

APPENDIX WIRELESS

This Appendix sets forth the terms and conditions under which the Parties will distribute revenue from their joint provision of Wireless Interconnection Service for traffic originated on a Commercial Mobile Radio Service (CMRS) Provider's network and terminating through the Parties' respective wireline switching networks within a Local Access and Transport Area (LATA). The Parties will be compensated under this Appendix only to the extent that they are not been compensated for Wireless Interconnection Service under other tariffs, settlement agreements, contracts or other mechanism. This Appendix is subject to the terms and conditions of applicable tariffs.

1.0 Definitions

- 1.1. Wireless Interconnection Service - The interchange of traffic originated from a Commercial Mobile Radio Service (CMRS) Provider's Mobile Telephone Switching Office (MTSO) through SWBT's or the LSP's point of switching for termination on the relevant Party's wireline switching network.
- 1.2. Commercial Mobile Radio Service (CMRS) Provider - A radio common carrier provider of domestic public cellular telecommunication service, as defined in Part 22, ~~Part~~ 24, or Part 90 of the FCC Rules and Regulations.
- 1.3. End Office - SWBT or LSP switching system where exchange service customer station loops are terminated for the purpose of interconnection to each other and to the network.
- 1.4. Local Access and Transport Area ("LATA") - A geographic area marking the boundaries beyond which a Bell Operating Company formerly could not carry telephone calls pursuant to the terms of the Modification of Final Judgment (MFJ), *U.S. vs. American Tel. & Tel. Co.*, 552 F.Supp. 131 (D.D.C. 1983), affirmed sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983).
- 1.5. Local Calling Area or Local Calling Scope - That area in which the message telephone exchange service between two or more end offices, without a toll charge, is provided.
- 1.6. Minutes of Use (MOU) - For the purposes of this Appendix, MOU means the Terminating Traffic as recorded by the Primary Company or MOU provided by the CMRS Provider to the Primary Company where the Primary Company is unable to measure the actual terminating usage.
- 1.7. Mobile Telephone Switching Office ("MTSO") - A CMRS Provider's switching equipment or terminal used to provide CMRS Provider's switching services or, alternatively, any other point of termination designated by the CMRS Provider.

The MTSO directly connects the CMRS Provider's customers within its licensed serving area to the Primary Company's facilities.

- 1.8. Primary Company - The Party that provides the End Office or Tandem Office where the CMRS Provider chooses to connect terminating traffic. The Primary Company also bills the CMRS Provider for Wireless Interconnection Service.
- 1.9. Revenues - Those monies the Primary Company bills and collects from the CMRS Provider for jointly provided Wireless Interconnection Service.
- 1.10. Secondary Company - The Party that receives Terminating Traffic from the Primary Company.
- 1.11. Tandem Office - A Party's switching system that provides an intermediate switching point for traffic between end offices or the network.
- 1.12. Terminating Traffic - That traffic which is delivered by a CMRS Provider to the Primary Company for termination at a point on the intraLATA wireline switching network.

2.0 ADMINISTRATION OF REVENUE DISTRIBUTION

- 2.1. The Primary Company will compute, bill, collect and distribute the revenue for jointly provided Wireless Interconnection Service for calls terminating within a LATA. On jointly provided Wireless Interconnection Service, the Primary Company will distribute a portion of the Local Transport (LT) Revenues as described below with the Secondary Company for its part in terminating traffic from the CMRS Provider. The Primary Company will distribute applicable Local Switching (LS) and Carrier Common Line (CCL) charges which are collected from the CMRS Provider to the Secondary Company, as described below.
- 2.2. Distribution of revenues will be computed using the rate elements as defined in SWBT's applicable Wireless Interconnection Tariff.
- 2.3. For terminating traffic, actual monthly wireless MOU will be measured by the Primary Company for each office in the LATA or provided to the Primary Company by the CMRS Provider in those cases where the Primary Company is unable to measure the actual terminating usage.
- 2.4. Each month, the amount of CCL and LS revenue (based on the rates in the Primary Company's applicable tariffs) due the Secondary Company from the Primary Company will be determined by totaling the actual terminating MOU associated with each of the Secondary Company's end offices and multiplying those MOU by the appropriate rates as set out above. The LT revenues due to the Secondary Company will be determined for each Secondary Company end office

by multiplying the billed MOU by the appropriate LT rate multiplied by the applicable end office percentage ownership of facilities listed in Exhibit A to this Appendix.

- 2.5. The Primary Company will prepare a revenue and usage statement on a monthly basis. Within 90 calendar days after the end of each billing period, except in cases of disputes, the Primary Company will remit the compensation amount due the Secondary Company. When more than one compensation amount is due, they may be combined into a single payment. No distribution will be made for the revenue the Primary Company is unable to collect.
- 2.6. The revenue and usage statement will contain the following information:
 - 2.6.1. The number of MOU for each of the Secondary Company's end offices, the corresponding rate elements to be applied to the MOUs for each end office, and the resulting revenues;
 - 2.6.2. The total of the MOU and revenues for the Secondary Company;
 - 2.6.3. The percent ownership factor used to calculate the distribution of Local Transport revenues; and,
 - 2.6.4. Adjustments for uncollectibles.
- 2.7. The Parties agree that revenue distribution under this Appendix will apply as of the effective date of the Agreement. The Primary Company will start revenue distribution on usage within 60 calendar days from the date this Appendix is effective.

3.0 TERMINATION PROVISIONS

- 3.1. This Appendix shall remain in effect until terminated by either Party upon a minimum of 30 calendar days written notice by such Party to the designated representative of the other.
- 3.2. This Appendix may be terminated by an order of an appropriate regulatory commission or a court of competent jurisdiction.

4.0 MISCELLANEOUS PROVISIONS

- 4.1. Exhibit A to this Appendix is attached and incorporated into this Appendix by reference. From time to time, by written agreement of both parties, new Exhibits may be substituted for the attached Exhibit A, superseding and canceling the Exhibit A previously in effect.

4.2. Each party will promptly upon request, furnish to the other such information as may reasonably be required to perform under this Appendix.

5.0 NOTICE

5.1. In the event any notices are required under the terms of this Appendix, they shall be sent by registered mail, return receipt requested to:

if to SWBT _____

if to LSP _____

6.0 APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

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

EXHIBIT A TO APPENDIX WIRELESS

End Office Percent Ownership of Local Transport Facilities

CLLI Code	NPA-NXX	% Ownership of Transport Facilities
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APPENDIX FGA

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

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

1.0 Definitions

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

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

2.0 **Undertaking of the Parties**

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

3.0 **Administration of Revenue Distribution**

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

4.0 **Minutes of Use (MOUs) Development**

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

4.2 **Terminating MOUs Development**

4.2.1 Actual monthly premium (charged at equal access end office) and non-premium (charged at non-equal access end offices) terminating FGA access MOUs for each office in the LATA or a FGA access EAS area will be measured by the Primary Company.

4.2.2 Where the Primary Company cannot measure or identify the terminating FGA MOUs by end office, terminating MOUs will be total unmeasured MOUs allocated to the LATA. In this event, those MOUs will be distributed based upon the ratio of each Party's subscriber access lines, as identified in Exhibit B, which is attached hereto and made a part hereof, to the total subscriber access lines in the FGA access area as determined by the Primary Company.

4.3 **Originating MOUs Development**

4.3.1 The Primary Company will derive and distribute monthly originating FGA access MOUs, billed by the Primary Company, to each Secondary Company's end office in the EAS calling area, as identified in Exhibit A, which is attached hereto and made a part hereof, based upon a ration of each Party's subscriber access lines to the total subscriber access lines in the appropriate EAS area as determined by the Primary Company.

4.3.2 The parties recognize that since originating non-EAS calls to the FGA service area are rated and billed as intraLATA toll, such usage is assumed to be minimal. Therefore, originating FGA access MOUs will not be distributed to end offices outside an EAS calling area.

5.0 **Calculation of Revenue Distribution**

5.1 The amount of premium or non-premium revenues due each party each month will be equal to the sum of Originating and Terminating premium or non-premium revenue for each end office. These revenues will be calculated by the Primary Company by multiplying each of the Secondary Company's effective interstate and/or intrastate FGA switched access tariff rate elements (except the Local

Transport element described below) by the appropriate MOU calculation under Sections 4.2.1 and 4.2.2.

5.2 Local Transport (or its equivalent under the Secondary Company's tariff and called Transport in this agreement) compensation will be determined for each company by multiplying each of the Secondary Company's Transport rates by the appropriate MOUs (as calculated under Sections 4.2.1 and 4.2.2.) by the Secondary company's percentage ownership of facilities agreed on by the Parties and set out in Exhibit B, which is attached hereto and made a part hereof.

6.0 **Revenue Distribution Amounts, Monthly Statements And Payments**

6.1 The Primary Company each month will calculate and prepare a monthly compensation statement reflecting the revenue distribution amounts for FGA, both EAS and non-EAS, access service due the Secondary Company.

6.2 The monthly compensation statement will show, for each Secondary Office, separately:

6.2.1 The total number of non-premium or premium terminating MOUs and revenue.

6.2.2 The total number on non-premium or premium originating MOUs and revenues.

6.2.3 The total compensation due the Secondary Company, by rate element.

6.2.4 The number of terminating MOUs recorded by the Primary Company.

6.2.5 The number of originating MOUs estimated by the Primary Company pursuant to Section 4.3 contained herein.

6.2.6 The number of access lines used to prorate originating usage pursuant to Section 4.3 contained herein.

6.2.7 The percent ownership factor, if any, used to prorate Local Transport revenues.

6.2.8 Adjustments for uncollectibles.

6.3 Within 60 Calendar days after the end of each billing period, the Primary Company will remit the compensation amount due the Secondary Company. Where more than one compensation amount is due, they may be combined into a single payment.

7.0 **Miscellaneous Provisions**

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

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

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

EXHIBIT A

EAS Locations for Originating and Terminating

Feature Group A Access Service

Primary Office Company		Secondary Office Company		
CLLI CODE	NPA-NXX	CLLI CODE	NPA-NXX	ACCESS LINE

EXHIBIT B

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

SECONDARY OFFICE COMPANY

CLLI CODE	NPA-NXX	Access Line	% Ownership of Transport Facilities	LATA
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ATTACHMENT 13: ANCILLARY FUNCTIONS

1.0 Introduction

- 1.1 This Attachment 13: Ancillary Functions, sets forth the Ancillary Functions that SWBT agrees to offer to CLEC under this Agreement, and the requirements associated therewith. SWBT will offer these Ancillary Functions to CLEC on rates, terms and conditions that are just, reasonable, and non-discriminatory and in accordance with the terms and conditions of this Agreement.

2.0 Collocation

- 2.1 The provisions regarding Physical Collocation are attached here to as Appendix Collocation.

3.0 Right of Way (ROW), Conduits and Pole Attachments

- 3.1 The provisions concerning CLEC's access to and use of space on or within a pole, duct, conduit, or right-of-way owned or controlled by SWBT are attached hereto as Appendix Poles, Ducts, Conduits and Rights-of-way.

4.0 Applicability of Other Rates, Terms and Conditions

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

COLLOCATION AGREEMENT

BETWEEN

SOUTHWESTERN BELL TELEPHONE COMPANY

AND

GABRIEL COMMUNICATIONS OF ARKANSAS, INC.

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COLLOCATION AGREEMENT

THIS COLLOCATION AGREEMENT (“Agreement”) is made this ____ day of _____, 1999 by and between SOUTHWESTERN BELL TELEPHONE COMPANY, a Missouri corporation (“SWBT”), and GABRIEL COMMUNICATIONS OF ARKANSAS, INC. (“CLEC”) a Missouri corporation (“Collocator”).

WITNESSETH

WHEREAS, SWBT is an incumbent local exchange carrier having a statutory duty to provide for “physical collocation” of “equipment necessary for interconnection or access to unbundled network elements,” in accordance with 47 U.S.C. 251(c)(6);

WHEREAS, Collocator wishes to physically collocate certain of its equipment within an Eligible Structure (as defined herein) and connect with SWBT;

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SWBT and Collocator (the “Parties”) agree as follows:

1.0 DEFINITIONS

1.1 “Act” means the Communications Act of 1934 [47 U.S.C. 153(R)], as amended by the Telecommunications Act of 1996.

1.2 “Adjacent Space Collocation” is physical collocation at a Collocator-provided controlled environmental vault — or similar structure to the extent technically feasible — on SWBT premises adjacent to an Eligible Structure.

1.3 “Caged Physical Collocation” is an individual enclosure (not including a top) for Collocator to install its telecommunications equipment within Collocator’s dedicated collocation space.

1.4 “Cageless Physical Collocation” is a collocation arrangement that does not require the construction of a cage or similar structure or the creation of a separate entrance to the collocation space.

1.5 “Dedicated Collocation Space” means the space dedicated for the Collocator’s physical collocation arrangement located within a SWBT Eligible Structure.

1.6 “Eligible Structure” means (1) a SWBT central office, serving wire center or tandem office, or (2) a building or similar structure owned or leased by SWBT that houses its network facilities, or (3) a structure that houses SWBT transmission facility.

1.7 “Shared Physical Collocation Cage” is a caged dedicated collocation space that is shared by two or more collocators within a SWBT Eligible Structure.

2.0 PURPOSE AND SCOPE OF AGREEMENT

2.1 The Parties agree that this Agreement does not constitute, and shall not be asserted to constitute, an admission or waiver or precedent with any State commission, the Federal Communications Commission, any other regulatory body, any State or Federal Court, or in any other forum that SWBT has agreed or acquiesced that any piece of Collocator equipment or facility is “equipment necessary for interconnection or access to unbundled network elements” under 47 U.S.C. 251(c)(6).

2.2 Nothing in this agreement requires SWBT to permit collocation of equipment used solely for switching (e.g. 5ESS, DMS 100, etc.) or solely to provide enhanced services; provided, however, that SWBT may not place any limitations on ability of Collocator to use all features, functions, and capabilities of collocated equipment including switching and routing features and functions and enhanced services functionalities if such equipment is necessary for access to UNEs or for interconnection with SWBT’s network. SWBT may require Collocator’s employees to undergo the same level of security training, or its equivalent, that SWBT’s own employees, or third party contractors providing similar functions must undergo; provided that SWBT may not require Collocator’s employees to receive such training from SWBT itself, but must provide information to Collocator on the specific type of training required so Collocator’s employees can conduct their own training.

2.3 **Submission to State Commission** – The effectiveness of this Agreement is conditioned upon the unqualified approval of this Agreement, whether as a result of an approval process or by operation of law, under 47 U.S.C. 252(a)(1). After execution of this Agreement, the parties shall submit it to the State commission for the State in which Collocator desires physical collocation as thereby required for approval, and shall defend the Agreement and support any reasonable effort to have this Agreement so approved, including the supplying of witnesses and testimony if a hearing is to be held.

2.4 **Failure to Receive Approval** – In the event that this Agreement does not receive such unqualified approval, this Agreement shall be void upon written notice of either party to the other after such regulatory action becomes final and unappealable. Thereafter Collocator may request to begin negotiations again under 47 U.S.C. 251. Alternatively, the parties may both agree to modify this Agreement to receive such approval, but neither shall be required to agree to any modification. Any agreement to modify shall not waive the right of either party to pursue any appeal of the ruling made by any reviewing regulatory commission.

2.5 **Preparation Prior to Regulatory Approval** – Upon the written request of Collocator, SWBT shall consider an application for collocation space submitted prior to receiving the approval required by Section 2.3 hereof. Upon such an election, this Agreement shall become effective but only insofar as to be applicable to the consideration of an application for collocation

space. In the event that the Agreement does not become fully effective as contemplated by this Section, Collocator shall not be entitled to any refund or return of any such payments beyond any portion of the charges paid but not attributable to costs incurred by SWBT. To the extent that SWBT has incurred preparation costs not included within any payment made by Collocator, Collocator shall pay those costs within thirty (30) days of notice by SWBT.

2.6 Price quote intervals are as follows and will run concurrent with the ten (10) day notification interval for availability of space:

Number of Applications by One Collocator	Quotation Interval
1 - 5	35 Business Days
6 - 10	40 Business Days
11 - 15	45 Business Days

Should Collocator submit six (6) or more applications within five (5) business days, the quotation interval will be increased by five (5) business days for every five (5) additional applications or fraction thereof. Any material revision to an application will be treated as a new application and will be subject to the time intervals set forth above.

Collocator may obtain a shorter interval for the return of price quotes than that set forth above by scheduling a meeting with SWBT at least twenty (20) business days prior to submission of the first application to discuss, coordinate and prioritize Collocator applications. Collocator has sixty-five (65) business days from receipt of the quotation to accept the quotation. The quotation expires after sixty-five (65) business days. After sixty-five (65) business days, a new application, application fee, and engineering design charge are required.

2.7 SWBT will complete construction of all Active Central Office Switchroom Space requests for caged, shared, and cageless collocation in 90 days from the receipt of Collocator's acceptance of the quotation.

