0 OPERATIONAL SUPPORT SYSTEMS: LOOP MAKEUP INFORMATION AND ORDERING<sup>1</sup>**

- 6.1 General: ILEC will provide CLEC with nondiscriminatory access by electronic or manual means, to its loop makeup information set forth in ILEC's Plan of Record. In the interim, loop makeup data will be provided as set forth below. In accordance with the FCC's UNE Remand Order, CLEC will be given nondiscriminatory access to the same loop makeup information that ILEC is providing any other CLEC and/or ILEC's retail operations or its advanced services affiliate.
- 6.2 Loop Pre-Qualification: Subject to 6.1 above, ILEC's interim pre-qual will provide a near-real time response to CLEC queries. Until replaced with OSS access as provided in 6.1, ILEC will provide mechanized access to a loop length indicator via Verigate and DataGate in regions where Verigate/DataGate are generally available for use with xDSL-based, HFPL, or other advanced services. The loop length is an indication of the approximate loop length, based on a 26-gauge equivalent and is calculated on the basis of Distribution Area distance from the central office. This is an optional service to the CLEC and is available at no charge.
- 6.3 Loop Qualification: Subject to 6.1 above, ILEC will develop and deploy enhancements to its existing DataGate and EDI interfaces that will allow CLECs, as well as ILEC's retail operations or its advanced services affiliate, to have near real time electronic access as a preordering function to the loop makeup information. As more particularly described below, this loop makeup information will be categorized by three separate pricing elements: mechanized, manual, and detailed manual.
- 6.3.1 Mechanized loop qualification includes data that is available electronically and provided via an electronic system. Electronic access to loop makeup data through the OSS enhancements described in 6.1 above will return information in all fields described in ILEC's Plan of Record when such information is contained in ILECs electronic databases. CLEC will be billed a mechanized loop qualification charge for each xDSL capable loop ordered at the rates set forth in Appendix 25:xDSL.
- 6.3.2 Manual loop qualification requires the manual look-up of data that is not contained in an electronic database. Manual loop makeup data includes the following: (a) the actual loop length; (b) the length by gauge; (c) the presence of repeaters, load coils, bridged taps; and shall include, if noted on the individual

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<sup>1</sup> These terms and conditions are unique to SWBT. Parties to Interconnection Agreements with GTE shall use the applicable Interconnection Agreement language or other mutually agreed upon language for OSS systems.



- loop record, (d) the total length of bridged taps; (e) the presence of pair gain devices, DLC, and/or DAML, and (f) the presence of disturbers in the same and/or adjacent binder groups. CLEC will be billed a manual loop qualification charge for each manual loop qualification requested at the rates set forth in Appendix 25:xDSL.
- 6.3.3 Detailed manual loop qualification includes all fields as described in ILEC's Plan of Record, including the fields described in fields 6.3.2 above. CLEC will be billed a detailed manual loop qualification charge for each detailed manual loop qualification requested at the rates set forth in Appendix 25:xDSL.
- 6.4 All three categories of loop qualification are subject to the following:
- 6.4.1 If load coils, repeaters, or excessive bridged tap are present on a loop under 12,000 feet in length, conditioning to remove these elements will be performed without request and at no charge to the CLEC.
- 6.4.2 If a CLEC elects to have ILEC provide loop makeup through a manual process for information not available electronically, then the loop qualification interval will be 3-5 business days, or the interval provided to ILEC's affiliate, whichever is less.
- 6.4.3 If the results of the loop qualification indicate that conditioning is available, CLEC may request that ILEC perform conditioning at charges set forth in Appendix 25: xDSL. The CLEC may order the loop without conditioning or with partial conditioning if desired.
- 6.4.4 For HFPL, if CLEC's requested conditioning violates Carrier Serving Area (CSA) or Serving Area Concept (SAC) design standards, ILEC is not required to condition the loop. If ILEC and or its affiliate contends that conditioning or deconditioning a loop will interfere with the voice grade service on the loop, then ILEC: (a) if CLEC disputes ILEC's contention, then, ILEC has the burden of establishing its position before the Missouri Public Service Commission, (b) may not provide xDSL services across the loop in question; and (c) at the request of the CLEC will, whenever possible, transfer the end-user's voice service to a loop that is capable of supporting the CLEC's xDSL technology across the high frequency network element.