2.8 Unless otherwise mutually agreed to by the Parties in writing, where power does not exist or in Other Central Office Space, SWBT will complete construction of requests for caged, shared, or cageless collocation within 180 days from receipt of Collocator's acceptance of the quotation.

2.9 SWBT will provide Collocator reduced intervals for augments to interconnection and/or power arrangements into its existing physical collocation space. Collocator must submit to SWBT's Interexchange Carrier Service Center (ICSC) a completed application for a Subsequent Job. For the reduced build-out interval to apply, this application must include an up-front payment of the non-recurring Application Fee. In addition, the application must include an accurate front equipment view (a.k.a. rack elevation drawing) specifying bay(s) for Collocator's point of termination. Unless mutually agreed to, reduced intervals for augments to interconnection and/or power arrangements, where sufficient power infrastructure is available,

shall be provided within (60) days after acceptance of the quote. Other augments requiring additional bay spaces, SWBT bays, SWBT cable racks, cage expansions and/or power requests that exceed existing power infrastructure, within Active Central Office space will have a construction interval mutually agreed upon between Collocator and SWBT, not to exceed 90 days.

2.10 Collocator must place operational telecommunications equipment in the Dedicated Collocation Space and connect with SWBT's network within sixty (60) days after receipt of such notice; provided, however, such 60-day period shall not begin until regulatory approval is obtained. If Collocator fails to do so, this Agreement is terminated except that Collocator shall be liable in an amount equal to the unpaid balance of the charges due. For purposes of this Section, Collocator's telecommunications equipment is considered to be operational and interconnected when connected to SWBT's network for the purpose of providing service.

3.0 GENERAL OFFERINGS

3.1 Except where physical collocation is not practical for technical reasons or because of space limitations, SWBT will provide physical collocation to Collocator for the purpose of interconnecting with SWBT's network or for obtaining access to SWBT's unbundled network elements pursuant to 47 U.S.C. 251(c). Physical collocation shall be provided on a non-discriminatory basis, on a "first-come, first served" basis, and otherwise in accordance with the requirements of the Act (including 47 U.S.C. 251(c)(6), and applicable FCC rules thereunder. SWBT's physical collocation offering includes the following:

3.1.1 **Caged Physical Collocation** – Collocator may apply for Caged Physical Collocation in increments of 50 square feet. SWBT will charge Collocator for the space it uses, the time and materials required to construct the "cage," and any other charges directly attributable to that carrier — such as dedicated conduit to and/or within the cage. Each Caged Physical Collocation request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in Collocator's assigned bays and the location will be determined by Collocator. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of Collocator's cost. Any available physical collocation option will require and include a minimum of one collocation interconnection power panel (CIPP).

SWBT will allow Collocator to contract with other prospective collocators to share the caged Dedicated Collocation Space in a sublease type arrangement, provided the subleasing collocator's equipment is also used for interconnection with SWBT's network and/or access to SWBT's unbundled network elements. In a sublease arrangement, the initial collocator(s) shall not charge a subleasing collocator more than the prorated share (based on square footage used exclusively or in common) of SWBT's monthly rates and nonrecurring charges to the initial collocator. Each collocator in a sublease arrangement may order SWBT unbundled network elements to and provision service from the dedicated collocation space regardless of which collocator was the original collocator.

3.1.2 Shared Physical Collocation Cage – A shared collocation cage is a caged collocation space shared by two or more new entrant Collocators pursuant to terms and conditions agreed to by the Collocators. Collocator may apply for Shared Physical Collocation Cage in increments of 50 square feet. In those instances where SWBT receives applications simultaneously from multiple collocators who desire construction of a cage to be shared, SWBT may not increase the cost of site preparation or nonrecurring charges above the cost of provisioning such a cage of similar dimensions and material to a single collocating party. In addition, SWBT must prorate the charge for site conditioning and preparation undertaken by SWBT to construct the shared collocation cage or condition the space for collocation use, regardless of how many carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to each party sharing the space based on the percentage of the total space of the shared cage utilized by the parties. The total of the collocators' combined floor space requirements must equal the total square footage of the shared cage. Collocator's allocation of the total charge for site preparation will be based on the percentage of the total space utilized by Collocator. If Collocator submits a unique request, then only Collocator will be charged for those costs directly attributable to Collocator.

If two or more requesting carriers have interconnection agreements with SWBT, SWBT will permit each requesting carrier to order unbundled network elements and provision service from shared collocation space, regardless of which requesting carrier was the original collocator. Each Collocator request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in one of Collocator's assigned bays and the location shall be determined by Collocator. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of Collocator's cost. Any available physical collocation option will require and include a minimum of one collocation interconnection power panel (CIPP).

3.1.3 Cageless Physical Collocation - Subject to technical feasibility and security requirements, SWBT will allow Collocator to collocate in any unused space (space that is vacant and does not contain SWBT equipment, is not reserved for growth, is not used for administrative or other functions, and is not needed for access to, egress from, or work within occupied or reserved space) in SWBT's Eligible Structure (central office), without requiring the construction of a cage or similar enclosure around Collocator's dedicated space, and without requiring the creation of a separate entrance to Collocator's dedicated space. SWBT will designate the space to be used for cageless collocation. SWBT may require Collocator to use a central entrance to the building in which the cageless collocation is provided, but may not require construction of a new entrance for Collocator's or other collocating carriers' use, and once inside the building, SWBT must permit Collocator to have direct access to Collocator's equipment.

SWBT may not require Collocator to use an intermediate interconnection arrangement (i.e., a POT bay) that simply increases collocation costs without a concomitant benefit to incumbents, in lieu of direct connection to SWBT's network if technically feasible. In addition, SWBT may not require Collocator to collocate in a room or isolated space separate from SWBT's own equipment that only serves to increase the cost of collocation and decrease the

amount of available collocation space. SWBT may take reasonable steps to protect its own equipment, such as, but not limited to, enclosing SWBT equipment in its own cage, and other reasonable security measures as described herein. SWBT may utilize reasonable segregation requirements that do not impose unnecessary additional cost on Collocator.

SWBT must make cageless collocation space available in single-bay increments, meaning that Collocator can purchase space in increments small enough to collocate a single relay rack, or bay, of equipment (10 square feet for standard equipment bays and 18 square feet for cabinetized equipment bays).

Each Collocator request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in one of Collocator's assigned bays and the location shall be determined by Collocator. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of Collocator's cost. Any available physical collocation option will require and include a minimum of one Collocation Interconnection Power Panel (CIPP).

3.1.4 Adjacent Space Collocation – When space is legitimately exhausted inside a SWBT Eligible Structure, SWBT will permit Collocator to physically collocate in adjacent controlled environmental vaults or similar structures (e.g. used by SWBT to house telecommunications equipment) to the extent technically feasible. SWBT will permit Collocator to construct or otherwise procure such adjacent structure, subject to reasonable safety and maintenance requirements, zoning and other state and local regulations, and SWBT's right to exercise reasonable control over the design, construction, and placement of such adjacent structures. Collocator will be responsible for securing the required licenses and permits, the required site preparations, and retain responsibility for building and site maintenance associated with placing the adjacent structure. SWBT will be allowed to reserve reasonable amounts of space adjacent to its premises needed to expand its premises to meet building growth requirements. SWBT reserves the right to assign the location of the designated space where the adjacent structure will be placed.

SWBT will provide a standard offering of 100 AMPS of AC power to the adjacent structure when Central Office Switchboard AC capacity exists and 200 AMPS of DC power to the adjacent structure up to 200 cable feet from the Central Office power source. When power requirements are outside of these office capacity and distance limitations, SWBT will treat the requirements as a unique request and coordinate a mutually agreeable solution for provisioning power with Collocator. At its option, Collocator may choose to provide its own AC and DC power to the adjacent structure. SWBT will provide power and physical collocation services and facilities to such adjacent structures, subject to the same nondiscrimination requirements as other collocation arrangements in this Agreement.

Any temporary adjacent structure placed by Collocator should be removed at Collocator's expense once interior space is available in the Eligible Structure. Appropriate charges applicable

for collocation within the Eligible Structure will apply. SWBT will work cooperatively with Collocator to relocate facilities into the Eligible Structure.

3.1.5 All other requests for physical collocation will be analyzed on a case-by-case basis. When Collocator requests a particular collocation arrangement, Collocator is entitled to a rebuttable presumption that such arrangement is technically feasible if any LEC with a substantially similar network has deployed such collocation arrangement in any incumbent LEC premises.

3.2 Interconnection Arrangement - SWBT shall provide, at the request of Collocator, the connection between Collocator's optional POT frame or equipment bay and the SWBT network. The connection cannot be provided by Collocator. Collocator will not be permitted access to the SWBT Main Distribution Frame or Intermediate Distribution Frame. If regeneration equipment is required, for any reason, it will be at Collocator's expense. Interconnection Arrangements options are as follows: DS1 Arrangement, DS3 Arrangement, Copper Cable Arrangement, Shielded Cable Arrangement, and Fiber Arrangement.

3.3 SWBT shall provide, at the request of Collocator, the connection between the equipment in the collocated spaces of two or more telecommunications carriers. Available connections include copper cable, coaxial cable, and fiber optic cable.

3.4 Within a contiguous area within the Eligible Structure, SWBT shall permit Collocator to connect its equipment with that of another collocated telecommunications carriers within the same Eligible Structure provided that the collocated equipment is also used for interconnection with SWBT or for access to SWBT's unbundled network elements. Collocator will not be permitted to place cable over SWBT's switches or other critical equipment. SWBT will designate the space to be used for such facilities. SWBT shall permit Collocator to construct such facilities using copper or optical fiber facilities subject to the same reasonable safety requirements that SWBT imposes on its own equipment and facilities.

If the collocators are not located on the same floor and cannot physically pull the cable themselves through the SWBT provided structure(s), SWBT will perform the necessary construction and perform the cable pull on a time and materials basis. At no time will Collocator be allowed access to any portion of the central office other than the collocation area — except for reasonable access to restrooms and parking lots where available. SWBT will not make the physical connection with Collocator's equipment, SWBT will not accept any liability for the cable or the connections and SWBT will not maintain any records concerning these connections.

3.5 SWBT shall permit Collocator to place its own connecting transmission facilities within SWBT's Eligible Structure in the physical collocation space, subject to reasonable safety limitations. Collocator shall not have access to SWBT's Main Distribution Frame and/or Intermediate Distribution Frame. As provided herein, SWBT may require reasonable security arrangements to protect its equipment and ensure network reliability. Except as provided below, SWBT may only impose security arrangements that are as stringent as the security arrangements

that SWBT maintains at its own premises for its own employees or authorized contractors. SWBT must allow Collocator to access its installed physical collocation equipment 24 hours a day, seven days a week, in central offices without requiring either a security escort of any kind or delaying a Collocator's employees' entry into SWBT's central office. SWBT interprets these requirements to apply to central offices only, not remote terminals. Reasonable security measures that SWBT may adopt include, but are not limited to, the following:

- A. Installing security cameras or other monitoring systems; or
- B. Requiring Collocator personnel to use badges with computerized tracking systems; or
- C. Requiring Collocator employees to undergo the same level of security training, or its equivalent, that SWBT's own employees, or third party contractors providing similar functions, must undergo; provided, however, that SWBT may not require Collocator employees to receive such training from SWBT itself, but must provide information to Collocator on the specific type of training required so Collocator's employees can conduct their own training.
- D. SWBT may take reasonable steps to protect its own equipment, such as enclosing the equipment in a cage.

3.6 **Relocation** – In the event SWBT determines it necessary for Dedicated Collocation Space to be moved within the Eligible Structure in which the Dedicated Collocation Space is located or to another Eligible Structure, Collocator is required to do so. If such relocation arises from circumstances beyond the reasonable control of SWBT, including condemnation or government order or regulation that makes the continued occupancy of the dedicated collocation space or eligible structure uneconomical in SWBT's sole judgment, Collocator shall be responsible for the cost of preparing the new dedicated collocation space at the new location. Otherwise SWBT shall be responsible for any such preparation costs.

In the event that Collocator requests that the Dedicated Collocation Space be moved within the SWBT Eligible Structure or to another Eligible Structure, SWBT shall permit Collocator to relocate the Dedicated Collocation Space, subject to the availability of space and associated requirements. Collocator shall be responsible for all charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new Dedicated Collocation Space and the new wire center as applicable.

4.0 SPACE AVAILABILITY

4.1 At the request of Collocator, SWBT will provide space for physical collocation as described above. SWBT is not required to provide physical collocation at a particular Eligible Structure if it demonstrates that physical collocation is not practical for technical reasons or because of space limitations. In such cases and with the qualifications set forth above, SWBT

will provide Adjacent Structure Collocation as described above or Virtual Collocation, except at points where SWBT proves that Adjacent Structure Collocation and/or Virtual Collocation is not technically feasible. If Adjacent Structure Collocation or Virtual Collocation is not technically feasible, SWBT will make a good faith effort to provide other methods of interconnection and access to unbundled network elements to the extent technically feasible.

4.2 The determination whether there is sufficient space to accommodate physical collocation at a particular Eligible Structure will be made initially by SWBT. SWBT will notify Collocator within ten (10) days of submission of a completed Application for physical collocation by Collocator as to whether its request for space is been granted or denied due to a lack of space. When space for physical collocation in a particular eligible structure is not available, SWBT shall place Collocator on the waiting list for collocation in a particular Eligible Structure according to the date Collocator submitted its application for physical collocation in that Eligible Structure.

4.3 If SWBT contends space for physical collocation is not available in premises, SWBT must also allow Collocator to tour the entire central office or other eligible structure in question, not just the area in which space was denied, without charge, within ten days of the receipt of SWBT's denial of space. If Collocator disputes SWBT's determination, Collocator can elect a review to be made by a mutually agreed to third party engineer, under a non-disclosure agreement. All costs of the third-party inspection, including but not limited to all payments to the third-party engineer in connection with the inspection, shall be shared equally by SWBT and Collocator. The engineer shall take into consideration SWBT's planned use for the eligible structure under review.

4.4 Within ten (10) days of Collocator submitting a request to SWBT for physical collocation, if SWBT finds that it must deny the request, SWBT must file its response, under seal, with the Commission. The response includes the following information:

- A. Central Office Common Language Identifier, where applicable;
- B. The identity of the requesting Collocator, including amount of space sought by Collocator;
- C. Total amount of space at the premises;
- D. Floor plans including measurements of the SWBT's premises, showing:
 - 1. Space housing SWBT network equipment or administrative offices;
 - 2. Space housing unused obsolete equipment, if any;
 - 3. Space which does not currently house SWBT equipment or administrative offices but is reserved by SWBT for future use;

4. Space occupied by collocators for the purpose of network interconnection or access to unbundled network elements;
 5. Space, if any, occupied by third parties for other purposes;
 6. Remaining space, if any.
- E. Identification of turnaround space for the switch or other equipment, if any;
- F. Central office rearrangement/expansion plans, if any and
- G. Description of other plans, if any, that may relieve space exhaustion.

4.5 SWBT will maintain a publicly available document, posted for viewing on SWBT's publicly available Internet site, indicating all premises that are full, and will update such a document within ten days of the date at which a premises runs out of physical collocation space.

4.6 Upon request, SWBT must submit to the requesting carrier within ten days of the submission of the request a report indicating the available collocation space in a particular SWBT premises. Collocator may request a report by submitting a completed Collocation Space Availability Report Request with the required fees for the requested report(s). This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. This report must also include measures that SWBT is taking to make additional space available for collocation. For more than 20 requests at once from Collocator regarding offices where there is no current collocation or collocation forecasted, SWBT will provide the additional information on a scheduled basis of ten additional offices every ten days.

4.7 In any Central Office in which all options for physical collocation offered by SWBT have been exhausted, SWBT shall not be permitted to provide additional space in that Central Office for any of its affiliates.

4.8 SWBT is not required to lease or construct additional space to provide for physical collocation when existing space has been exhausted. Moreover, SWBT is not required to, nor shall this Appendix create any obligation or expectation, to relinquish used, or forecasted space to undertake the construction of new quarters or to construct additions to existing quarters in order to satisfy any request for additional space or the placement of Collocator equipment or facilities, whether through an initial request for physical collocation or a subsequent request for more space in an Eligible Structure. SWBT and Collocator shall not unreasonably warehouse forecasted space.

4.9 To the extent possible, SWBT will make contiguous space available to Collocator if Collocator seeks to expand an existing physical collocation arrangement and such request meets SWBT's non-discriminatory practices regarding efficient space utilization.

4.10 When planning renovations of existing Eligible Structures or constructing or leasing new Eligible Structures, SWBT will take into account future demand based upon its knowledge of Collocator demand for Collocation.

4.11 SWBT may retain a limited amount of floor space for SWBT’s own specific future uses for a time period on terms no more favorable to SWBT for like equipment than those that apply to other telecommunications carriers, including Collocator, seeking to reserve Collocation space for their own future use. Except for space needed for switching equipment “turnaround” (e.g., the installation of new switching equipment to replace then-existing switching equipment), if any, and/or otherwise permitted or directed by applicable rule or order, SWBT will relinquish any space held for future use before denying a request for Virtual Collocation on grounds of space limitations, unless SWBT proves to the Commission that Virtual Collocation at that point is not technically feasible, including that space does not exist. In any such event, SWBT and Collocator will attempt to reach a mutually agreeable alternative method of interconnection.