## **7.0 PROVISIONING**

- 7.1 Provisioning: ILEC will not guarantee that the local loop(s) ordered will perform as desired by CLEC for xDSL-based, HFPL, or other advanced services, but will assure guarantee basic metallic loop parameters, including continuity and pair balance. CLEC-requested testing by ILEC beyond these parameters will be billed on a time and materials basis at the applicable tariffed rates or as stated in the Interconnection Agreement. On loops where CLECs have requested that no conditioning be performed, ILEC's maintenance will be limited to verifying loop suitability based on POTS design. For loops having had partial or extensive conditioning performed at CLEC's request, ILEC will verify continuity, the completion of all requested conditioning, and will repair at no charge to CLEC any gross defects which would be unacceptable based on current POTS design criteria and which do not result from the loop's modified design. For loops less than 12,000 feet, ILEC will remove load coils, repeaters, and excessive bridged tap at no charge to CLEC.
- 7.2 Subject to Section 6.4.4 above, CLEC shall designate, at the CLEC's sole option, what loop conditioning ILEC is to perform in provisioning the xDSL loop(s), subloop(s), or HFPL on the loop order. Conditioning may be ordered on loop(s), subloop(s), or HFPL of any length at the Loop conditioning rates set forth in the Interconnection Agreement. The loop, subloop, or HFPL will be provisioned to meet the basic metallic and electrical characteristics such as electrical conductivity and capacitive and resistive balance.
- 7.3 The provisioning intervals are applicable to the HFPL regardless of the loop length. The Parties will meet to negotiate and agree upon subloop provisioning intervals.
- 7.3.1 The interim provisioning and installation interval for HFPL, where no conditioning is requested (including outside plant rearrangements that involve moving a working service to an alternate pair as the only possible solution to provide the HFPL), on orders for 1-20 loops per order or per end-user location, will be three (3) business days, or the provisioning and installation interval applicable to ILEC's tariffed xDSL-based services, or its affiliate's, whichever is less.
- 7.3.2 The interim provisioning and installation intervals for the HFPL where conditioning is requested or outside plant rearrangements are necessary, as defined above, on orders for 1-20 loops per order or per end-user customer location, will be ten (10) business days, or the provisioning and installation interval applicable to ILEC's tariffed xDSL-based services or to its affiliate's xDSL-based services where conditioning is required, whichever is less. For

HFPL orders, intervals are contingent upon the CLEC customer's release of the voice grade circuit during normal working hours. In the event the end user customer should require conditioning during non-working hours, the due date may be adjusted consistent with end user release of the voice grade circuit and out-of-hours charges may apply.

- 7.3.3 Orders for more than 20 loops per order or per end user location, where no conditioning is requested will have a provisioning and installation interval of 15 business days, or as agreed upon by the Parties. For HFPL orders, intervals are contingent upon end user release during normal working hours. In the event the CLEC's end user customers require conditioning during non-working hours, the due date may be adjusted consistent with end user release of circuit and out-of-hours charges may apply.
- 7.3.4 Orders for more than 20 loops per order which require conditioning will have a provisioning and installation interval agreed by the parties in each instance.
- 7.3.5 Subsequent to the initial order for the HFPL, additional conditioning may be requested on such loop(s) at the rates set forth in the Interconnection Agreement and the applicable service order charges will apply; provided, however, when requests to add or modify conditioning are received for a pending HFPL order(s), no additional service order charges shall be assessed, but the due date may be adjusted if necessary to meet standard provisioning intervals. The provisioning interval for additional requests for conditioning pursuant to this subsection will be the same as set forth above.
- 7.4 The CLEC, at its sole option, may request shielded cross-connects for central office wiring for use with 2-wire xDSL loop or HFPL when used to provision ADSL over a DSL-capable Loop or HFPL provided for herein at the rates set forth in the Appendix Pricing.
- 7.5 None of the provisioning intervals in which ILEC provide tie cables necessary for the collocation of splitters may exceed 30 calendar days of receipt of a CLEC's application.

## **8.0 MAINTENANCE /SERVICE ASSURANCE**

- 8.1 If requested by either Party, the parties will negotiate in good faith to arrive at terms and conditions for Acceptance Testing on repairs.
- 8.2 Narrowband/voice service: If the narrowband, or voice, portion of the loop becomes significantly degraded due to the broadband or high frequency portion of the loop, certain procedures as detailed below will be followed to restore the

- narrowband, or voice service. Should only the narrowband or voice service be reported as significantly degraded or out of service, ILEC shall repair the narrowband portion of the loop without disturbing the broadband portion of the loop if possible. In any case, ILEC shall notify the end user and CLEC for advance permission any time ILEC repair effort has the potential of affecting service on the broadband portion of the loop.
- 8.3 ILEC will offer a 24-hour clearing time on trouble reports referred by the CLEC and proven to be in the wiring or physically tested and found to be in the loop. If ILEC isolates a trouble (causing significant degradation or out of service condition to the POTS service) to the HFPL caused by the CLEC data equipment or splitter, ILEC will attempt to notify the CLEC and request a trouble ticket and committed restoration time for clearing the reported trouble (no longer than 24 hours). The CLEC will allow the end user the option of restoring the POTS service if the end user is not satisfied with the repair interval provided by the CLEC. If the end user chooses to have the POTS service restored until such time as the HFPL problem can be corrected and notifies either CLEC or ILEC (or if the CLEC has failed to restore service within 24 hours), either Party will notify the other and provide contact names prior to ILEC cutting around the POTS Splitter/DSLAM equipment to restore POTS. When the CLEC resolves the trouble condition in its equipment, the CLEC will contact ILEC to restore the HFPL portion of the loop. In the event the trouble is identified and corrected in the CLEC equipment, ILEC will charge the CLEC upon closing the trouble ticket.
- 8.4 Maintenance, other than assuring loop continuity and balance on unconditioned or partially conditioned loops greater than 12,000 feet, will only be provided on a time and material basis. On loops where CLEC has requested recommended conditioning not be performed, ILEC's maintenance will be limited to verifying loop suitability for POTS. For loops having had partial or extensive conditioning performed at CLEC's request, ILEC will verify continuing, the completion of all requested conditioning, and will repair at no charge to CLEC any gross defects which would be unacceptable for POTS and which do not result from the loop's modified design.
- 8.5 Any CLEC testing of the retail-POTS service must be non-intrusive unless utilizing Mechanized Loop Testing (MLT). Prior to a CLEC utilizing MLT intrusive test scripts, the CLEC must have established data service on that loop and have specifically informed the customer that service testing will interrupt both the data and voice telephone services served by that line. CLEC may not perform intrusive testing without having first obtained the express permission of the end user customer and the name of the person providing such permission. CLEC shall make a note on the applicable screen space of the name of the end user customer providing permission for such testing before initializing an MLT

test or so note such information on the CLEC's trouble documentation for non-mechanized tests.

- 8.6 The CLEC shall not rearrange or modify the retail-POTS within its equipment in any way beyond the original HFPL service without coordination with ILEC.

**9.0 SPECTRUM MANAGEMENT**

- 9.1 Spectrum management for HFPL shall be provided under the same terms and conditions as set forth in the underlying xDSL Agreement.

**10.0 PRICING**

- 10.1 ILEC and CLEC agree to the following interim prices for access to the Line-Sharing UNE. Any element necessary for interconnection that is not identified below is priced as currently set forth in the Interconnection Agreement between the parties, pursuant to the interim award. The interim prices listed below will be in effect only until the effective date of the Missouri Public Service Commission's order establishing permanent rates in Case No. TO-2001-440 or another appropriate case established by the Missouri Public Service Commission to investigate the permanent rates, terms and conditions for Line Sharing. The interim prices set forth below are subject to true up to the permanent Line Sharing rates established by the Missouri Public Service Commission in Case No. TO-2001-440 or another appropriate case. Any refund or additional charges due as a result of true up shall be paid within thirty days of the effective date of the Commission's order adopting permanent rates. The time period subject to true up shall be limited to six months, retrospectively from the effective date of the Commission's final order adopting permanent Line Sharing rates, but shall not include any period prior to the effective date of this agreement with CLEC.

<b>Element</b>	<b>Interim Price</b>
Shared Line (HFPL) Recurring	\$0
ILEC Splitter, Recurring	\$0.89
OSS Recovery Charge	\$0.61

**11.0 RESERVATION OF RIGHTS**

- 11.1 CLEC and ILEC enter into this interim Appendix to allow CLEC to order HFPL during the initial deployment phase. CLEC and ILEC enter into this interim Appendix without waiving current or future relevant legal rights and without prejudicing any position CLEC or ILEC may take on relevant issues before industry forums, state or federal regulatory or legislative bodies or courts of competent jurisdiction.
- 11.2 The Parties acknowledge and agree that the provision of the HFPL and the associated rates, terms and conditions set forth above are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). If any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory body or court of competent jurisdiction stays, modifies, or otherwise affects any of the rates, terms and conditions herein, specifically including those arising with respect to Federal Communications Commission orders (whether from the Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188 (rel. August 7, 1998), in CC Docket No. 98-147, the FCC's First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), in CC Docket 98-147, the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket 96-98 (FCC 99-370) (rel. November 24, 1999) ("the UNE Remand Order"), or the FCC's 99-355 Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999), or any other proceeding, the Parties shall negotiate in good faith to arrive at an agreement on conforming modifications to this Appendix. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or the provisions affected shall be handled under the Dispute Resolution procedures set forth in the underlying Interconnection Agreement.

**APPENDIX OS-RESALE****SWBT-PROVIDED LOCAL & INTRALATA  
OPERATOR ASSISTANCE SERVICES**

This Appendix OS-Resale to Attachment 1: Resale sets forth the terms and conditions under which SWBT agrees to provide local and intraLATA operator services (Operator Services or OS) for CLEC, but only upon CLEC's request therefore. This Appendix applies only to operator assistance services provided within a LATA.

**1.0 SWBT will provide the following three tiers of Operator Services:**

- 1.1 Fully-Automated - Allows the caller to complete a call utilizing Automated Alternate Billing Service (AABS) equipment without the assistance of a SWBT Operator, hereafter called Operator. AABS allows the caller the option of completing calls through the AABS audio response system. AABS will be offered in areas where facilities exist and where SWBT has Automatic Number Identification (ANI) equipment and TOUCH-TONE service in place. AABS cannot be activated from a rotary telephone and failure or slow response by the caller to the audio prompts will bridge an Operator to the caller for further assistance. The called party must also have TOUCH-TONE service to accept calls that are billed collect or to a third number.
- 1.2 Semi-Automated - Allows the caller to complete a call by receiving partial assistance from an Operator or when AABS cannot be activated due to equipment limitations.
- 1.3 Non-Automated - Allows the caller to complete a call by receiving full assistance from an Operator.

**2.0 SWBT will provide to CLEC the call types in Sections 3.0 through 8.0 below:**

- 3.0 **Fully Automated Station-to-Station** - This service is limited to those calls placed collect or billed to a third number. The caller dials 0 plus the telephone number desired, the service selection codes and/or billing information as instructed by the AABS equipment. The call is completed without the assistance of an Operator. This service may also include the following situations:
  - 3.1 The caller identifies himself or herself as disabled and gives the Operator the number to which the call is to be billed (either collect or third number).
  - 3.2 When due to trouble on the network or lack of service components, the automated call cannot be completed without assistance from an Operator.
  - 3.3 When an Operator reestablishes an interrupted call that meets any of the situations described in this Section.