4.12 SWBT shall, upon space exhaustion and reasonable request by Collocator, remove obsolete unused equipment from their premises if necessary to make space available for collocation.

4.13 SWBT may impose reasonable restrictions on its provision of additional unused space available for Collocation (so-called “warehousing”) as described in paragraph 586 of the First Interconnection Order; provided, however, that SWBT shall not set a maximum space limitation on Collocator unless SWBT proves to the Commission that space constraints make such restrictions necessary.

5.0 DENIAL OF COLLOCATION EQUIPMENT

5.1 SWBT shall permit the collocation of any type of equipment necessary (“used or useful”) for interconnection or access to unbundled network elements. SWBT may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that SWBT applies to its own equipment. SWBT may not object to the collocation of equipment on the ground that the equipment fails to comply with any requirement contained in TP 76200MP other than those included in Level One standards. If SWBT denies collocation of Collocator equipment, citing non-compliance to one or more TP 76200MP Level One requirements, SWBT must provide to the Collocator within five business days of the denial a list of all network equipment that SWBT has placed within the network area(s) of the premises in question since January 1, 1998, together with an affidavit attesting that all of that equipment meets or exceeds TP 76200MP Level One requirements.

5.2 SWBT is not required to permit collocation of equipment that is not necessary for either access to UNEs or for interconnection with SWBT, nor such as equipment used exclusively for switching or for enhanced services. Nothing in this Agreement requires SWBT to permit collocation of equipment used solely for switching or solely to provide enhanced services;

provided, however, that SWBT may not place any limitations on the ability of Collocator to use all the features, functions, and capabilities of equipment collocated, including, but not limited to, switching and routing features and functions and enhanced services functionalities.

6.0 DEDICATED COLLOCATION SPACE CHARGES

6.1 For each Eligible Structure in which Collocator desires to physically collocate equipment, Collocator must submit a Physical Collocation Application with the applicable Engineering Design Charge and/or application fee. A copy of the Physical Collocation Application may be obtained from your Collocation Services account manager. The Physical Collocation Application must also be used for each subsequent request to place equipment in an Eligible Structure.

6.2 SWBT will contract for and perform the construction and preparation activities underlying the Preparation Charge, including, any Custom Work charges, using same or consistent practices that are used by SWBT for other construction and preparation work performed in the Eligible Structure. Applicable recurring charges will be included in the price quote.

6.3 **Recurring charges.** Collocator shall pay to SWBT a per month for use of the Dedicated Collocation Space. The recurring monthly charges for each Dedicated Collocation Space shall stay fixed for the term of this agreement and may be modified upon renegotiation of the Interconnection Agreement

6.4 Collocator shall pay its proportionate share of any reasonable security arrangements SWBT employs to protect SWBT's equipment and ensure network reliability as outlined in section 3.5.

6.5 **Payment of Preparation Charge.** Prior to any obligation on SWBT to start any preparation of the Dedicated collocation space, Collocator shall pay SWBT fifty percent (50%) of the Preparation Charge and eighty-five percent (85%) of any custom work charge required to create or vacate any entrance facility for the Collocator ("Custom Work"). Collocator also has the option of submitting a surety bond to cover these charges, in lieu of a check. The remainder of the Preparation Charge and any Custom Work charge are due upon completion and prior to occupancy by the Collocator.

6.6 **Occupancy Conditioned on Payment.** SWBT shall not permit Collocator to have access to the dedicated collocation space for any purpose other than inspection during construction of Collocator's dedicated physical collocation space until SWBT is in receipt of complete payment of the Preparation Charge and any Custom Work charges.

6.7 **Breach Prior to Commencement Date.** In the event that the Collocator materially breaches this Agreement by purporting to terminate this Agreement after SWBT has begun preparation of the dedicated collocation space but before SWBT has been paid the entire amounts

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

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

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

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

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

7.0 USE OF DEDICATED COLLOCATION SPACE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.0 RESPONSIBILITIES OF COLLOCATOR

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

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

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

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

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

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

- A. Its fiber optic cable(s);
- B. Its equipment;
- C. Optional point of termination cross connects in its dedicated collocation space or the optional POT Frame/cabinet located in the collocation common area except if on SWBT's equipment.
- D. Collocator requested dedicated point of termination frame maintenance, including replacement of fuses and circuit breaker restoration, to the extent that such fuses and circuit breakers are within Collocator's dedicated collocation space or in the optional POT frame located in the collocation common area if and as required; and

- E. The connection cable and associated equipment which may be required within Collocator's dedicated collocation space or in the optional POT frame/cabinet located in the collocation common area to the point(s) of termination of that cable within Collocator's dedicated space.
- F. Any power cables required beyond the SWBT provided Collocation Interconnection Power Panel (CIPP) to Collocator's equipment. SWBT must always engineer, furnish and install the Collocation Interconnect Power Panel (CIPP) within Collocator-provided equipment bay, the associated power cables to the CIPP from the SWBT provided power distribution source and terminate and test the power cables. The CIPP will be placed within Collocator-provided equipment bay in a location within the bay as designated by Collocator.

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

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

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

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

9.0 VIRTUAL COLLOCATION

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

10.0 CASUALTY LOSS

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

- A. The dedicated collocation space are not rendered untenable in whole or in part, SWBT shall repair the same at its expense (as hereafter limited) and the rent shall not be abated, or
- B. The dedicated collocation space are rendered untenable in whole or in **part** and such damage or destruction can be repaired within ninety (90) days, SWBT has

the option to repair the dedicated collocation space at its expense (as hereafter limited) and rent shall be proportionately abated while Collocator was deprived of the use. If the dedicated collocation space cannot be repaired within ninety (90) days, or SWBT opts not to rebuild, then this Agreement shall (upon notice to Collocator within thirty (30) days following such occurrence) terminate as of the date of such damage.

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

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

11.0 RE-ENTRY

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

12.0 LIMITATION OF LIABILITY

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

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

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

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

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

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

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

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

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

action or omission by any other, regardless of the degree of culpability of any such other or SWBT, and regardless of whether any claimed SWBT liability arises in tort or in contract. Collocator shall save and hold SWBT harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other acting for, through, or as a result of Collocator.

13.0 INDEMNIFICATION OF SWBT

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

14.0 LIMITATION OF ACTIONS; DISPUTE RESOLUTION

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

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

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

14.4 **Arbitration** – If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party

may demand such arbitration in accordance with the procedures set forth in those rules. Discovery shall be controlled by the arbitrator and shall be permitted only to the extent set forth in this Section. Each party may submit in writing to the other party, and the receiving party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following:

- A. Interrogatories
- B. Demands to produce documents
- C. Requests for admission

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

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

15.0 NOTICES

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

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

If to Collocator: Gabriel Communications of Arkansas, Inc.
16090 Swingley Ridge Road, Suite 500
Chesterfield, MO 63017

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

16.0 COMPLIANCE WITH LAWS

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

17.0 OSHA STATEMENT

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

18.0 INSURANCE

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

- A. Comprehensive General Liability insurance including Products/Completed Operations Liability insurance including the Broad Form Comprehensive General Liability endorsement (or its equivalent(s)) with a Combined Single limit for Bodily Injury and Property Damage of \$1,000,000. Said coverage shall include the contractual, independent contractors products/completed operations, broad form property, personal injury and fire legal liability.

- B. If use of an automobile is required or if Collocator is provided or otherwise allowed parking space by SWBT in connection with this Agreement, automobile liability insurance with minimum limits of \$1 million each accident for Bodily Injury, Death and Property Damage combine. Coverage shall extend to all owned, hired and non-owned automobiles. Collocator hereby waives any rights of recovery against SWBT for damage to Collocator's vehicles while on the grounds of the eligible structure and Collocator will hold SWBT harmless and indemnify it with respect to any such damage or damage to vehicles of Collocator's employees, contractors, invitees, licensees or agents.
- C. Workers' Compensation insurance with benefits afforded in accordance with the laws of the state in which the space is to be provided.
- D. Employer's Liability insurance with minimum limits of \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease per employee and \$500,000 for bodily injury by disease policy aggregate.
- E. Umbrella/Excess liability coverage in an amount of \$5 million excess of coverage specified above.
- F. All Risk Property coverage on a full replacement cost basis insuring all of Collocator's personal property situated on or within the eligible structure or the dedicated collocation space. Collocator releases SWBT from and waives any and all right of recovery, claim, action or cause of action against SWBT, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to Collocator or located on or in the space at the instance of Collocator by reason of fire or water or the elements or any other **risks** would customarily be included in a standard all risk casualty insurance policy covering such property, regardless of cause or origin, including negligence of SWBT, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on Collocator's fixtures and other personal property shall contain a waiver of subrogation against SWBT, and any rights of Collocator against SWBT for damage to Collocator's fixtures or personal property are hereby waived.

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

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

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

18.4 **Effective Date** – All insurance must be in effect on or before occupancy date and shall remain in force as long as any of Collocator’s facilities or equipment remains within the dedicated collocation space or the Building. If Collocator fails to maintain the coverage, SWBT may pay the premiums thereon and, if so, shall be reimbursed by Collocator.

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

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

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

19.0 SWBT’s RIGHT OF ACCESS

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

20.0 MISCELLANEOUS

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

Exhibit _____

Exhibit _____

Exhibit _____

Exhibit _____

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

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

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

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

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

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

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

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

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

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

20.12 **Wavier of Obligations**

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

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

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

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

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

20.17 Survival – The terms, provisions, representations, and warranties contained in this Agreement that by their nature and/or context are intended to survive the performance thereof by either or both parties hereunder shall so survive the completion of performances and termination of this Agreement, including the making of any and all payments due hereunder.

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

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

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

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

21.0 APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

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

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

THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT.

SOUTHWESTERN BELL TELEPHONE COMPANY

By: _____

Title: _____

GABRIEL COMMUNICATIONS OF ARKANSAS, INC.
Interconnector: Collocator

By: _____

Title: _____

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SOUTHWESTERN BELL TELEPHONE
LICENSING AGREEMENT FOR ACCESS TO
POLES, DUCTS, CONDUIT AND RIGHTS-OF-WAY
IN THE STATE OF ARKANSAS

REVISED 1/97

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

This Agreement dated _____, 19__ is made by and between Southwestern Bell Telephone Company and the undersigned Applicant requesting access to poles, ducts, conduits, and rights-of-way.

ARTICLE 1: PARTIES

1.01 Southwestern Bell Telephone Company. Southwestern Bell Telephone Company ("SWBT") is a corporation chartered in the State of Missouri. SWBT's principal office is located at 1010 Pine Street, St. Louis, Missouri 63101.

1.02 Applicant. Applicant is a person or entity doing business or operating in this State under the following name(s): _____

_____. Applicant maintains offices in this state at the following address: _____

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

ARTICLE 2: PURPOSE OF AGREEMENT

2.01 Primary Purpose of Agreement. 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 Agreement is to set forth the basic rates, terms, conditions, and procedures under which Applicant will have access to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT in accordance with the Pole Attachment Act.

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

2.03 Interim Agreement. The parties acknowledge that it may be necessary to amend or supersede this Agreement from time to time to conform to changes in the law, to streamline

procedures for granting access, and to resolve complex issues arising by virtue of the presence of competing telecommunications providers on, within, or in the vicinity of the same poles, ducts, conduits, and rights-of-way. Each party therefore agrees that this Agreement shall be considered as an interim agreement and that each party shall, at the request of the other party, engage in good faith negotiations to supplement, amend or replace this Agreement.

2.04 Relationship, if Any, to Interconnection Agreement. As indicated below, this Agreement may be executed either as a standalone agreement or as an appendix or attachment to a comprehensive interconnection agreement ("Interconnection Agreement") between the parties and shall be construed accordingly.

This Agreement has been entered into as a standalone Agreement.

This Agreement has been entered into as an appendix or attachment to an Interconnection Agreement between the parties. Except as otherwise specifically stated in the Interconnection Agreement, the terms of this Agreement shall apply in the event of conflict between the terms of this Agreement and other terms and conditions set forth in the Interconnection Agreement.

ARTICLE 3: DEFINITIONS

3.01 Definitions in general. As used in this Agreement, the terms defined in this article shall have the meanings set forth below in Sections 3.02 to 3.38 except as the context otherwise requires.

3.02 Agreement. The term "Agreement" refers to this Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way. References to the "Interconnection Agreement" refer to the comprehensive interconnection agreement, if any, to which this Agreement has been made an appendix or attachment. The term "Agreement" includes all Appendices and forms identified in Section 3.04.

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

3.04 Appendix The capitalized term "APPENDIX" refers to the following appendices which are an integral part of this Agreement.

APPENDIX I Schedule of Fees and Charges

APPENDIX II: Identification of Applicant

APPENDIX III: Administrative Forms and Notices

sw-9433: Application and Pole Attachments License

SW-9433-1: Pole, Anchor and Guy Strand Details

SW-9433-2: Application Survey Data

sw-9434: Authorization for Prelicense Survey and/or Make-Ready Work

sw-9435: Application and Conduit Occupancy License

SW-9435-1: Conduit System Diagram

SW-9435-2: Cable to Occupy conduit

SW-9435-3: Equipment Housing to be Placed in Manholes

SW-9436A: Notification of Surrender or Modification of Pole Attachment License by Licensee

SW-9436B: Notification of Surrender or Modification of Conduit Occupancy License by Applicant

SW-9436C: Notification of Unauthorized Attachments by Applicant

APPENDIX IV: Insurance Requirements

APPENDIX V: Nondisclosure Agreement (SWBTPole, Duct, Conduit, and Right-of-Way)

APPENDIX VI: Notices to SWBT

3.05 **Assigned**. when used with respect to pole, duct, conduit, or right-of-way space, the term "assigned" refers to space that is occupied by, or has been designated for occupancy by, either party or by 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 Agreement, no person or entity shall have the right to occupy space assigned to another person or entity (other than on a temporary basis in the event of emergency) until the assignment has been released or lapsed. Assignment is further described in Section 8.02 of this Agreement.

3.06 **Authorized contractor**. The term "authorized contractor" refers to any contractor, subcontractor, or other vendor mutually approved by Applicant and SWBT to perform make-

ready or **other work**, on Applicant's **behalf**, on, Within, or in **the vicinity** of **SWBT's** poles, ducts, conduits, and rights-of-way. The term "**authorized contractor**" includes Applicant if Applicant is approved as an authorized contractor pursuant to Section 10.05 of this Agreement.

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

3.08 Conduit. The term "**conduit**" refers to **all** conduits **subject** to the Pole Attachment **Act**. In **general**, a conduit is a **structure**, usually **underground** or on bridges, containing one or **more** ducts used to enclose cables, **wires**, and **other facilities**. Except as the context **otherwise requires**, the term "**conduit**" refers to conduit owned or controlled by **SWBT**, including the **re-entenable manholes and handholes** used to **connect** ducts and provide **access** to cables, wires, and **other** facilities within the ducts. **As used in this Agreement**, the term "**conduit**" refers only to the conduit itself (including ducts, manholes and handholes) and does not include **central office vaults**, controlled **environment** vaults, or **other SWBT facilities** housed in or **connected** to **SWBT's** conduit.

3.09 Conduit occupancy. The terms "**conduit occupancy**" and "**occupancy**" refer to the presence of wire, cable, optical conductors, or **other facilities** within any **part** of **SWBT's** conduit **system**.

3.10 Conduit system. The term "**conduit system**" refer to any combination of ducts, conduits, manholes, and handholes joined to form an integrated **whole**. In this **Agreement**, the term refers to conduit **systems** owned or **controlled** by **SWBT** and does not include **central office vaults**, controlled **environment** vaults, and **other facilities** housed in or **physically connected** to the conduit **system**.

3.11 Duct. The term "**duct**" refers to **all** ducts **subject** to the Pole **Attachment Act**. In **general**, a "**duct**" is a single **closed** tube, pipe, or **channel** for enclosing and **carrying** cables, wires, and **other facilities**. **As used in this Agreement**, the term "**duct**" includes "**inner ducts**" created by **subdividing a duct** into **de r channels**. Except as the context **otherwise** requires, the term "**duct**" refers to ducts owned or controlled by **SWBT**.

3.12 Facilities. The terms "**facility**" and "**facilities**" refer to **any** property, equipment, or **items** owned or controlled by any **person** or **entity**.

3.13 FCC. The **acronym "FCC"** refer to the **Federal Communications Commission**.

3.14 Jacket. The term "**jacket**" refers to a single enclosed outer covering **containing** **communications wires**, **fibers**, or **other communications media**. **As used in this Agreement**, the term "**jacket**" refers to the **outermost sheath** or jacket of a cable.

3.15 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.

3.16 License. The term "license" refers to a written instrument confirming that SWBT has afforded Applicant 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 Agreement and may, if the context requires, refer to licenses issued by SWBT prior to the date of this Agreement.