- 4.0 Semi-Automated Station-to-Station** - This service is limited to those calls placed sent paid, collect or billed to a third number. The caller dials 0 plus the telephone number desired and the call is completed with the assistance of an Operator. This service may also include the following situations:
- 4.1 Where the caller does not dial 0 prior to calling the number desired from a public or semi-public telephone, or from a telephone where the call is routed directly to an Operator (excluding calling card calls).
  - 4.2 When an Operator re-establishes an interrupted call that meets any of the situations described in this Section.
- 5.0 Semi-Automated Person-to Person** - A service in which the caller dials 0 plus the telephone number desired and specifies to the Operator the particular person to be reached or a particular PBX station, department or office to be reached through a PBX attendant. This service applies even if the caller agrees, after the connection is established, to speak to any party other than the party previously specified. This service may also include:
- 5.1 Where the caller does not dial a 0 prior to dialing the number from a public or semi-public telephone, or where the call is routed directly to an Operator.
  - 5.2 When an operator reestablishes an interrupted call that meets any of the situations described in this Section.
- 6.0 Operator Handled Station-To-Station** - A service provided when the caller dials 0 to reach an Operator, and the Operator dials a sent paid, collect or third number station-to-station call. These calls may originate from a private, public or semi-public telephone. The service may also include when an Operator reestablishes an interrupted call as described in this Section.
- 7.0 Operator Handled Person-To-Person** - A service in which the caller dials 0 and requests the Operator to dial the number desired and the person, station, department or office to be reached. The call remains a person-to-person call even if the caller agrees, after the connection is established, to speak to any party other than the party previously specified. The service may also include when an Operator reestablishes an interrupted call as described in this Section.
- 8.0 Operator Transfer Service** - A service in which the caller dials 0 and requests to be connected to an interexchange carrier using an Operator's assistance. At the caller's request, the Operator transfers the call to an interexchange carrier participating in SWBT's Operator Transfer service offering. CLEC agrees to obtain all necessary compensation arrangements between CLEC and participating carriers.



**9.0 Call Branding/Rate Reference****9.1 Call Branding**

- 9.1.1 The process by which an Operator, either live or recorded, will identify the operator service provider as being CLEC's. SWBT will offer Call Branding of Operator Services in the name of CLEC.
- 9.1.2 CLEC will provide SWBT with the specific branding phrase to be used to identify CLEC. The standard phrase will be consistent with the general form and content currently used by the Parties in branding their respective services.
- 9.1.3 SWBT will brand Operator Services in the name of CLEC starting not later than thirty (30) days after the Effective Date of the Agreement and will complete implementation of this process in all SWBT Operator Assistance platforms not later than five (5) months after the Effective Date of the Agreement. In the interim, SWBT will, if allowed by federal and state law and regulatory rules, unbrand competitive LEC operator services calls that are branded by live operators. CLEC will not request interim unbranding of Operator Services for calls that are branded by automated systems until such time as SWBT's operator services platforms are capable of re-branding. The schedule is dependent upon the ability of SWBT's vendor to meet its current commitment; however, SWBT will use its best efforts to manage the vendor to meet said date.
- 9.1.4 An initial non-recurring charge will apply for loading CLEC's Operator Services Call Branding Announcement as well as a charge for each subsequent change to CLEC's Operator Services Call Branding Announcement as provided in Section 13.0 Pricing of Appendix OS-Resale.

**9.2 Rate Reference**

- 9.2.1 SWBT Operator Services operators will provide Operator Services Rate Information upon request to CLEC's end users as required by Section 226(b)(1)(C) of the Act. Rate Reference information will be provided under the following terms and conditions:
- 9.2.2 CLEC will furnish Rate Reference information in a mutually agreed to format or media thirty (30) days in advance of the initial date when they are to be provided by SWBT. If CLEC does not provide the Rate information and branding phrase as required in this Section, SWBT will brand the OS service provided to CLEC as SWBT OS service and quote SWBT rates. SWBT will no longer brand these calls as SWBT calls nor quote SWBT rates when the appropriate equipment or software is installed.
- 9.2.3 CLEC will inform SWBT, in writing, of any changes to be made to such Rate Reference Information ten (10) working days prior to the effective rate change date. CLEC

acknowledges that it is responsible to provide SWBT updated Rate information in advance of when the Rates are to become effective

- 9.2.4 In all cases when SWBT receives a rate request from an CLEC end user, SWBT will quote the Operator Services rates provided by CLEC, except as provided in 9.2.2.
- 9.2.5 An initial non-recurring charge will apply for loading CLEC's Operator Services Rate information as well as a charge for each subsequent change to CLEC's Operator Services Reference information as provided in Section 13.0 Pricing of Appendix OS-Resale.

#### **10.0 Other Operator Assistance Services**

- 10.1 Line Status Verification - A service in which the caller asks the Operator to determine the busy status of an access line.
- 10.2 Busy Line Interrupt - A service in which the caller asks the Operator to interrupt a conversation in progress, to determine if one of the parties is willing to speak to the caller requesting the interrupt. A Busy Line Interrupt charge will apply even if no conversation is in progress at the time of interrupt or the parties interrupted refuse to terminate the conversation in progress.
- 10.3 Handling of Emergency Calls to Operator - SWBT agrees to process emergency calls from CLEC Resale customers to an Operator in the same manner that SWBT processes the same type of call for a SWBT end user customer.
- 10.4 Calling Card - Calls billed to an CLEC proprietary calling card (0+ or 0- access) will be routed via transfer to the CLEC operator.