3.17 Local service provider ("LSP"). The terms "local service provided" and "LSP" refer to telecommunications carriers authorized by applicable federal and state laws and regulations to provide local exchange Service. As used in this Agreement, these terms include SWBT.

3.18 Maintenance duct. The term "maintenance duct" refers to a full-sized duct (typically 3-inches in diameter or larger) which may be used, on a short-term basis, for maintenance, repair, or emergency restoration activities. Maintenance ducts will be available, on a nondiscriminatory basis, to all persons and entities (including SWBT, Applicant, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located for (a) short-term emergency repairs as provided in Article 15 of this Agreement and (b) short-term non-emergency maintenance or repair activities as provided in Articles 12 and 13 of this Agreement. No more than one full-sized duct within any given conduit system cross-section will be designated by SWBT as the maintenance duct. The term "maintenance duct" does not include ducts and conduits extending from a SWBT manhole to customer premises. Maintenance ducts will not be considered "available" (as defined in Section 3.07) for assignment to SWBT, Applicant, or joint users for purposes other than short-term uses contemplated in this section; provided, however, that SWBT may assign the duct currently designated as a maintenance duct if another suitable full-sized duct will be made available to serve as a replacement maintenance duct.

3.19 Make-ready work. The term "make-ready work" refers to all work performed or to be performed to prepare SWBT's poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Applicant's facilities. "Make-ready work" 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 Applicant's facilities (as distinguished from work required for the purpose of meeting SWBT's business needs or convenience). "Make-ready work" may require "dig-ups" of existing facilities and may include the repair, enlargement or modification of SWBT's facilities (including, but not limited to, poles, ducts, conduits, handholes, and manholes), consolidating services into fewer cables, or the performance of other work required to make a pole, duct, conduit, or right-of-way usable for the initial placement of Applicant's facilities. As used in this Agreement, the term "make-ready" work also includes associated planning and engineering work required to verify or determine the extent of make-ready work required to perform make-ready projects.

3.20 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.

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

3.22 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.

3.23 Person acting on Applicant's behalf. The terms "person acting on Applicant's behalf," "personnel performing work on Applicant's behalf," and similar terms include both natural persons and firms and ventures of every type, including, but not limited to, corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on Applicant's behalf," "personnel performing work on Applicant's behalf," and similar terms specifically include, but are not limited to, Applicant, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by Applicant and their respective officers, directors, employees, agents, and representatives.

3.24 Person acting on SWBT's behalf. The terms "person acting on SWBT's behalf," "personnel performing work on SWBT's behalf," and similar terms include both natural persons and firms and ventures of every type, including but not limited to corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on SWBT's behalf," "personnel performing work on SWBT's behalf," and similar terms specifically include, but are not limited to, SWBT, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or on behalf of SWBT and their respective officers, directors, employees, agents, and representatives.

3.25 Pole. The term "pole" refers to all poles subject to the Pole Attachment Act. Except as the context otherwise requires, the term "pole" refers only to utility poles and anchors which are owned or controlled by SWBT.

3.26 Pole Attachment. The terms "pole attachment" and "attachment" include any item attached to or supported by a pole or by any anchors, bolts, cables, clamps, guys, strands, or other hardware affixed to or associated with the pole.

3.27 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.

3.28 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 the **existing availability** and capacity of a pole or conduit **system** and **identifying** capacity, safety, reliability, or **engineering concerns**, if any, relating to Applicant's application;
- (b) determining the **extent, if any, to which modifications** to the pole or conduit **system** are required to accommodate Applicant's **facilities**;
- (c) determining **what** make-ready work, if any, **will be** required to prepare the **pole, conduit, or conduit system** to accommodate Applicant's **facilities**; and
- (d) ~~estimating~~ the **costs, if any, that** Applicant **will be** required to pay for **any such** makeready work or **facilities modifications**.

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

- (a) the **existing capacity** of a pole or conduit **system** and whether **those facilities** are suitable for Applicant's **use**;
- (b) the **extent, if any, to which modifications** to the pole or conduit **system** are required to accommodate Applicant's **facilities**; and
- (c) **what** makeready work, if **any**, is required to prepare the pole, conduit, or conduit **system** to accommodate Applicant's **facilities**.

3.30 Rights-of-way. The term “rights-of-way” refers to all rights-of-way **subject** to the Pole Attachment **Act**. In general, rights-of-way are legal rights to **pass over or through** or otherwise 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 (a) public rights-of-way **authorizing SWBT** to locate facilities **on, under, or over** public lands and roadways and (b) **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 land 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**. Except as the context otherwise requires, the term “rights-of-way” refer **only** to rights-of-way **owned or controlled by SWBT**.

3.31 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**.

3.32 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."

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

3.34 Strand. The term "strand" refers to supporting 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. 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."

3.35 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.

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

3.37 Vault. The term "vault" generally refers to central office vaults and controlled environment vaults ("CEVs").

3.38 "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 situ on, within, near to, surrounding, or adjoining SWBT's poles, ducts, conduits, and rights-of-way. These sites include, but are not limited to, all sites within a distance of 10 feet of any SWBT pole, duct, conduit, or right-of-way.

ARTICLE 4: NATURE AND SCOPE OF AGREEMENT

4.01 Scope of Agreement. This Agreement establishes 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 to Applicant. Nothing contained in this Agreement 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 Agreement 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 Applicant any right, title, or interest in or to any real or personal property owned by

SWBT, and the placement of Applicant's facilities on or in SWBT's poles, ducts, conduits and rights-of-way shall not create or vest in SWBT any right, title, or interest in such facilities.

4.03 No Effect on SWBT's Right to Convey, Transfer, or Abandon Property. Nothing contained in this Agreement shall in any way affect SWBT's right to abandon, convey, or transfer to any other person or entity any interest in real or personal property, including any poles, ducts, conduits, or rights-of-way to or in which Applicant has attached or placed facilities pursuant to this Agreement.

4.04 No Effect on SWBT's Rights to Manage its Facilities. Nothing contained in this Agreement 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 save 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.

4.05 No Right to Interfere with Facilities of Others. Except to the extent expressly provided by the provisions of this Agreement or by the Telecommunications Act of 1996 or other applicable laws, rules, or regulations, the provisions of this Agreement shall not be construed as authorizing either party to this Agreement, or persons acting on their behalf, to rearrange or Where 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.

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

ARTICLE 5: ACCESS TO RIGHTS-OF-WAY

5.01 Public Rights-of-Way. SWBT and Applicant agree that neither party has the right to restrict or interfere with the other party's access to public rights-of-way. SWBT and Applicant shall be responsible for obtaining their own rights-of-way and permission to use real or personal property owned or controlled by any governmental body.

5.02 Private Rights-of-Way Not Owned or C _____ . SWBT and Applicant 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.

5.03 Access to Associated Rights-of-Way. Each pole attachment and conduit occupancy license issued under or made subject to this Agreement shall include access to and use of all associated rights-of-way, including, but not limited to, rights-of-way required by Applicant for ingress, egress, or other access to any sites where SWBT's poles or any part of SWBT's conduit system are located, but only to the extent, if any, that SWBT has the legal authority to grant such access and use. SWBT will place no restrictions on Applicant's ability to construct, maintain, and monitor its facilities at these sites that are more restrictive than those SWBT places on itself. Although SWBT will afford access to rights-of-way owned or controlled by it and permit Applicant to utilize SWBT's rights-of-way to the extent that SWBT has legal authority to do so, Applicant acknowledges that SWBT may not own or control certain rights-of-way to the extent necessary to permit Applicant full access to such rights-of-way. The following general principles shall be applied with respect to access to rights-of-way on third-party real estate:

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

5.04 Access to Rights-of-Way Incident to the Use of CEVs and Similar Structures. SWBT will provide Applicant nondiscriminatory access, as provided in Section 5.03 above, 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 upon by the parties under other agreements or required by order of any court or governmental agency having jurisdiction over the subject matter. This section relates only to access to rights-of-way. Neither this section nor any other part of this Agreement establish facilities collocation rights.

ARTICLE 6: SPECIFICATIONS

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

6.02 Design to Minimize the Need for Access to SWBT's P_____. The parties shall each design their facilities to minimize the need for the parties to access SWBT's poles or conduit system.

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, or sound engineering practice, SWBT will permit Applicant at its own expense to utilize the following techniques to avoid high or unusual expenditures: (a) placement of pole attachments on both the "field" side and "road" side of a pole; (b) placement of extension arms or stand-off brackets on poles; and (c) building conduit branches into SWBT's conduit systems. Applicant acknowledges that use of the above techniques will be rare and will be permitted only on a case-by-case basis. Extension arms or stand-off brackets, if utilized, shall be provided by SWBT, at Applicant's expense, and installed as make-ready work in accordance with SWBT's specifications. Once installed, extension arms and stand-off brackets shall become part of the pole and shall be owned by SWBT. Unused capacity on any such extension arms or stand-off brackets shall be deemed "available" (as defined in Section 3.07) for assignment.

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

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

6.05 Additional Electrical Design Specifications: Conduit. The parties agree that, in addition to the specifications and requirements referred to in Sections 6.01-6.04 above, facilities placed in SWBT's conduit system after the effective date of this Agreement shall meet 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) **Neither party shall circumvent the corrosion mitigation measures of the other party or joint users.**

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

- (a) **Except as otherwise specifically agreed in this Agreement or licenses issued hereunder, Applicant's facilities shall enter SWBT's conduit system at locations consistent with the physical design specifications that SWBT applies to itself (typically through a manhole) or at such other designated locations agreed upon in writing (e.g., through the licensing process) by the parties in accordance with Section 6.03 (infrequent construction techniques and connectivity solutions).**
- (b) **Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in SWBT's conduit or ducts.**

- (c) 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 Conduits: To ensure efficient use of conduits, SWBT will, when cable diameters permit, install inner ducts in multiples that fully utilize duct space (typically 3 or 4 inner ducts in a full 4-inch duct) as needed for SWBT's own business purposes and to accommodate Applicant and other joint users; provided, however, that SWBT will not be required to install inner duct in advance of need or in anticipation of potential future requests for access by Applicant and other joint users.

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

- (a) Applicant shall not bore, make, or enlarge any hole in, or otherwise structurally modify or alter any manhole, handhole, duct, conduit, or other facility which is part of SWBT's conduit system except as provided in this Agreement 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 Applicant or an authorized contractor from reattaching cable racks or performing similar routine work which is minor in nature and associated with the placement and splicing of Applicant's cable.
- (c) Where Applicant's duct or facility physically connects with SWBT's manhole, the section of Applicant's duct or facility which connects to SWBT's manhole shall be installed by SWBT or its contractor at Applicant's expense (which will be SWBT's actual costs or the price charged SWBT by the contractor). 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 Applicant's needs, Applicant may arrange for the work to be performed by an authorized contractor selected by Applicant from a list of mutually agreeable qualified "bidders" developed by SWBT and Applicant.
- (d) SWBT will have the option to monitor the entrance and exit of Applicant's facilities into SWBT's conduit system and the physical placement of Applicant's facilities in any part of SWBT's conduit system. Notice requirements for, and expenses associated with, this monitoring are addressed in Section 6.11 of this Agreement.

- (e) If Applicant 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 Applicant's duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into SWBT's conduit system.

6.09 General Requirements Relating to Personnel, Equipment, Materials, and Public safety. The parties contemplate that Applicant, its contractor, and other persons acting on Applicant's behalf will perform work for Applicant 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, Applicant and joint users, to protect the health and safety of persons working on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, and to protect the public at large. The requirements of this section shall be reciprocal and shall apply to SWBT and personnel acting on SWBT's behalf to the same extent they apply to Applicant.

- (a) Applicant, authorized contractors, and other personnel performing work on Applicant's behalf on or in SWBT's poles, ducts, and conduits shall meet the same requirements generally applicable to SWBT and its contractors.
- (b) Only properly trained persons shall work on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. Applicant shall be responsible for determining that all such persons acting on Applicant's behalf have proper training.
- (c) Neither Applicant nor any person acting on Applicant's behalf shall permit any person to climb 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.
- (d) Neither Applicant nor any person acting on Applicant's behalf shall permit any person acting on Applicant's behalf to perform any work on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way without first verifying, to the extent practicable, on each date when such work is to be performed, that conditions at the work site (including but not limited to the physical condition of the pole or any part of SWBT's conduit system) are sufficiently safe for the work to be performed. If Applicant or any person acting on Applicant's behalf determines that the condition of the pole or conduit system is not safe enough for the work to be performed, Applicant shall notify SWBT of the condition of the pole or conduit system in question and shall not proceed with the work until Applicant is satisfied that the work can be safely performed.

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

- (i) All personnel *acting* on Applicant's behalf shall, while working on or in SWBT's poles, ducts, conduits, or rights-of-way, carry with them suitable identification and shall, upon the request of any SWBT employee or representative, produce such identification.
- (j) Applicant (and any person *acting* on Applicant's behalf) may report unsafe conditions on, within, or in the vicinity of SWBT's poles or conduit system to SWBT.
- (k) Applicant shall establish sufficient controls and safeguards to assure compliance with all provisions of this section.

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

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

according to standards established by the United States Environmental Protection Agency.

- (g) Planks or other types of platforms shall be supported only by cable racks.
- (h) Any leak detection liquid or device used by Applicant or personnel performing work on Applicant's behalf within or in the vicinity of SWBT's conduit system shall be of a type approved by SWBT.
- (i) 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, will be provided by Applicant, Only explosion-proof lighting fixtures shall be used.
- (l) ~~Neither~~ Applicant nor personnel performing work on Applicant's behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in SWBT's conduit system (including any manhole) during work operations performed within or in the vicinity of SWBT's conduit system.
- (m) 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. In addition, Applicant shall comply with the standards set by SWBT for its own personnel restricting the use of such tools, equipment, and devices, provided that such standards have been communicated in writing to Applicant at least 10 days in advance of the construction, installation, or placement of Applicant's facilities within SWBT's conduit system.
- (n) Cable lubricants used in conduit systems shall be of a type or types approved by SWBT. SWBT shall provide a complete list of approved types of lubricants.

6.11 **Opening of Manholes.** The following requirements apply to the opening of SWBT's manholes.

- (a) Applicant will notify SWBT not less than five working days in advance before entering SWBT's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the parties. The notice shall state the general nature of the work to be performed. As a courtesy, Applicant shall, when feasible, provide

SWBT with **10 working days advance notice before entering SWBT's conduit system**. SWBT shall, within **10 working days after the effective date of this Agreement**, advise Applicant of the **manner** in which notices required by this section shall be given.

- (b) **An authorized employee or representative of SWBT may be present at any time when Applicant or personnel acting on Applicant's behalf enter or perform work within SWBT's manhole.**
- (c) **The parties contemplate that Applicant 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, Applicant shall notify SWBT as soon as is reasonably possible of its intent to enter and perform work in the conduit system in a manner other than is specified in subsection (a) and SWBT shall not, without due cause and justification, insist on literal compliance with requirements of subsection (a) in such circumstances. SWBT will establish procedures enabling SWBT to receive notices from Applicant under this subsection 24 hours a day, seven days a week.**
- (d) **Each party must obtain any necessary authorization from appropriate authorities to open manholes for such party's own conduit work and associated operations therein.**
- (e) **When an authorized employee or representative of SWBT is present as a construction observer, Applicant shall pay SWBT's costs attributable to having such employee or representative present. SWBT shall not charge Applicant for more than one such construction observer per site at any given time. If the actual participation of SWBT personnel in work activities at the site is integral to successful completion of the work, Applicant shall be responsible for paying the costs of all SWBT personnel reasonably needed for such work**

6.12 OSHA Compliance . The parties agree that:

- (a) **facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the Occupational Safety and Health Act (OSHA) and all rules and regulations promulgated thereunder;**
- (b) **all persons 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; and**
- (c) **Applicant shall establish appropriate procedures and controls to assure compliance with all requirements of this section.**

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

- (a) Applicant may, at its expense, perform such inspections and tests of conduit facilities occupied by or assigned to Applicant as Applicant may deem necessary to determine the presence at such sites of environmental contaminants. SWBT will assist Applicant, at Applicant's request and expense, in the performance of such inspections and tests.
- (b) SWBT makes no representations to Applicant or personnel performing work on Applicant's behalf that SWBT's conduit system or any specific portions thereof 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, Applicant or personnel acting on Applicant'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 within or in the vicinity of conduit facilities occupied by or assigned to Applicant 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.

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

- (a) The parties' 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 all applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws, including but not limited to the Resource Conservation and Recovery Act (42 U.S.C. §§ 9601 et seq.), the Toxic Substance Control Act (15 U.S.C. §§ 2601-2629), the Clean Water Act (33 U.S.C. §§ 1251 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j).
- (b) All persons acting on Applicant's or SWBT's behalf, including but not limited to Applicant's or SWBT's employes, 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.