#### **11.0 Responsibilities of the Parties**

- 11.1 SWBT will provide and maintain such equipment as is required to furnish the Operator Services as described in this Appendix.
- 11.2 Facilities necessary for SWBT to provide Operator Services to CLEC will be provided by SWBT using standard trunk traffic engineering procedures to ensure that the objective grade of service is met.
- 11.3 CLEC will furnish all records required by SWBT to provide the Operator Services. Such records, or information, will include CLEC's rate quotation tables and any other information required by SWBT. CLEC will provide the initial data by a date mutually agreed to between CLEC and SWBT. CLEC will keep this data current using procedures mutually agreed to by CLEC and SWBT. CLEC will provide all data and changes to SWBT in the mutually agreed to format(s).

- 11.4 SWBT will accumulate and provide to CLEC data as specified in Attachments 4: Connectivity Billing-Resale and Attachment 5: Customer Usage Data-Resale to this Agreement necessary for CLEC to verify traffic volumes and bill its end users.

## **12.0 Methods and Practices**

- 12.1 SWBT will provide Operator Services in accordance with the operator methods and practices in effect for SWBT at the time the call is made, unless otherwise agreed in writing by both Parties.

## **13.0 Pricing**

- 13.1 Rates to be charged to CLEC by SWBT for the Operator Services provided pursuant to this Appendix are set forth in Appendix Services/Pricing of Attachment 1: Resale.

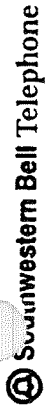
Pricing for branding of CLEC OS calls are as follows:

Call Branding	
Rate per initial load/change per TOPS switch per brand	\$3,000.00
Rate per branded call:	\$0.0250

- 13.2 In the event that the phraseology for branding OS calls is the same phraseology for branding DA calls, only one \$3,000.00 charge will apply per initial loading or subsequent change.
- 13.3 Pricing for rate quotations are as follows: Rate quotes will be provided by SWBT to callers requesting CLEC rates using the rate tables already loaded by SWBT based on information provided by CLEC. The parties agree that CLEC will reimburse SWBT \$2,200.00 for the initial loading costs per operator switch and \$1,000.00 per operator switch for any future CLEC requested modifications to the rate tables. These prices will not be subject to true-up.

## **14.0 Liability**

- 14.1 Indemnification and limitation of liability provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions portion of the Agreement.



Retention Period: Active, Plus 5 Years

APPLICANT'S NAME: \_\_\_\_\_

AGREEMENT No.: \_\_\_\_\_

APPLICATION No.: \_\_\_\_\_

## Pole Attachments

[ ] Provisional, Records Based Assignment

[ ] Pre-Occupancy Survey

Wire Center \_\_\_\_\_

PAGE \_\_\_\_\_ OF \_\_\_\_\_

TYPE: \_\_\_\_\_

(CATV, Telecom, Other)

Item #	Record #	Pole #	Ownership SWBT or Power	Street Address	Proposed Attachment Height	Guy Rq'd Y or N	Make Ready		Pole Mntd Apparatus Height
							Work Y or N	Description	
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
TOTAL									

Number of Cables \_\_\_\_\_

Weight/per ft. and Size/O.D. \_\_\_\_\_

Number and Types of Strands \_\_\_\_\_

Other Notes: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

SIGNED: \_\_\_\_\_  
SWBT Representative

SIGNED: \_\_\_\_\_

Applicant's Representative

☐ Official File Copy, If Checked In Red

**SW9433**  
**POLE ATTACHMENTS**  
**FORM INSTRUCTIONS**

7/1/98

Form SW9433 may be used as follows: (1) Provisional, Records Based Assignment per Section 8.02(b), (2) Pre-Occupancy Survey per Section 7.04, and (3) Immediate Occupancy under Section 8.03(a). See Article 9 for additional information.

**REQUIRED INFORMATION FOR PROVISIONAL, RECORDS BASED ASSIGNMENT**

**APPLICANT'S NAME:** Name of firm submitting application for pole attachment space.

**AGREEMENT No.:** Number obtained from the Master Agreement Number.

**APPLICATION No.:** Will be provided by applicant in sequential ascending order.

**[ ] Provisional, Records Based Assignment:** Applicable when an applicant elects to make a Provisional, Records Based Assignment. The form will be signed and dated at the bottom by both the applicant and the SWBT representative. A copy will be provided to the applicant and the original will be maintained by SWBT.

**SWBT Wire Center:** Records are grouped by "Wire Center" name. Entering the name here eliminates having to show the Wire Center name in the "Record #" column.

**Type:** The applicant states that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

**Record #:** The SWBT paper record or the SWBT mechanized record number,

**Pole #:** Applicant will supply the pole number either from the SWBT Records or from a field visit.

**Ownership:** Applicant will determine and post the ownership of the pole by marking S for SWBT or P for Power Company based on SWBT's records.

**Street Address:** Applicant will provide street address or geographical reference point of the pole.

**Proposed Attachment Height:** Applicant will provide the proposed attachment height in feet and inches on the pole.

**Guy Rq'd:** Not required for Provisional, Records Based assignment.

**Make Ready Work:** Not required for Provisional, Records Based assignment.

**Make Ready Description:** Not required for Provisional, Records Based assignment.

**Pole Mntd Apparatus Height:** Not required for Provisional, Records Based assignment.

**Weight/per ft. and Size/O.D.:** Applicant will provide.

**Number and Types of Strands:** Applicant will provide the number and types of strands.

**Other Notes:** Any other notes relevant to the request including any infrequent construction techniques.

**Date:** The date the Provisional, Records Based Assignment was made.

**Time:** The time the Provisional, Records Based Assignment was made.

**Signed (Applicant's Representative):** Applicant's Representative signs that Provisional, Records Based Assignment was made.

**Signed (SWBT Representative):** SWBT's Representative signs that Provisional, Records Based Assignment was made.

**SW9433**  
**POLE ATTACHMENTS**  
**FORM INSTRUCTIONS**

7/1/98

**REQUIRED INFORMATION FOR PRE-OCCUPANCY SURVEY**

**APPLICANT'S NAME:** Name of firm submitting application for pole attachment space.

**AGREEMENT No.:** Number obtained from the Master Agreement Number.

**APPLICATION No.:** Will be provided by SWBT.

☐ **Pre-Occupancy Survey:** This would be checked when this form is being used as a Pre-Occupancy Survey. The form would be completed in its entirety and signed by the applicant and submitted to SWBT for review in obtaining pole attachment space.

**Type:** The applicant states that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

**Record #:** The SWBT paper record or the SWBT mechanized record number,

**Pole #:** Applicant will supply the pole number either from the SWBT Records or from a field visit.

**Ownership:** Applicant will determine and post the ownership of the pole by marking S for SWBT or P for Power Company.

**Street Address:** Applicant will provide street address or geographical reference point of the pole.

**Proposed Attachment Height:** Applicant will provide the proposed attachment height in feet and inches on the pole.

**Guy Req'd:** Applicant will state if a guy is required. (Yes or No)

**Make Ready Work:** Applicant will state if make ready work is required. (Yes or No)

**Make Ready Description:** Applicant will give description of make ready work required.

**Pole Mntd Apparatus Height:** Applicant will state any proposed apparatus that would be placed on the pole. (Terminal, etc.)

**Weight/per ft. and Size/O.D.:** Applicant will provide.

**Number and Types of Strands:** Applicant will provide the number and types of strands.

**Other Notes:** Any other notes relevant to the request including any infrequent construction techniques.

**Date:** The date the Pre-Occupancy Survey was submitted to SWBT.

**Time:** The time the Pre-Occupancy Survey was submitted to SWBT.

**Signed (Applicant's Representative):** Applicant's Representative signs when Pre-Occupancy Survey was submitted to SWBT.

**Signed (SWBT Representative):** SWBT's Representative signs when Pre-Occupancy Survey was submitted to SWBT.

**IMMEDIATE OCCUPANCY:** Applicant must provide the same information required for Pre-Occupancy Survey. In addition, "IMMEDIATE OCCUPANCY" must be conspicuously noted on the Form.



## Access Application and Make-Ready Authorization

(Request for Access to Poles, Ducts, Conduit)

Retention Period: Active, plus 5 years

Name of Applicant \_\_\_\_\_

Agreement No. \_\_\_\_\_

Application No. \_\_\_\_\_

### Provisional Assignment

As specified in the attached documents, and in accordance with the terms and conditions of the Master Agreement between SWBT and Applicant, application is hereby made for a provisional assignment of space in anticipation of a nonexclusive license of communication facilities to access the quantity of SWBT facilities indicated below:

\_\_\_\_\_ SWBT poles \_\_\_\_\_ Feet SWBT Whole Duct \_\_\_\_\_ Feet SWBT Innerduct

Applicant desires immediate assignment of space and acknowledges that the effective date is \_\_\_\_\_. Applicant agrees to provide an application for assignment/access/occupancy of the assigned space within 30 days from the date of the assignment, or forfeit the assignment

Provisional Assignment Expiration Date \_\_\_\_\_

### Assignment/Access/Occupancy

As specified in the attached documents, and in accordance with the terms and conditions of the Master Agreement between SWBT and Applicant, application is hereby made for occupancy of space through a nonexclusive license of communication facilities to access the quantity of SWBT facilities indicated below:

\_\_\_\_\_ SWBT poles \_\_\_\_\_ Feet SWBT Whole Duct \_\_\_\_\_ Feet SWBT Innerduct

Applicant authorizes SWBT to perform the required pre-licensing survey including any field inspections required to evaluate capacity, safety, reliability, and engineering standards; and to determine the cost, if any, of required modifications or make-ready work.

Effective Date \_\_\_\_\_ Assignment Expiration Date: \_\_\_\_\_

Applicant's Estimated Construction Start Date: \_\_\_\_\_

Applicant's Estimated Construction Completion Date: \_\_\_\_\_

Authorized by Applicant: \_\_\_\_\_

Signature

Title

Date: \_\_\_\_\_

### Make-Ready Work

#### Estimated Costs

Constr. Labor

Material

Engr. Design

Total

Hours

x

Rate

\$

\$ xxx

\$

\$

\$

Total

\$

\$

\$

\$

\$

Estimated SWBT Completion Date \_\_\_\_\_

☐ No Make-Ready Work Required. ☐ No Make-Ready Work Required under 8.03(a).

☐ Make-Ready Work will be completed by applicant's authorized contractor.

☐ I authorize SWBT to complete the required make-ready work. Costs will be based upon actual costs incurred by SWBT.

Applicant's Signature

Title

Date \_\_\_\_\_

License No. \_\_\_\_\_

Authorized by SWBT: \_\_\_\_\_

Signature

Title

Date: \_\_\_\_\_

☐ Official File Copy, If Checked in Red

SW-9434  
(Rev. 7-98)

**SW-9434**  
**ACCESS APPLICATION and MAKE-READY AUTHORIZATION**  
**FORM INSTRUCTIONS**  
**7/1/98**

Form SW-9434 is used to request access to poles, ducts, and conduit; to transmit notice of Provisional Assignments; and to provide other information required in the access process.