- (c) The parties shall each establish appropriate procedures and controls to assure compliance with all requirements of this section.
- (d) Neither Applicant nor SWBT nor personnel performing work on either party's behalf shall discharge water or any other substance from any SWBT manhole or other conduit facility onto public or private property, including any storm water drainage system, without first testing such water or substance for contaminants in accordance with SWBT's standards and practices and determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person.
- (e) Applicant and SWBT and all personnel performing work on Applicant's or SWBT's behalf shall, when working on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, comply with such additional standards, practices, and requirements as SWBT may from time to time adopt to comply with environmental laws, provided that such standards are communicated in writing to Applicant at least 10 days in advance of the construction, installation, or placement of Applicant's facilities within SWBT's conduit system.

6.15 Compliance with Other Governmental Requirements (Including Aeronautical Navigation Safeguards). Applicant 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). Applicant and SWBT shall comply with all statutes, ordinances, rules, regulations, and other laws requiring the marking and lighting of aerial wires, cables, and other structures to ensure that such wires, cables, and structures are not a hazard to aeronautical navigation.

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

6.17 Applicant's Responsibility for the Condition of its Facilities. Applicant 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 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 PREOCCUPANCY INSPECTIONS

7.01 Designation of Primary Points of Contact. Each party will, at the request of the other party, designate a primary point of contact to facilitate communications between the parties

and the timely processing of Applicant's applications for access to SWBT's poles, ducts, conduits, and rights-of-way located within this State. Designations of **primary** points of contact will be made by **written** notices including the name, title, address, phone number, and fax number of the person designated as the primary point of contact. Designation of **primary** points of contact pursuant to this section will not **affect** notice requirements or other legal requirements set forth in other provisions of **this Agreement**.

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

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

- (a) Applicant may, at any time after the effective date of this Agreement, request permission to inspect SWBT's pole and conduit maps and records, cable plat maps, and other plant location records, if any, recording or logging assignments of pole, duct, and conduit space. Applicant will be permitted to examine these records during regular business hours at a location where copies of such records are maintained or at such other location as may be mutually agreed upon by the parties. Access to such maps and records will be by appointment only, and SWBT will make such maps and records available for inspection by Applicant on 10 business days advance notice; provided, however, that Applicant will, as a courtesy, when feasible, provide SWBT with 15 business days advance notice of its intent to examine such records. Applicant may, from time to time, request expedited access to records (e.g., access on two business days notice) to respond to exceptional situations in which earlier notice is not feasible. SWBT shall, when feasible, provide Applicant with expedited access as requested. Applicant acknowledges, however, that requests for expedited access to records will be rare and will be permitted only on a case-by-case basis.
- (b) SWBT will permit Applicant to take notes and make drawings with reference to 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. SWBT will also, at Applicant's request, permit Applicant, while on SWBT's premises, to obtain copies, at Applicant's expense, of pole and

conduit *maps* and records (**other than** cable plat maps). **No references to cable counts, cable designations or other cable-specific information, circuit information, or customer-specific information of any kind may be included in any such copies, notes, or drawings;** provided, however, that Applicant may make estimates regarding the physical characteristics (such as **size and weight**) of the cables being surveyed when necessary to make engineering determinations regarding the capacity, **safety**, reliability, or suitability of SWBT's poles, ducts, conduits, and **rights-of-way for Applicant's intended uses.**

- (c) SWBT will provide Applicant the best **information** available from SWBT's current pole and conduit *maps* and records, cable plat *maps*, and **other outside plant and construction records.** SWBT represents that **such** records reflect approximate geographical locations of the **facilities** depicted and may not accurately reflect information **such as:**
 - (1) the **exact** location **of the facilities** depicted;
 - (2) the physical **size**, characteristics, or condition of the facilities depicted;
 - (3) the ducts or **inner** ducts presently occupied, **assigned**, or available within any particular conduit segment or **manhole**;
 - (4) the arrangement of **facilities attached** to a pole, the position of **facilities suspended** between poles or **their relationship to each other and to the ground, or the positioning of cables and other facilities housed** within ducts, conduits, **manholes** or **other portions of SWBT's conduit system;** and
 - (5) other **information which must be assessed** before it can be determined that space is available on or in a pole, duct, or conduit for the attachment or occupancy of Applicant's facilities or that the pole, duct, or conduits depicted **are** suitable for Applicant's **intended use.**

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

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

- Section 6.1.1 relating to the opening of manholes.

ARTICLE 8: POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

8.01 Selection of Space. Applicant will ~~select~~ the space Applicant will occupy on SWBT's poles or in SWBT's conduit systems. Applicant's selections will be based on the same criteria SWBT applies to itself. To enable Applicant to make *such* selections in accordance with SWBT's criteria, SWBT will provide Applicant information about the network guidelines and engineering protocols used by SWBT in determining the placement of facilities on SWBT's poles and in SWBT's conduit systems.

8.02 Pole, Duct, and Conduit Space Assignments. Pole, duct, and conduit space selected by Applicant will be assigned to Applicant as provided in this section.

- (a) On receipt of Applicant's application for a pole attachment or conduit occupancy license, pole, duct, and conduit space selected by Applicant will be assigned to Applicant for a **pre-occupancy period** not to exceed 12 months, beginning with the date of such assignment. The assignment and date of assignment will be recorded in the appropriate SWBT records. If *such* space has been provisionally assigned to Applicant as authorized below in subsection (b), the 12-month pre-occupancy assignment period will begin on the date the provisional assignment is recorded in SWBT's records or the date of SWBT's receipt of Applicant's notice, whichever date first occurs.
- (b) SWBT shall, within 60 days after the effective date of this Agreement, adopt interim procedures which will enable pole, duct, and conduit space to be provisionally assigned to Applicant and other applicants prior to the submission of formal applications required pursuant to Section 9.02 of this Agreement. The interim procedures will apply to SWBT as well as to Applicant and other applicants. SWBT may, on 60 days advance notice to Applicant, revise or terminate *such* interim procedures if *such* procedures prove to be unworkable, in which event Applicant may challenge SWBT's decision to revise or terminate *such interim procedures* in accordance with procedures available to Applicant under applicable federal and state laws and regulations. In agreeing to adopt *such interim procedures* on a trial basis, SWBT does not agree that *such* procedures are necessary, workable, or desirable. The procedures will enable Applicant and other applicants, by written notice, to advise SWBT of their intent to occupy unassigned space which appears, from SWBT's records, to be available for assignment. Upon receipt of *such* notice, SWBT will provisionally assign the space selected by Applicant or such other applicant by recording the assignment on the appropriate SWBT records, which records will be available for inspection as provided in Section 7.03 of this Agreement. Space provisionally assigned to Applicant or *such other* applicant will not be available for assignment to any other person or entity, including SWBT. Notwithstanding *such* provisional assignment, Applicant shall not occupy *such* space without first

obtaining a license. The following additional requirements shall apply.

- (1) Before sending SWBT a notice of its intent to occupy unassigned space, Applicant shall make a good faith determination that it **actually plans to occupy such space**. The assignment process shall not be used by either party for the purpose of holding or **reserving** space which such party does not plan to use or for the purpose of precluding SWBT or any other person or entity from utilizing or having access to SWBT's poles, ducts, conduits, or rights-of-way.
- (2) **With respect to unassigned conduit occupancy space, the notice must include all information required to enable SWBT and joint users, including other persons or entities which may from time to time seek space in the same ducts and conduits, to determine the specific space which Applicant desires to occupy. The notice must, therefore, include, at a minimum, the following information:**
 - (i) the **specific conduit sections, and each manhole, to be occupied;**
 - (ii) **the number of ducts, and number of inner ducts, to be occupied by Applicant within each conduit section;**
 - (iii) **the physical size (diameter) of the cables to be placed in such duct;**
 - (iv) **the anticipated use by Applicant of any infrequent construction techniques and connectivity solutions authorized under Section 6.03 to avoid high or unusual expenditures; and**
 - (v) **Applicant's best estimates of the dates when Applicant plans to begin and complete construction at the site specified in the notice.**
- (3) **With respect to unassigned pole space, such notice must include all information required to enable SWBT and other joint users, including other persons or entities seeking space on the same poles, to determine the specific space which Applicant desires to occupy. The notice must, therefore, include, at a minimum, the following information:**
 - (i) the specific poles to be occupied;
 - (ii) **the specific space on each pole to be occupied, including the height (distance from the ground) of the attachment and the side (road or field) where the attachment is to be made;**
 - (iii) the **anticipated number and types of cables to be attached, together with the anticipated physical size (diameter) and weight (weight per foot) of**

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- such cables, and the anticipated number and types of strands, if any, to be **wed** 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 make-ready work may be required of subsequent applicants as a result of the provisional assignment of space to Applicant;
- (iv) the anticipated use by Applicant of any infrequent construction techniques and connectivity solutions authorized under Section 6.03 to avoid high or unusual expenditures; and
- (v) Applicant's best estimates of the dates when Applicant plans to begin and complete construction at the sites specified in the notice.
- (4) ~~Within 30 days after giving such~~ notice, Applicant shall file an application under Section 9.02 or the provisional assignment will lapse.
- (5) As stated in Section 7.03(c), SWBT does not represent that its records accurately reflect the information necessary to enable Applicant to rely upon a records-based assignment process. SWBT shall have no duty to verify that space provisionally assigned pursuant to this subsection is actually available until Applicant has formally applied for the space and SWBT has completed the pre-license survey.
- (c) Assignments made prior to the issuance of a license will be provisional assignments and will be subject to modification if it is subsequently determined that the space selected by Applicant is already occupied or that a different assignment is required to comply with SWBT's standards for assigning pole, duct, and conduit occupancy space.
- (d) Applicant's obligation to pay semi-annual pole attachment or conduit occupancy fees will commence from the date the assignment (including any provisional assignment made pursuant to subsection (b)), is recorded in the appropriate SWBT records.
- (e) During the 12-month assignment period following the date space is assigned to Applicant and entered into the appropriate SWBT record, SWBT shall not occupy or use such space without Applicant's permission, shall not assign such space to any party other than Applicant, and shall not knowingly permit any party other than Applicant to occupy or use such space without Applicant's permission except as otherwise specifically provided in this Agreement. The assignment to Applicant will automatically lapse 12 months after the date the assignment has been entered into the appropriate SWBT record if Applicant has not occupied such assigned space within such 12-month period; provided, however, that if Applicant's failure to occupy the space within such 12-month

- - period **results from SWBT's** failure to **perform** make-ready Work on schedule, the **parties shall** negotiate a **single extension** of the assignment **period**, which extension **shall** not extend the assignment period beyond **three** months from the date of completion of SWBT's makeready work
- (f) If SWBT assigns pole, duct, or conduit space to itself, such assignment will automatically lapse **12** months **after** the date the assignment **has been** entered into the appropriate SWBT record if SWBT **has not occupied** such assigned space within **such 12-month period**.
- (g) If capacity **expansions**, makeready **work**, or **facilities modifications** on any pole, duct, or conduit **are required** due to the assignment of space to Applicant or SWBT under this section, the party to whom **such** space has been assigned will reimburse the person or entity **incurring the costs** for such capacity **expansions**, make-ready **work**, or **facilities modifications** if the party to whom **such** space has been assigned **fails to occupy** the assigned space within the **12-month assignment period**
- (h) Except as provided in subsection (e) above, **assignments** shall not be **extended**, renewed, or **chained in any manner (other than by actual occupancy)** that enables Applicant, SWBT, or other joint users 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**.

ARTICLE 9: APPLICATIONS AND PRE

URVEYS

9.01 Licenses Required. Except as otherwise **specifically permitted** in this Agreement, Applicant *shall* apply in **writing** for and **receive** a license **before attaching facilities** to specified SWBT poles or placing **facilities** within specified SWBT ducts, conduits, manholes, or handholes.

9.02 Application Form. To apply for a pole attachment or conduit occupancy license under this Agreement, Applicant **shall submit** to SWBT **two signed copies** of the appropriate application forms. SWBT represents that the forms **specified** in subsections (a)-(b) are forms in use prior to the effective date of this Agreement and that SWBT plans to **revise** such forms to conform to the provisions of this Agreement and to **streamline** the application process. The parties therefore **agree** that the forms specified in subsections (a) and (b) will be interim forms only.

- (a) To apply for a pole attachment license, Applicant *shall* submit to SWBT **two signed copies** of SWBT's Form SW-9433 ("Application and Pole Attachment License") together with completed **Forms SW-9433-1** ("pole, Anchor and Guy Strand Details") and **SW-9433-2** ("Application Survey Data"). An application for a pole attachment license will not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that **such** forms will be deemed to be substantially complete if they contain the

- information specified in subsections (c)-(h) below, as applicable. Copies of **Forms SW-9433, SW-9433-1, and SW-9433-2** are attached to this Agreement as parts of **APPENDIX III**. SWBT reserves the right to change the format and content of these forms upon **60** days notice in writing to Applicant.
- (b) To apply for a conduit occupancy license, Applicant shall submit to SWBT two signed copies of SWBT's Form SW-9435 ("Application and Conduit Occupancy License") together with completed **Forms SW-9435-1 ("Conduit System Diagram"), SW-9435-2 ("Cable to Occupy Conduit"), and SW-9435-3 ("Equipment Housings to be Placed in Manholes")**. An application for a conduit occupancy license will not be complete or subject to processing by SWBT until **these forms have been submitted to SWBT**; provided, however, that such forms will be deemed to be substantially complete if they contain the information specified in subsections (c)-(h) below, as applicable. Copies of **Forms SW-9435, SW-9435-1, SW-9435-2, and SW-9435-3** are attached to this Agreement as parts of **APPENDIX III**. SWBT reserves the right to change the format and content of these forms upon **60** days notice in writing to Applicant.
- (c) Each application for a license under this Agreement shall include, at a minimum, the following information:
- (1) the poles, ducts, and conduits (including all manholes) along Applicant's proposed route to or within which Applicant desires to attach or place its facilities;
 - (2) a description of the facilities to be attached to SWBT's poles and a description of the facilities to be placed within each component of SWBT's conduit system (including but not limited to ducts, conduits, manholes, and handholes) along the proposed route; and
 - (3) for poles, the proposed points of attachment
- (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

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be attached to SWBT' s poles or placed in SWBT' s conduit **system**

- (e) When it appears to Applicant that capacity **expansions**, make-ready work, or **other facilities modifications** may be required to accommodate Applicant' s access requests, Applicant **shall** describe the make-ready work or **facilities modifications** which Applicant proposes. Applicant **shall also** describe its intent to use **any infrequent** construction techniques or **connectivity** solutions **authorized** under **Section 6.03** to avoid **high** or **unusual** expenditures and its reasons for the **use** of such techniques or solutions.
- (f) Applicant **acknowledges** that the poles along a particular pole line or route **may** include poles **owned by firms** (such as **electric utilities**) **other than SWBT**, that it may be **necessary** for SWBT to **rearrange its facilities** or perform **other make-ready work** on poles other than poles it **owns** or controls **in order to** accommodate Applicant' s request for **access** to SWBT' s poles and that, at the time an application is submitted, it may be **difficult** for Applicant to **determine with Certainty** whether a **particular pole is owned or controlled by SWBT or by another** entity. **Accordingly**, the application **shall**, to the extent **feasible**, **identify all** poles utilized by SWBT (without regard to ownership) along the proposed route.
- (g) Each application for a license under **this Agreement** shall be accompanied by a **construction schedule showing** Applicant' s projected dates for **beginning and** completing **construction at the sites specified** in the application. Information on this schedule may be used by SWBT' s **engineering and** outside plant **construction personnel** in **scheduling work** required to process Applicant' s applications and scheduling such **capacity expansions, de-ready work, and facilities modifications**, if any, as may be **necessary to accommodate** Applicant' s facilities.
- (h) Applicant may include multiple cables in a single license application and may provide **multiple services (e.g., CATV and non-CATV services)** under the same cable **sheath or jacket**. When multiple **services** are provided **under the same cable sheath or jacket**, or when multiple **services** are provided using **different cables attached or lashed to the same strand** or otherwise occupying the same space on a pole or the same duct or **inner duct** within a conduit, Applicant will so **advise SWBT and SWBT' s rates under this Agreement will be adjusted to permit SWBT to charge Applicant the highest lawful rate applicable under this Agreement.**

9.03 Cooperation in the Application Process. The orderly **processing** of applications submitted by Applicant 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 Applicant and other firms seeking access.** The parties therefore agree to the following **transitional procedures** which will remain in effect **during the term** of this Agreement unless earlier **modified by mutual agreement of the parties.**

- (a) Before submitting a formal written application for access to SWBT's poles, ducts, conduits, and rights-of-way, Applicant 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 Applicant 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) Applicant shall only submit applications for access to poles, ducts, conduits, and rights-of-way which it plans to use within one year following the date access is granted and shall use its best efforts to submit applications in an orderly manner in accordance with Applicant's needs. If Applicant contemplates the need to submit more than 10 applications within any 45-day period with respect to poles, ducts, conduits, and rights-of-way within the territory of any single SWBT construction district, Applicant shall give SWBT advance notice as promptly as is reasonably practicable.
- (c) No more than 300 poles (and their associated anchors) shall be the subject of any single pole attachment license application.
- (d) No more than 20 manholes shall be the subject of any single conduit occupancy license application.