**REQUIRED INFORMATION**

**NAME OF APPLICANT.** Name of firm requesting space on poles or in conduit.

**AGREEMENT NO.** Number obtained from the Master Agreement Number.

**APPLICANT NO.** Will be provided by applicant in sequential ascending order.

**Provisional Assignment Box Data**

**"attached documents"** Copies of the Assignment Of Space Logs showing the applicant's entries for the requested space or completed Forms SW-9433 or SW-9435 if appropriate. Assignment is not official until the required data is entered in the Assignment Of Space

\_\_\_\_\_ **SWBT poles** The number of poles for which space is requested.

\_\_\_\_\_ **Feet SWBT Whole Duct** The accumulated Center-to-Center measurements for the Whole Duct to be occupied. To be used only for cables too large in diameter (Typically copper conductor cables.) to fit in SWBT standard innerduct.

\_\_\_\_\_ **Feet SWBT Innerduct** The accumulated Center-to-Center measurements for the innerduct to be occupied.

**Effective date is** date entered in Assignment Of Space Log

***Provisional Assignment Expiration Date:*** 30 calendar days from the date entered in the Assignment of Space Log (i.e., Date Application must be submitted to hold the assignment of space.)

**Assignment/Access/Occupancy Box Data**

**"attached documents"** Completed Forms SW-9433 and/or SW-9435.

\_\_\_\_\_ **SWBT poles** The number of poles to be accessed.

\_\_\_\_\_ **Feet SWBT Whole Duct** The accumulated Center-to-Center measurements for the Whole Duct to be occupied. To be used only for cables too large in diameter (Typically copper conductor cables.) to fit in SWBT standard innerduct.

\_\_\_\_\_ **Feet SWBT Innerduct** The accumulated Center-to-Center measurements for the innerduct to be occupied.

**Effective date is** date entered in Assignment Of Space Log

***Assignment Expiration Date:*** 12 months from the date entered in the Assignment of Space Log (Date facilities must be placed to avoid forfeiture of assigned space.)



SW-9434  
ACCESS APPLICATION and MAKE-READY AUTHORIZATION  
FORM INSTRUCTIONS  
7/1/98

**Applicant's Estimated Construction Start Date:** Current "best estimate" of the date project construction will begin. "ASAP" is not an acceptable date.

**Applicant's Estimated Construction Completion Date:** Current "best estimate" of the date placements and splicing will be completed. "ASAP" is not an acceptable date.

**Authorized by Applicant:** Signature and Title of the Applicant's representative authorizing the request for access and payment (if any) of related SWBT engineering charges in connection with such access.

**Date:** Date of authorization by Applicant's representative.

**MAKE-READY WORK Box Data**

**Estimated costs:** SWBT will calculate data for Construction Labor, Material, and Engineering Design hours and summarize the **TOTAL** estimated SWBT Make-Ready Costs.

**Estimated SWBT Completion Date** SWBT Engineering will provide the estimated completion date of SWBT Make-Ready Work based upon current scheduling loads.

☐ **No Make-Ready Work Required.** Applicant should check this box if it has determined that fully code/specifications-complaint access can be granted without any work or modifications by SWBT or other parties. If inner duct must be placed, box should not be checked.

☐ **No Make-Ready work Required under 8.03(a).** Applicant should check this box only if this Application is being submitted under the provisions described in 8.03(a) Immediate Occupancy.

☐ **Make-Ready Work will be completed by Applicant's authorized contractor.** If Applicant plans to utilize a mutually approved authorized contractor to perform all the Make-Ready work, this box only should be checked.

☐ **I authorize SWBT to complete the required make-ready work....** If applicant wants SWBT to perform all the Make-Ready Work, this box only should be checked.

**If some Make-Ready work must be done by SWBT and some will be done by the Applicant's *authorized contractor*, the last two boxes should be checked. A detailed description of the work to be done by SWBT must be included.**

**Applicant's Signature, Title and Date:**

If the *No Make-Ready Work Required* box is checked by Applicant, Applicant's Signature confirms the accuracy of the current Applicant construction schedule.

If the *No Make-Ready Work Required under 8.03(a)* box is checked, Applicant confirms Immediate Occupancy procedures have been followed.

If *Make-Ready Work will be completed by Applicant's Authorized contractor* is checked, Applicant's signature concurs with any changes in proposed Make-Ready work identified by SWBT and confirms the accuracy of the current schedule.

If SWBT will perform any Make-Ready Work, Applicant's signature authorizes payment to SWBT of actual cost to perform the required make-ready work.

**LICENSE NO.** \_\_\_\_\_ **Authorized by SWBT:** The SWBT State ULS will authorize, date, and issue the License No. on the SW-9434 which becomes the Applicant's License For Access.