9.04 Applicant's Priorities. When Applicant has multiple applications on file within a single SWBT plant construction district, Applicant 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 Applicant has submitted its written license application as specified in Section 9.02 of this Agreement. SWBT shall not, without due cause and justification, repeat pre-occupancy survey work performed by Applicant.

- (a) The field inspection portion of the pre-license survey, which includes the visual inspection of existing pole and conduit facilities, shall be performed by SWBT or its authorized representative. Primary purposes of the field inspection will be to enable SWBT to (1) verify the capacity expansions, make-ready work and facilities modifications, if any, necessary to accommodate Applicant's facilities; (2) plan and engineer the make-ready work, if any, required to prepare SWBT's poles, ducts, conduits, rights-of-way, and associated facilities for Applicant's proposed attachments or occupancy; and (3) estimate the costs associated with such capacity expansions, make-ready work and facilities modifications. SWBT may dispense with the field inspection if it appears that the information necessary to process Applicant's license application is already available from existing

- sources, including the application forms and such other information as may be available to SWBT.
- (b) The administrative processing portion of the pre-license survey (which includes processing the application and reviewing records) will be performed by SWBT.
- (c) Before performing any portion of the pre-license survey, SWBT shall obtain Applicant's written authorization to perform such work. Authorization may be given, when possible, when the application is submitted.

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

10.01 Response Within 45 Days. Within 45 days of Applicant's submission of a license application pursuant to Section 9.02 of this Agreement, or within such other period of time as may be mutually agreed upon in writing by the parties, SWBT shall respond to the application. The response shall state whether the application is being granted or denied. If denial is anticipated, SWBT shall promptly notify Applicant of the anticipated denial and shall, at Applicant's request, discuss alternatives to denial.

- (a) If access is granted, SWBT shall, no later than 45 days after Applicant's submission of the license application, further advise Applicant in writing what capacity expansions, make-ready work, or facilities modifications, if any, will be required to prepare SWBT's pole or conduit facilities and provide Applicant an estimate of charges for such capacity expansions, make-ready work, or facilities modifications.
- (b) If access is denied, SWBT shall confirm the denial in writing by the 45th day after the receipt by SWBT of Applicant's completed application. 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 Applicant in its completed application sets forth in writing specific proposals for expanding capacity, the denial statement shall specifically address such proposals.
- (c) Applicant agrees that if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific poles, ducts, or conduit facilities, Applicant shall promptly withdraw or amend its application. For example, if Applicant, based on the information available to Applicant, has itself determined that for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes, access can only be granted after the performance of make-ready work which Applicant would not be willing to authorize, Applicant in good faith shall so notify SWBT, withdraw or amend its application, and waive the requirement

of a written denial statement, thereby **minimizing** administrative burdens on SWBT .

- (d) Notwithstanding the 45-day deadline, and subject to applicable make-ready work requirements, if any, **SWBT will make** available to Applicant for immediate occupancy any pole, duct, or conduit **space** that is not currently **assigned or designated as the maintenance duct**. Availability determinations will be based on the appropriate **SWBT records to be maintained by SWBT and made** available for **viewing by** Applicant as provided in Section 7.03 of this Agreement. Applicant **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 Applicant.

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

- (a) At Applicant's request, SWBT will **modify** its poles or conduit **system** to accommodate Applicant's **facilities**, **subject** to Applicant's agreement to pay **the costs** of *such* modifications; provided, however, **that such modifications** shall be consistent with **the capacity, safety, reliability, and engineering considerations** which SWBT would apply to itself if *the work were performed for SWBT's own benefit*. Outside plant **facilities modifications** subject to this subsection include, but **are not limited to**, installation of *inner* duct, cable consolidations and **the removal** of cable that **are** retired or inactive (dead). **Except as otherwise specifically** provided in this section, SWBT may **recover from Applicant the costs of** modifying its outside plant **facilities to make** space available for *Applicant's facilities* and charges for *such modifications shall be determined and billed in the same manner as other make-ready work subject to Section 19.06 and APPENDIX* of this Agreement.
- (b) **SWBT will, at its own expense, install** *inner* duct in SWBT's conduit **system** as **necessary to make** space available for Applicant's **facilities**. **Inner** duct installations to accommodate Applicant's **facilities** will be **performed by** SWBT within the **same time intervals** which would apply if **SWBT were performing such installations for itself**. If SWBT's intervals for **beginning or completing inner** duct installation do not **meet Applicant's needs**, Applicant may **select an** authorized contractor to perform the inner duct **installation**. Such contractor **shall be selected from a list**, developed and **maintained** jointly by SWBT and

Applicant, of **contractors mutually** approved by the **parties** to perform **inner duct installations**. Applicant may install **the inner duct** itself if Applicant is on the list of mutually agreeable contractors at **the time** the work is performed. **When inner duct is installed** in SWBT's conduit **system** by Applicant or an **authorized contractor selected** by Applicant, SWBT will provide **the inner-ducting materials to be installed** and Applicant **shall bear all other installation expenses**. Applicant **shall give SWBT sufficient advance notice** of the materials needed to enable SWBT to provide such materials to Applicant on a **timely basis**. Applicant **shall return all unused materials, including unused inner duct and reels, to SWBT** or purchase them **from SWBT**. **Inner duct installed** by Applicant or an **authorized contractor selected** by Applicant **shall be installed** in accordance with the same **standards and practices** which would be followed if the inner duct were being installed by SWBT or SWBT's contractor. Applicant **shall indemnify SWBT** for any **damages resulting from** Applicant's self-provisioning of inner-duct.

- (c) SWBT shall, at its expense, remove cables that are retired or inactive (dead) to free-up requested duct and pole space, provided that such removal is reasonably feasible (i.e., cable pulls easily without incident). If a portion of cable is "frozen" in a duct and would require excavation to remove, Applicant may, at its option, request that SWBT excavate the obstruction or, in the alternative, arrange for an authorized contractor to excavate the obstruction. Such contractor shall be selected from a list, developed and maintained jointly by SWBT and Applicant, of contractors mutually approved by SWBT and Applicant to perform excavations in the vicinity of SWBT's conduit system. Applicant may perform the excavation itself if Applicant is on the list of mutually agreeable contractors at the time the work is to be performed. Such excavations will be at Applicant's expense. Removal of the remainder of the cable will be at SWBT's expense. Neither Applicant nor any authorized contractor selected by Applicant to perform excavation work under this subsection shall conduct facility excavation activities in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of the facilities. Applicant shall indemnify SWBT for any damages resulting from the performance of excavation work by Applicant or any authorized contractor selected by Applicant under this subsection.

10.03 Issuance of Licenses and Immediate Access When No Make-ready Work is Required. If SWBT determines that no make-ready work is necessary to accommodate Applicant's facilities, SWBT will issue a license without performing make-ready work and pole attachment or conduit occupancy space will be made available to Applicant for immediate occupancy.

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

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- (a) **The notice shall be given in Writing no later than 45 days after the receipt by SWBT of Applicant's completed application pursuant to Section 9.02 of this Agreement or within such other period of time as may be mutually agreed upon in writing by the parties.**
 - (b) **The notice will include SWBT's estimate of make-ready charges, which estimate shall be stated on SWBT Form SW-9434 ("Authorization for Pre-license Survey or Make-Ready Work"), a copy of which is attached hereto as part of APPENDIX III.**
 - (c) **Applicant shall have 20 days (the "acceptance period") after receiving SWBT's estimate of make-ready charges to authorize completion of the makeready work proposed by SWBT or to advise SWBT of its willingness to perform the proposed make-ready work itself. If Applicant advises SWBT that it is willing to perform the make-ready work proposed by SWBT in accordance with SWBT's plans and specifications, SWBT will not, without due cause and justification, refuse to accept Applicant's offer to perform the work. Authorization shall be accomplished by Applicant's signing the estimate and returning it to SWBT within the 20-day acceptance period.**
 - (d) **Within the 20-day acceptance period, the parties may negotiate modifications of the make-ready work to be performed. If the parties reach agreement through negotiation, a new estimate shall be prepared and authorization shall be accomplished by Applicant's signing the revised estimate and returning it to SWBT within the original 20-day acceptance period, or within such period of time as may be mutually agreed upon by the parties.**
 - (e) **If Applicant does not sign and return the estimate within the 20-day acceptance period, or within such other period of time as may be mutually agreed upon in writing by the parties, Applicant shall notify SWBT in writing by the 20th day whether Applicant is withdrawing its application, electing to perform the make ready work itself as provided in subsection (c) or electing to treat SWBT's make-ready requirements as a denial of access.**
 - (1) **If no such notice is given by the 20th day, or such later date as may be mutually agreed upon by the parties, SWBT shall contact Applicant to determine whether Applicant intends to withdraw its application. Applicant shall be deemed to have withdrawn its application if, in response to SWBT's inquiry, Applicant does not immediately sign and return the estimate to SWBT.**
 - (2) **If Applicant timely notifies SWBT that it is electing to treat SWBT's make-ready requirements as a denial of access, SWBT shall, within 20 days after receiving the notice, provide Applicant with a written statement explaining its decision to grant access only if the specified make-ready work is performed.**

The statement shall be specific, shall include all relevant evidence and information supporting SWBT's decision to grant access only if the specified make-ready work is performed, and shall explain how such evidence and information relates to SWBT's decision for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. The statement shall also set forth the basis for SWBT's make-ready proposals and specifically address SWBT's rationale for rejecting Applicant's alternative written proposals, if any.

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

- (a) Applicant and SWBT will mutually establish and maintain a list of authorized contractors which may be selected by Applicant to perform make-ready work when SWBT's interval for beginning or completing such make-ready work does not meet Applicant's needs. At Applicant's request, SWBT will approve Applicant for inclusion on the list of authorized contractors upon Applicant's demonstrating that it meets SWBT's requirements for contractors permitted to perform make-ready work
- (b) If SWBT's interval for beginning or completing make-ready work does not meet Applicant's needs, Applicant may (1) perform the make-ready work itself, if Applicant is on the list of mutually agreeable contractors at the time the work is to be performed or (2) select an authorized contractor from the list of authorized contractors jointly developed by Applicant and SWBT to perform the work. Subject to the availability of personnel, Applicant may also request that SWBT perform the work on an expedited basis; provided, however, that make-ready work will not be performed on an expedited basis unless Applicant first approves any overtime or primum rates or charges associated with performance of the work on an expedited basis. Nothing contained in this subsection authorizes Applicant or any authorized contractor selected by Applicant to consolidate SWBT's cables.
- (c) From time to time, additional contractors, subcontractors or other vendors may be jointly approved by Applicant and SWBT to perform specific make-ready work in the event that the work load exceeds the capacity of the authorized contractors on the approved list to perform the make-ready work in a timely manner.
- (d) Neither Applicant nor authorized contractors selected by Applicant to perform make-ready work under this section shall conduct such work in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of SWBT's facilities. Applicant and any authorized

contractor selected by Applicant to perform make-ready work shall indemnify SWBT for any and all damages resulting in whole or in part from their activities under this d o n .

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

acknowledges that as a result of make-ready work Performed to accommodate Applicant's facilities, additional capacity may become available on SWBT's poles or in its conduit system. In such event, Applicant shall not have any preferential right to utilize such additional capacity in the future and shall not be entitled to any pole attachment or conduit occupancy fees which may subsequently be paid to SWBT for the use of such additional capacity by any joint user. If SWBT utilizes additional space or capacity created as a result of make-ready work performed at Applicant's expense, SWBT will reimburse Applicant on a pro-rata basis for its share, if any, of the make-ready expenses in accordance with applicable FCC rules. If any third party later utilizes any such additional space, SWBT shall, at the request of Applicant or such third party, provide such information as may be available to SWBT to assist Applicant and such third party in determining the amount, if any, which such third party may owe Applicant as its pro-rata share of such makeready expenses. Nothing contained in this section shall be construed as imposing on SWBT any right or duty to determine the amounts owing by any third-party to Applicant, to collect or remit any such amounts for or to Applicant, to resolve or adjudicate any disputes over reimbursement between Applicant and such third-party, or to take any other action to enforce Applicant's reimbursement rights against any third party.

10.09 License and Attachment. After all required make-ready work is completed, SWBT will execute and return to Applicant a license confirming that Applicant may attach the specified facilities to SWBT's poles or place specified facilities in SWBT's conduit system. Applicant shall have access to attach or place only those facilities specifically described in the license, and no others, except as provided in Section 12.03 below.

ARTICLE 11: CONSTRUCTION OF APPLICANT'S FACILITIES

11.01 Applicant's Responsibilities for Attaching and Placing Its Facilities. Applicant 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, Applicant 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 Applicant'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.

11.02 Construction Schedule. After the issuance of a license, Applicant shall provide SWBT with an updated construction schedule and thereafter keep SWBT informed of anticipated changes in the construction schedule. Construction schedules required by this section shall include, at a minimum, the following information:

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

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

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

12.02 Routine Maintenance of Applicant's Facilities. Each license granted under this Agreement authorizes Applicant 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 Applicant's facilities in any manner which results in Applicant's attachments differing substantially in size, weight, or physical characteristics from the attachments described in Applicant's license.

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

- (a) Drive rings and J-hooks may be installed as specified in pole attachment licenses issued to Applicant.
- (b) If attachment space has already been licensed to Applicant on a given SWBT pole, Applicant may install drive rings and J-hooks within the space assigned to

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Applicant (**e.g., six inches above and six inches below Applicant's point of attachment on the pole**) without **applying for or obtaining a new or amended license**. **No additional attachment charges shall apply with respect to drive rings and J-hooks installed in Applicant's licensed attachment space.**

- (c) Applicant's **first** choice for placement of drive rings and J-hooks shall be the licensed attachment space **assigned to Applicant as provided in subsections (a) and (b) above**; provided, however, that if attachment space **already licensed to Applicant on a given SWBT pole is not adequate for Applicant's drive rings or J-hooks**, Applicant may, **when necessary**, and without **applying for or obtaining a new or amended license**, install such **drive rings and J-hooks above or below Applicant's licensed attachment space as described in subsection (b) above**. **No additional attachment charges shall apply with respect to drive rings and J-hooks installed outside Applicant's licensed attachment space as permitted in this subsection.**
- (d) If Applicant **has not already been licensed attachment space on a given SWBT pole**, Applicant may, **when necessary**, install **drive rings and J-hooks on unassigned space on such pole** without **first obtaining a license for such attachment and shall, immediately following such installation, apply for a license for the attachment.**
- (e) **Notwithstanding the provisions of subsections (c)-(d) above**, Applicant may not install **drive rings and J-hooks in space assigned to SWBT or another joint user without the approval of SWBT or such other joint user and may not install drive rings and J-hooks in unassigned space in any manner which will block or preclude the subsequent occupancy or use of space by SWBT or other joint users**. If the presence of Applicant's **facilities in space not assigned to Applicant will block or preclude the use of assigned or otherwise assignable space by SWBT or other joint users**, **Applicant shall, on SWBT's request, promptly relocate the facilities in order to accommodate the facilities of other users and shall bear all expenses associated with such relocation.**
- (f) Applicant **shall, at the request of SWBT or another joint user, at Applicant's expense, promptly relocate any drive rings and J-hooks placed on SWBT's poles other than as permitted in this section.**

12.04 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities.

Maintenance ducts **shall be available, on a nondiscriminatory basis, for short-term (not to exceed 30 days) non-emergency maintenance or repair activities by any person or entity (including but not limited to SWBT, Applicant, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located**; provided, however, that use of the maintenance duct for **non-emergency maintenance and repair activities must be scheduled by SWBT**. A **person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify SWBT of such use and must either vacate the maintenance duct**

within 30 days or, with SWBT's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies which may occur while the maintenance duct is occupied.

12.05 Applicant Responsible for Maintenance of Applicant's Facilities. Applicant 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 Applicant's facilities and (b) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

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

ARTICLE 13: MODIFICATION OF APPLICANT'S EA _____

13.01 Notification of Planned Modifications. At least 30 days before adding to, relocating, replacing or modifying its facilities attached to a pole or anchor or located in any part of SWBT's conduit system, Applicant shall provide sufficient information to SWBT to determine whether the proposed addition, relocation, replacement, or modification is permitted under Applicant's present license or requires a new or amended license.

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

- (a) requires that Applicant occupy additional space on SWBT's poles (except on a temporary basis in the event of an emergency);
- (b) requires that Applicant occupy additional space (other than space in the maintenance duct in accordance with Sections 12.04, 13.03, and 15.02 of this Agreement) in any part of SWBT's conduit system 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 Applicant's present application (e.g., different duct or size increase causing a need to recalculate storm loadings, guying, or pole class);

or

(d) requires additional holding capacity on a permanent basis.

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

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

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

ARTICLE 14: REARRANGEMENT OF APPLICANT'S FACILITIES AT SWBT'S REQUEST

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

another person or entity to ~~seek~~ access to **SWBT's** poles, ducts, conduits, or rights-of-way.

- (a) Applicant **agrees that** Applicant **will** cooperate with **SWBT** and joint users in making such rearrangements **as may** be necessary to enable such changes **to be** made and that **costs incurred by** Applicant **in** making such rearrangements **shall**, in the absence of a specific agreement **to the contrary**, be borne by **the** parties in accordance with **then** applicable **statutes, regulations, and agency orders, including the Pole Attachment Act and regulations thereunder.**
- (b) Applicant **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** Applicant **shall not reject 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;**
 - (2) **the timeliness of SWBT's request to Applicant;**
 - (3) **the nature and number of rearrangements sought;**
 - (4) **the impact on the ability of the parties and joint users to meet customer service needs; and**
 - (5) **risks of service interruption to customers of the parties and joint users.**
- (c) Nothing **contained in this** article **shall** preclude Applicant **from advising** **SWBT,** within **60 days** from the date of **the** notice, of **its** desire to add to or **modify** its **existing attachment.**

ARTICLE 15: EMERGENCY REPAIRS AND POLE REPLACEMENTS

15.01 Applicability. The parties **acknowledge** that in **the event of an emergency, services** provided by **the parties and joint users** to their respective **customers** may be interrupted, that it **may not be possible for all service providers with facilities attached to SWBT's poles 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 Agreement. 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 **Applicant Responsible for Emergency Repairs to Its Own Facilities: Access to Maintenance Duct.** In general, Applicant shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling Applicant to make such repairs.

- (a) Nothing contained in this Agreement shall be construed as requiring SWBT to perform any repair or service restoration work of any kind with respect to Applicant's facilities.
- (b) Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any person or entity (including but not limited to SWBT, Applicant, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located; provided, however, that a person or entity using the maintenance duct for emergency repair activities shall immediately notify SWBT of such use and must either vacate the maintenance duct within 30 days or, with SWBT's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance duct. The parties agree not to exceed 30 days' use except in unusual emergencies that may require longer than 30 days to rectify.
- (c) If necessary, other unoccupied ducts 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.** Promptly after the issuance of a license permitting Applicant to attach facilities to SWBT's poles or place facilities within SWBT's conduit system, Applicant shall provide SWBT with the emergency contact number of Applicant's designated point of contact for coordinating the handling of emergency repairs of Applicant's facilities and shall thereafter notify SWBT of changes to such information

15.04 **Reporting of Conditions Requiring Emergency Repairs.** Applicant 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 Applicant 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 Applicant's facilities.

15.05 **Order of Precedence of Work Operations: Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations.** When notice and coordination are practicable, SWBT, Applicant, and other affected parties shall coordinate repair and other work operations in

emergency situations involving **service disruptions**. Disputes will be immediately resolved at the site by the **affected** parties 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 **ha**) 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.
- (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 either party reasonably believes that, due to the condition of the other party's **facilities** placed on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, there is an **immediate or imminent** threat to the safety or health of employees or any other person, to the physical integrity or functioning of SWBT's or Applicant's facilities, or SWBT's or Applicant's ability to meet its **service obligations**, SWBT or Applicant 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 Applicant may reattach them as provided in this section but shall not be obligated to do so.

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

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

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

15.08 Applicant to Bear Expenses. Applicant shall bear all **expenses** arising out of or in connection with emergency repairs of its **facilities and transfers** or ~~rearrangements~~ of its **facilities associated** with emergency pole replacements under this article.

- (a) Applicant 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 Applicant's **facilities**.
- (b) Applicant will **reimburse** **SWBT** for the **cost** incurred by **SWBT** for **any work** performed by **SWBT** on Applicant's behalf as provided by this article.

ARTICLE 16: INSPECTION BY SWBT OF APPLICANT'S FACILITIES

16.01 SWBT's Right to Make Periodic or Spot Inspections. **SWBT** shall have the right, but not the duty, to make **periodic** or **spot** inspections at any time of **Applicant's facilities attached** to **SWBT's poles** or **placed** within **SWBT's poles, 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 **Agreement** and licenses hereunder. **SWBT may charge Applicant for inspection expenses only if the inspection reflects that Applicant is in substantial noncompliance with the terms of this Agreement.** **If the inspection reflects that Applicant's facilities are not in compliance with the terms of this Agreement, Applicant shall bring its facilities into compliance promptly after being notified of such noncompliance and shall notify SWBT in writing when the facilities have been brought into compliance.**

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

ARTICLE 17: TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

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

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

- (a) Before removing any such untagged or unmarked facilities, SWBT shall first attempt to determine whether the facilities are operational or subject to a license issued under this Agreement or a prior licensing agreement.
- (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 Applicant under this Agreement, SWBT shall give written notice to Applicant requesting Applicant to tag or mark the facilities within 60 days and Applicant shall either tag the facilities within the 60-day period, advise SWBT in writing of its schedule for tagging the facilities, or notify SWBT in writing that it disclaims ownership of or responsibility for the facilities. If Applicant disclaims ownership of or responsibility for the facilities, Applicant shall disclose to SWBT the identity of the owner or other person or entity thought by Applicant to be responsible for the facilities.
- (d) If the facilities appear to be facilities used by Applicant but not subject to a current license granted under this Agreement, the provisions of Sections 17.04-17.12 shall apply.

17.03 Applicant's Verification That Presently Attached Facilities Are Subject to Existing Licenses. Applicant warrants and represents to SWBT that Applicant has verified or will, within six months after the effective date of this Agreement, verify that all facilities owned or used by Applicant and presently attached to SWBT's poles or occupying any part of SWBT's conduit system within this State have been disclosed to SWBT and are subject to existing licenses. If it is determined that any of Applicant's facilities are not the subject of existing licenses, such facilities will be made subject to licenses issued under this Agreement or promptly removed from SWBT's poles or conduits.

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

17.05 Notice to Applicant. If any of Applicant's facilities for which no license is presently in effect are found attached to SWBT's poles or anchors or within any part of SWBT's conduit system, SWBT, without prejudice to other rights or remedies available to SWBT under this Agreement; and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Applicant advising Applicant that no license is presently in effect with respect to the facilities and that Applicant must, within 15 business days, respond to the notice as provided in Section 17.06 of this Agreement.

17.06 Applicant's Response. Within 15 business days after receiving a notice under Section 17.05 of this Agreement, Applicant shall acknowledge receipt of the notice and submit to SWBT, in writing, either:

- (a) a denial or disclaimer of ownership or other interest in the facilities, together with an explanation of the factual and claimed legal basis for such denial or disclaimer;
- (b) a statement that the facilities are the subject of a current license, together with an explanation of the factual and claimed legal basis for Applicant's assertion that the facilities are currently licensed; or
- (c) an application for a new or amended license with respect to such facilities, together with a full and complete explanation of the circumstances under which such facilities were attached to, placed within, or allowed to remain on or in SWBT's poles or any part of SWBT's conduit system. Such explanation shall include, at a minimum, the following:
 - (1) the date (or estimated date) when such facilities were attached to SWBT's poles or placed in SWBT's conduit system, and the factual basis supporting Applicant's selection of such date (or estimated date); and
 - (2) the factual basis for Applicant's assertion, if any, that decisions to attach, place or allow the facilities to remain on or in SWBT's poles or conduit system were made in good faith and without intent to circumvent SWBT's pole attachment or conduit occupancy licensing requirements.

17.07 Denial or Disclaimer of Ownership or Other Interest. Applicant's submission to SWBT of a denial or disclaimer of ownership or other interest in the facilities shall constitute Applicant's waiver of any objection Applicant may have to SWBT's removal of the facilities. Submission of such a denial or disclaimer shall not be construed as an agreement by Applicant to pay any charges associated with removal of the facilities; provided, however, that nothing

contained in this section shall prohibit SWBT from invoking the dispute resolution process or filing suit, in a court of competent jurisdiction, to establish that Applicant is liable to SWBT for the costs of removal.

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

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

17.10 Fees and Charges. Applicant shall be liable to SWBT for all fees and charges associated with any unauthorized pole attachment or conduit occupancy for which it is responsible. License fees and charges shall continue to accrue until the unauthorized facilities are removed from SWBT's poles or conduit system and shall include, but not be limited to, all fees and charges which would have been due and payable if Applicant and its predecessors had continuously complied with all applicable SWBT licensing requirements. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges and shall be determined as follows. The parties shall engage in good faith discussions to reach a mutually agreeable determination as to the amount due and owing in accordance with APPENDIX L. If the parties are unable to reach agreement on the amount due and owing, the amount owing with respect to each unauthorized attachment or occupancy shall be equal to three times the annual attachment and occupancy fees in effect on the date Applicant is notified by SWBT of the unauthorized attachment or occupancy pursuant to Section 17.05 of this Agreement. -

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

17.12 No Ratification of Unlicensed Attachments or Unauthorized Use of SWBT's Facilities. No act or failure to act by SWBT with regard to any unlicensed attachment or occupancy or unauthorized use of SWBT's facilities shall be deemed to constitute a ratification by SWBT of the unlicensed attachment or occupancy or unauthorized use.

ARTICLE 18: REMOVAL OF APPLICANTS FACILITIES

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

- (a) Applicant 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 removal of the facilities will begin and end.
- (b) Applicant shall, if requested by SWBT to do so, place a pull mandrel (dug) through all or any specified part of the duct which was occupied by Applicant.
- (c) Except as otherwise agreed upon in writing by the parties, Applicant must, after removing its facilities, plug all previously occupied ducts at the entrances to SWBT's manholes (if SWBT would itself plug the ducts under the same circumstances) in accordance with the standards set by SWBT for its operations, provided that such standards have been communicated in writing to Applicant at least 10 days in advance of the removal of Applicant's facilities.
- (d) Applicant 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 Applicant's facilities from SWBT's poles, ducts, conduits, or rights-of-way and (2) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.
- (e) When Applicant no longer intends to occupy space on a pole or in a conduit, Applicant will provide written notification to SWBT that it wishes to terminate the license with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Applicant's facilities, the license shall terminate and the space shall be available for reassignment.

18.02 Removal of Facilities Not in Active Use. At SWBT's request, Applicant shall remove from SWBT's poles, ducts, conduits, and rights-of-way any of Applicant's facilities which

are no longer in active use; provided, however, that Applicant shall not be required to remove such facilities when due cause and justification exists for allowing them to remain in place. Applicant shall not abandon any of its facilities by leaving them on SWBT's poles, within SWBT's conduit system, at any location where they may block access to or obstruct SWBT's poles or any part of SWBT's conduit system, or on any public or private property in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

18.03 **Removal Following Termination of License.** Applicant shall remove its facilities from SWBT's poles 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 conduit system.

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

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

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

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

- (a) the date when SWBT plans to commence removal of Applicant's facilities, and

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

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

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

ARTICLE 19: FEES, CHARGES, AND BILLING

19.01 One-time Contract Administration Fee. SWBT may charge Applicant a one-time contract administration fee as provided in APPENDIX L. Such fee shall be **assessed** for work performed in the **initial processing** of this Agreement, and Applicant **agrees that such fee shall be non-refundable** upon acceptance of this Agreement by SWBT. **The one-time contract administration fee is not a fee assessed for individual license applications under this Agreement.** SWBT may also charge Applicant contract administration fees in connection with **renegotiations** of this Agreement at Applicant's request.

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

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 APPENDIX L. For all attachments to SWBT's poles and occupancy of SWBT's ducts and conduits, Applicant will pay SWBT's **semiannual charges as specified in APPENDIX L.** These charges apply not only to pole attachments and conduit occupancy authorized pursuant to licenses subject to this Agreement but also to pole attachments and conduit occupancy, *if any*, commenced by Applicant or its predecessors without authorization by SWBT.

19.04 Billing for Attachment and Occupancy Fees. Semiannual attachment and occupancy fees under this Agreement 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 APPENDIX 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 Applicant under licenses issued as of the date of billing by SWBT, shall be determined in accordance with the schedule of charges set forth in APPENDIX I, and shall be payable **semiannually** in advance. Pole attachment and conduit occupancy space assigned to Applicant prior to the issuance of a license shall be billed in the same manner as if a license had been issued on the date of assignment.

- (a) Bills shall be submitted to Applicant for two semiannual billing periods, the first period including charges for the months of January through June and the second including charges for the months of July through December.
- (b) Attachment and occupancy status shall be considered to have commenced as of January 1 for any pole attachment or conduit occupancy for which a license is issued between January 1 and June 30 of the same calendar year and as of July 1 for any pole attachment or conduit occupancy for which a license is issued between July 1 and December 31 of the same calendar year. Charges associated with newly licensed pole attachments and conduit occupancy shall not be prorated and shall be payable in advance; provided, however, that nothing herein shall preclude SWBT from billing such charges in arrears.
- (c) Charges shall not be adjusted or prorated retroactively in the event of the removal of Applicant's facilities.

19.05 Pre-license Survey Fees. With respect to pre-license surveys conducted by SWBT pursuant to Section 9.05 of this Agreement, SWBT may charge Applicant cost-based prelicense survey fees as provided in APPENDIX L

19.06 Make-ready Charges. Applicant will pay make-ready charges, if any, as specified in this section and APPENDIX L. As provided in Section 10.04 of this Agreement, SWBT will furnish Applicant an estimate of the charges for make-ready work no later than 45 days after receipt by SWBT of Applicant's completed application or within such other period as may be mutually agreed upon in writing by the parties. The estimate will be stated on SWBT Form SW-9434 ("Authorization for Pre-license Survey or Make-Ready Work"), a copy of which is attached hereto as part of APPENDIX III. SWBT shall not be required to perform the make-ready work until Applicant has prepaid the estimated make-ready charges in full. After make-ready work has been completed by SWBT, Applicant shall pay SWBT the difference between the estimated make-ready charges and the actual charges, if the actual charges are greater than the estimate, or SWBT shall refund to Applicant the difference between the estimated make-ready charges and the actual charges, if the actual charges are less than the estimate.

19.07 Due Date for Payment. For fees and charges other than charges for make-ready work, each bill or invoice submitted by SWBT to Applicant shall state the date that payment is due, which date shall be not less than 60 days after the date of the bill or invoice. Applicant will pay each such bill or invoice on or before the stated due date. For make-ready work, the payment

due date shall be not less than 30 days after the date of the bill or invoice.

19.08 Modification of Fees and Charges. Subject to applicable federal and state laws, regulations, and agency orders, SWBT shall have the right to **modify all** charges and fees set forth in this Agreement as provided in this section.

- (a) Upon at least 60 days' prior written notice to Applicant, SWBT may change the amounts of any fee or charge specified in APPENDIX L
 - (1) The notice shall state the effective date of the changes, which shall be no earlier than the 60th day after the notice is given.
 - (2) The changes shall be effective on the effective date stated in the notice Unless stayed or prohibited by a court or agency of competent jurisdiction.
 - (3) The changes shall be reflected on the first semiannual bill issued on or after the effective date specified in the notice.
- (b) If the fees and charges set forth in the notice are not acceptable to Applicant, Applicant may, notwithstanding any other provisions of this Agreement, terminate this Agreement or seek relief before a court or agency of competent jurisdiction.

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

19.10 Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All charges and fees set forth in this Agreement, including charges and fees set forth in this article and APPENDIX I, shall be subject to all applicable federal and state laws, regulations, and commission orders, including but not limited to the Pole Attachment Act, regulations, rules, and commission orders issued thereunder.

ARTICLE 20: PERFORMANCE AND PAYMENT BONDS

20.01 Bond May Be Required. SWBT may require Applicant, authorized contractor, and other persons acting on Applicant's behalf to execute performance and payment bonds (or

provide other **forms of security**) in amounts and **on** terms sufficient to **guarantee** the performance of their respective obligations arising out of or in connection with **this Agreement**.

- (a) If Applicant elects to perform make-ready **work** or facilities **modifications** under **Sections 10.02-10.05** of **this Agreement**, **SWBT may** require Applicant, authorized contractors, and other persons acting on Applicant's behalf to execute bonds equivalent to **those which would** be required by **SWBT** if the **work** had been performed by **contractors**, subcontractors, or **other persons** selected **directly** by **SWBT**.
- (b) No other **bond shall** be required of Applicant to secure obligations arising under this Agreement in the absence of due **cause** and **justification**.
- (c) **If a bond or similar form of assurance is required of Applicant, an authorized contractor, or other person acting on Applicant's behalf, Applicant shall** promptly submit to **SWBT**, upon **request**, adequate proof that the **bond** remains in **full force and effect** and provide **certification from the company** issuing the bond that the bond **will not be cancelled, changed or materially altered** without first providing **SWBT 60 days** written notice.
- (d) **SWBT** may communicate directly **with the issuer** of any bond 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**.

20.02 Payment and Performance Bonds in Favor of Contractors and Subcontractors.

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

ARTICLE 21: APPLICANT'S LIABILITY AND DUTY TO INDEMNIFY SWBT

21.01 Definitions. The definitions in this Section shall apply to all sections of this article.

- (a) The phrase "**claims, demands, and causes of action**" includes **claims**, demands,

causes of action, damages, payments, costs, charges, attorneys' fees, expenses, and Liabilities of every kind and character.