Retention Period: Active, Plus 5 Years

APPLICANT'S NAME: \_\_\_\_\_

AGREEMENT NO.: \_\_\_\_\_

APPLICATION NO.: \_\_\_\_\_

**Conduit Occupancy**  
[ ] Provisional, Records Based Assignment  
[ ] Pre-Occupancy Survey

PAGE \_\_\_\_\_ OF \_\_\_\_\_

TYPE: \_\_\_\_\_  
(CATV, Telecom, Other)

Item #	M.C.	Oper. #	Record #	Manhole #	Street Address	Distance To Next Manhole (Ctr to Ctr)	Proposed Duct or Innerduct	Make Ready Work Y or N	Make Ready Description
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
TOTAL									

Number of Cables \_\_\_\_\_

Size of Cable (O.D. Inches) \_\_\_\_\_

Splice Information Manhole # \_\_\_\_\_, Details \_\_\_\_\_

Splice Information Manhole # \_\_\_\_\_, Details \_\_\_\_\_

Slack Loop Info. Manhole # \_\_\_\_\_, Details \_\_\_\_\_

Slack Loop Info. Manhole # \_\_\_\_\_, Details \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

SIGNED: \_\_\_\_\_  
SWBT Representative

SIGNED: \_\_\_\_\_  
Applicant's Representative

☐ Official File Copy, If Checked In Red

**SW9435**  
**CONDUIT OCCUPANCY**  
**FORM INSTRUCTIONS**

7/1/98

From SW9435 may be used as follows: (1) Provisional, Records Based Assignment per Section 8.02(b), (2) Pre-Occupancy Survey per Section 7.04, and (3) Immediate Occupancy under Section 8.03(a). See Article 9 for additional information.

**REQUIRED INFORMATION FOR PROVISIONAL, RECORDS BASED ASSIGNMENT**

**APPLICANT'S NAME:** Name of firm submitting application for conduit space.

**AGREEMENT No.:** Number obtained from the Master Agreement Number.

**APPLICATION No.:** Will be provided by applicant in sequential ascending order.

[ ] **Provisional, Records Based Assignment:** Applicable when an applicant would make a Provisional, Records Based Assignment. The form will be signed and dated at the bottom by both the applicant and the SWBT representative. A copy will be provided to the applicant and the original will be maintained by SWBT.

**SWBT Wire Center:** Records are grouped by "Wire Center" name. Entering the name here eliminates having to show the Wire Center name in the "Record #" column.

**Type:** Applicant indicates that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

**Record #:** This would refer to either the SWBT paper record or the SWBT mechanized record number.

**Manhole #:** Applicant will supply each manhole number.

**Street Address:** Applicant will provide street address of the manhole, if applicable.

**Proposed Duct or Inner duct:** Applicant will identify the duct and the inner duct within the duct when inner duct is applicable.

**Make Ready Work:** Not required for Provisional, Records Based assignment.

**Make Ready Description:** Not required for Provisional, Records Based assignment.

**Number of Cables:** Applicant will enter the number of cables.

**Size of Cable (O.D. Inches):** Applicant will enter size of cable.

**Splice Information Manhole #:** Not required for Provisional, Records Based assignment.  
**Details:** Not required for Provisional, Records Based assignment.

**Slack Loop Info. Manhole #:** Not required for Provisional, Records Based assignment.

**Details:** Not required for Provisional, Records Based assignment.

**Date:** The date the Provisional, Records Based Assignment was made.

**Time:** The time the Provisional, Records Based Assignment was made.

**Signed (Applicant's Representative):** Applicant's Representative signs that Provisional, Records Based Assignment was made.

**SW9435**  
**CONDUIT OCCUPANCY**  
**FORM INSTRUCTIONS**

7/1/98

**Signed (SWBT Representative):** SWBT's Representative signs that the Provisional, Records Based Assignment was made.

**REQUIRED INFORMATION FOR PRE-OCCUPANCY SURVEY (CONDUIT SPACE)**

**FIRM'S NAME:** Name of firm submitting application for conduit space.

**AGREEMENT No.:** Number obtained from the Master Agreement Number.

**APPLICATION No.:** Will be provided by applicant in sequential ascending order.

**[ ] Pre-Occupancy Survey:** Applicable when this form is being used as a Pre-Occupancy Survey. The form would be completed in its entirety by the applicant and submitted to SWBT for review in obtaining conduit space.

**Type:** Applicant indicates that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

**Oper. #:** Applicant will provide the operation number when required. The same operation number may very well be referenced on an attached map.

**Manhole #:** Applicant will supply each manhole number.

**Street Address:** Applicant will provide street address of the manhole, if applicable.

**Distance to Manhole:** Applicant will state the distance from manhole to manhole in feet.

**Proposed Duct or Inner duct:** Applicant will identify the duct and the inner duct within the duct when inner duct is applicable.

**Make Ready Work:** Not required for Provisional, Records Based assignment.

**Make Ready Description:** Not required for Provisional, Records Based assignment.

**Number of Cables:** Applicant will enter the number of cables.

**Size of Cable (O.D. Inches):** Applicant will enter size of cable.

**Splice Information Manhole #:** Applicant will enter any relevant splice information.

**Details:** Applicant will provide any relevant details regarding splice information.

**Slack Loop Info. Manhole #:** Not required for Provisional, Records Based assignment.

**Details:** Not required for Provisional, Records Based assignment.

**Date:** The date the Provisional, Records Based Assignment was made.

**Time:** The time the Provisional, Records Based Assignment was made.

**Signed (Applicant's Representative):** Applicant's Representative signs that Provisional, Records Based Assignment was made.

**Signed (SWBT Representative):** SWBT's Representative signs when Pre-Occupancy Survey was submitted to SWBT.

**IMMEDIATE OCCUPANCY:** Applicant must provide the same information required for Pre-Occupancy Survey. In addition, "IMMEDIATE OCCUPANCY" must be conspicuously noted on the Form.