- (b) "Negligence" includes both negligent acts and omissions.
- (c) "Personal injury" includes but is not limited to bodily injury, physical injury, mental injury, pain and suffering, mental anguish, and mental distress.
- (d) When used in the phrase "protect, defend, indemnify and save SWBT harmless from and against any and all claims, demands, and causes of action" and similar phrases, the term "SWBT" includes Southwestern Bell Telephone Company, its officers, directors, employees, agents, representatives, and attorneys; SWBT's corporate parent, SBC Communications Inc., and its officers, directors, employees, agents, representatives, and attorneys; and all subsidiaries and affiliates of Southwestern Bell Telephone Company and SBC Communications Inc. and their respective officers, directors, employees, agents, representatives, and attorneys.
- (e) When used in the phrase "protect, defend, indemnify and save SWBT harmless from and against any and all claims, demands, and causes of action" and similar phrases, the term "SWBT" does not include contractors, subcontractors, and other vendors acting on SWBT's behalf.

21.02 INDEMNIFICATION FOR CERTAIN CLAIMS RELATED TO THE

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SWBT HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH THE PERSONAL, INJURY OR DEATH OF ANY PERSON ACTING ON APPLICANT'S BEHALF AND RESULTING FROM ANY INCIDENT OCCURRING ON, WITHIN, OR IN THE VICINITY OF SWBT'S POLES, DUCTS, CONDUITS, OR RIGHTS-OF-WAY WHILE SUCH PERSON WAS ON THE PREMISES FOR THE OSTENSIBLE PURPOSE OF PERFORMING WORK ON BEHALF OF APPLICANT. THIS SECTION EXPRESSLY REQUIRES APPLICANT TO PROTECT, DEFEND, INDEMNIFY AND SAVE SWBT HARMLESS FROM AND AGAINST ANY SUCH CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH NEGLIGENT AND ALLEGEDLY NEGLIGENT ACTS AND OMISSIONS OF SWBT AND PERSONS ACTING ON SWBT'S BEHALF. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED AS REQUIRING APPLICANT TO (a) INDEMNIFY SWBT FROM ANY LIABILITY ARISING OUT OF OR IN CONNECTION WITH SWBT'S WILLFUL OR INTENTIONAL MISCONDUCT OR FOR ANY ACTS OR OMISSIONS CONSTITUTING GROSS NEGLIGENCE BY SWBT, (b) FOREGO ANY CLAIMS APPLICANT MAY HAVE AGAINST CONTRACTORS, SUBCONTRACTORS, AND OTHER VENDORS ACTING ON SWBT'S BEHALF, (c) INDEMNIFY SWBT'S CONTRACTORS, SUBCONTRACTORS, OR OTHER VENDORS ACTING ON SWBT'S BEHALF, OR (d) INDEMNIFY SWBT OR ANY PERSONS ACTING

**ON SWBT'S BEHALF IN CONTRAVENTION OF FEDERAL LAW OR IN
CONTRAVENTION OF THE LAWS OF THIS STATE.**

21.03 Indemnification for Applicant's Acts. Applicant agrees to protect, defend, indemnify and save SWBT harmless from and against any and all claims, demands, and causes of action arising out of, in connection with, or as a result of:

- (a) Applicant's performance of this Agreement;
- (b) the performance by Applicant of any act authorized, or permitted under this Agreement or any license subject to this Agreement; or
- (c) the failure by Applicant, or any person or entity acting on Applicant's behalf, to comply with any of the terms or conditions of this Agreement.

21.04 Personal Injury, Death, and Property Damage Claims Arising Out of Applicant's Acts or Omissions. Applicant agrees to protect, defend, indemnify and save SWBT harmless from and against any and all claims, demands, and causes of action, of every kind and character, arising out of or in connection with personal injury, death, or property damage suffered by any person or entity and arising, in whole or in part, out of or in connection with any act or omission of Applicant (or any person acting on Applicant's behalf) related to the planned or actual construction, attachment, use, inspection, maintenance, repair, rearrangement, modification, or removal of facilities attached or to be attached to SWBT's poles or facilities or placed or to be placed in SWBT's ducts, conduits, or rights-of-way.

21.05 Personal Injury, Death, and Property Damage Claims Arising Out of the Presence of Applicant's Facilities on, Within, or in the Vicinity of SWBT's Poles, Ducts, Conduits, or Rights-of-Way. Applicant agrees to protect, defend, indemnify and save SWBT harmless from and against any and all claims, demands, and causes of action, of every kind and character, arising out of or in connection with personal injury, death, or property damage suffered by any person or entity and arising, in whole or in part, out of or in connection with the presence of Applicant's facilities on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

21.06 Personal Injury, Death, and Property Damage Claims Relating to Nuisances and Hazardous Conditions Created by Applicant. Applicant agrees to protect, defend, indemnify and save SWBT harmless from and against any and all claims, demands, and causes of action, of every kind and character, arising out of or in connection with personal injury, death, or property damage suffered by any person or entity and arising, in whole or in part, out of or in connection with the existence of (or failure to abate) any nuisance or hazardous condition created by Applicant (or any person acting on Applicant's behalf) or otherwise resulting from the presence of Applicant's facilities on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, including but not limited to any such nuisance or hazardous condition resulting from any improper attachment or any failure of Applicant's facilities to remain attached to or property suspended from SWBT's poles or any other facilities to which Applicant's facilities may be attached.

21.07 Damage to Facilities. Applicant shall exercise due care to avoid damaging the facilities of SWBT, joint users, and other persons or entities whose facilities are attached to SWBT's poles or located within SWBT's ducts, conduits, and rights-of-way and shall assume full responsibility and liability for any and all direct and indirect loss arising out of or in connection with any such damage caused by the acts or omissions of Applicant and any persons or entities acting on Applicant's behalf, including but not limited to failures to follow any specifications or comply with any other obligations set forth in this Agreement.

- (a) Applicant shall develop and implement sufficient safeguards and controls to insure that Applicant and all persons acting on Applicant's behalf avoid damaging any such facilities.
- (b) In the event such damage occurs, Applicant shall make an immediate report to the owner of any facilities damaged by Applicant or by any persons acting on Applicant's behalf and shall also report the damage to SWBT.
- (c) Applicant shall be liable to SWBT for any damage to SWBT's facilities caused by Applicant or by any person acting on Applicant's behalf and shall protect, defend, indemnify, and hold SWBT harmless from any and all claims, demands, and causes of action directly or indirectly arising out of or in connection with such damages to SWBT's facilities, including but not limited to any and all claims, demands, and causes of action resulting from service outages or failures experienced by SWBT's customers.
- (d) Applicant shall protect, defend, indemnify, and hold SWBT harmless from any and all claims, demands, and causes of action, directly or indirectly arising out of or in connection with any damage caused by Applicant or by any person acting on Applicant's behalf to the facilities of any joint user or other person or entity whose facilities are attached to SWBT's poles or placed within SWBT's ducts, conduits, or rights-of-way, including but not limited to any and all claims, demands, and causes of action resulting from service outages or failures experienced by customers of such joint user or other person or entity.
- (e) Compliance with the specifications provided in this Agreement shall not be a defense to liability or to any indemnity obligation arising under this section.

21.08 Damage to Property and Loss of Rights to Use Property. Applicant shall exercise due care to avoid damage to real or personal property located on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way and shall protect, indemnify, defend and hold SWBT harmless from any and all claims, demands, or causes of action resulting, in whole or in part, from any acts or omissions by Applicant or other persons acting on Applicant's behalf which cause damage to any such real or personal property. In addition, Applicant shall exercise due care to avoid taking any action which may result in the loss by SWBT, or by any joint user, of any rights-of-way or third-party property owner consents and shall protect, defend, indemnify, and hold SWBT harmless from and against any such loss and any costs of defending against any

threatened loss of such **rights-of-way** or third-party property owner consents based in whole or in part on the acts or omissions of Applicant or any persons acting on Applicant's behalf.

21.09 Other Claims Arising In Connection with the Construction and Operation of Applicant's Facilities. Applicant shall protect, defend, indemnify, and hold SWBT harmless from any and all claims, demands, and causes of action which arise directly or indirectly from the planned or actual construction, attachment, use, inspection, maintenance, repair, rearrangement, modification, presence, failure, or removal of Applicant's facilities attached (or to be attached) by Applicant to SWBT's poles or placed in SWBT's ducts, conduits, or rights-of-way, or from any failure by Applicant to remove its facilities, including but not limited to:

- (a) claims arising out of or in connection with the failure by Applicant to meet any obligations (including but not limited to contract and service obligations) to Applicant's customers, suppliers, and other persons and entities dealing with Applicant;
- (b) claims for taxes, franchise fees, right-to-use fees, and other special charges assessed on Applicant or assessed on SWBT due to the placement or presence of Applicant's facilities on or within SWBT's poles, ducts, conduits, or rights-of-way;
- (c) tort claims of every kind and character, including but not limited to claims and demands for damages or losses for negligence, trespass, invasion of privacy, defamation (including but not limited to libel and slander), and infliction of mental anguish or distress;
- (d) claims for the violation of any intellectual property rights, including but not limited to claims for copyright infringement, patent infringement, or unauthorized use or transmission of television or radio broadcast programs or other program material; and
- (e) claims arising out of or in connection with the violation or alleged violation by Applicant of my statute, ordinance, regulation, or other law.

21.10 Notice of Claims. If any personal injury, death, or property damage claim is asserted against Applicant in connection with any incident occurring on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, or if any incident occurs which may give rise to such a claim, Applicant shall promptly notify SWBT of such claim or incident.

21.11 Accident Reports and Statements. Applicant will promptly provide SWBT, at no cost to SWBT, with copies of all accident reports and statements made to Applicant's insurer (or to insurers of any person or entity acting on Applicant's behalf) by Applicant or others in connection with any claims, including but not limited to personal injury, death, and property damage claims, arising or alleged to have arisen in any manner, directly or indirectly, out of or in connection with the construction, maintenance, repair, replacement, presence, use or removal of

Applicant's facilities placed on or in SWBT's poles, ducts, conduits, or rights-of-way.

**ARTICLE 22: SWBT'S LIABILITY
AND LIMITATIONS OF SWBT'S LIABILITY**

22.01 LIMITATIONS OF SWBT'S LIABILITY IN GENERAL. THIS ARTICLE AND ARTICLE 21 CONTAIN PROVISIONS EXPRESSLY LIMITING SWBT'S LIABILITY WITH RESPECT TO CERTAIN CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH SWBT'S ACTS AND OMISSIONS (INCLUDING NEGLIGENT ACTS AND OMISSIONS). NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED AS LIMITING SWBT'S LIABILITY FOR ANY ACTS OR OMISSIONS CONSTITUTING WILLFUL OR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE BY SWBT OR AS REQUIRING APPLICANT TO FOREGO ANY CLAIMS APPLICANT MAY HAVE AGAINST CONTRACTORS, SUBCONTRACTORS, AND OTHER VENDORS ACTING ON SWBT'S BEHALF. NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED AS EXEMPTING SWBT FROM ANY LIABILITY IN CONTRAVENTION OF FEDERAL LAW OR IN CONTRAVENTION OF THE LAWS OF THIS STATE. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS ARTICLE:

- (a) **SWBT'S LIABILITY TO APPLICANT FOR DAMAGES RELATING TO THIS AGREEMENT (INCLUDING DAMAGES ARISING OUT OF OCCURRENCES ON, WITHIN, OR IN THE VICINITY OF SWBT'S POLES, DUCTS, CONDUITS, OR RIGHTS-OF-WAY) SHALL NOT, REGARDLESS OF THE BASIS OF APPLICANT'S DAMAGES CLAIMS, DURING ANY CALENDAR YEAR EXCEED THE GREATER OF \$250,000 OR THREE TIMES THE AGGREGATE AMOUNT OF POLE ATTACHMENT AND CONDUIT OCCUPANCY FEES PAID BY APPLICANT TO SWBT UNDER THIS AGREEMENT DURING THE CALENDAR YEARS WHEN THE ACTS OR OMISSIONS GIVING RISE TO LIABILITY OCCURRED.**
- (b) **FOR DAMAGES RELATING TO THIS AGREEMENT (INCLUDING DAMAGES ARISING OUT OF OCCURRENCES ON, WITHIN, OR IN THE VICINITY OF SWBT'S POLES, DUCTS, CONDUITS, OR RIGHTS-OF-WAY), SWBT SHALL NOT BE LIABLE TO APPLICANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY APPLICANT (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY APPLICANT), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING NEGLIGENCE.**
- (c) **SWBT SHALL NOT BE LIABLE TO APPLICANT FOR THIRD-PARTY CLAIMS AGAINST APPLICANT FOR LOSSES OR DAMAGES RELATING**

TO THIS AGREEMENT (INCLUDING DAMAGES *ARISING* OUT OF OCCURRENCES ON, **WITHIN**, OR IN **THE VICINITY OF SWBT'S POLES, DUCTS, CONDUITS, OR RIGHTS-OF-WAY**).

22.02 SWBT NOT GENERALLY LIABLE FOR DAMAGES TO APPLICANT'S FACILITIES. BY LICENSING APPLICANT TO ATTACH FACILITIES TO SWBT'S POLES OR PLACE FACILITIES WITHIN SWBT'S DUCTS, CONDUITS, OR RIGHTS-OF-WAY, SWBT DOES NOT WARRANT THE UNINTERRUPTED USE OF SUCH FACILITIES BY APPLICANT OR UNDERTAKE TO PROTECT SUCH FACILITIES OR ANY PERSONNEL INVOLVED IN THE CONSTRUCTION, PLACEMENT, USE, INSPECTION, **MAINTENANCE, REPAIR, REARRANGEMENT**, MODIFICATION, OR REMOVAL OF SUCH FACILITIES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 22.03 OF THIS AGREEMENT, SWBT SHALL NOT BE LIABLE TO APPLICANT FOR ANY DAMAGES TO APPLICANT'S **FACILITIES** OR FOR ANY INJURIES SUFFERED BY ANY PERSONNEL INVOLVED IN THE CONSTRUCTION, ATTACHMENT, USE, INSPECTION, **MAINTENANCE, REPAIR**, MODIFICATION, **REARRANGEMENT**, OR REMOVAL OF APPLICANT'S FACILITIES.

22.03 Damage to Applicant's Facilities. SWBT and persons acting on SWBT's behalf shall exercise due care to avoid **damaging any** of Applicant's **facilities** attached or to be attached to SWBT's poles or placed or to be placed within SWBT's ducts, conduits, or rights-of-way.

- (a) In the event such damage occurs, SWBT shall make an immediate report to Applicant of any **facilities damaged** by SWBT or by persons acting on SWBT's behalf.
- (b) SWBT shall reimburse Applicant for actual costs incurred by the Applicant for the physical repair of facilities damaged by affirmative acts of negligence committed by SWBT or by SWBT's employees.
- (c) SWBT shall reimburse Applicant for actual costs incurred by the Applicant for the physical repair of facilities damaged by affirmative acts of negligence committed by SWBT's non-employee agents, representatives, contractors, subcontractors, and other non-employees acting on SWBT's behalf, provided, however, that SWBT shall not be liable to Applicant under this subsection until Applicant's claims against such non-employee agents, representatives, contractors, subcontractors, or other persons, and their respective insurers, have been adjudicated or settled; provided further that SWBT's liability shall not exceed the difference between the actual costs incurred by Applicant and the amounts recovered by Applicant directly from such non-employee agents, representatives, contractors, subcontractors, other persons, and their respective insurers; and provided further that any settlement with any such non-employee agent, contractor, representative, subcontractor, or other person for less than the full amount of Applicant's claim shall operate as a full and complete release of any liability of SWBT under this section unless SWBT is a party to and approves

such settlement.

- (d) **EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT , SWBT SHALL NOT BE LIABLE TO APPLICANT, OR HAVE ANY OBLIGATION TO INDEMNIFY APPLICANT, FOR ANY LIABILITY OF APPLICANT TO ITS CUSTOMERS WITH RESPECT TO:**
- (1) **ANY INTERRUPTION OF ANY SERVICE PROVIDED BY APPLICANT RESULTING FROM DAMAGE TO OR INTERFERENCE WITH THE OPERATION OF APPLICANT'S FACILITIES ATTACHED TO SWBT'S POLES OR PLACED WITHIN SWBT'S DUCTS, CONDUITS, OR RIGHTS-OF-WAY AND CAUSED BY NEGLIGENT ACTS OR OMISSIONS OF ANY PERSON, INCLUDING SWBT OR PERSONS ACTING ON SWBT'S BEHALF ;OR**
- (2) **ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY MANNER RELATED TO THE USE BY APPLICANT OR ITS CUSTOMERS OF FACILITIES ATTACHED TO OR PLACED WITHIN SWBT'S POLES, DUCTS, CONDUITS, OR RIGHTS-OF-WAY, INCLUDING ANY SUCH SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING, IN WHOLE OR IN PART, AS A RESULT OF NEGLIGENT ACTS OR OMISSIONS OF ANY PERSON, INCLUDING SWBT OR PERSONS ACTING ON SWBT'S BEHALF.**

ARTICLE 23: INSURANCE

23.01 Insurance Required. Licenses issued pursuant to this Agreement shall be conditioned on Applicant's compliance with the insurance requirements specified in this section. Unless Applicant has provided proof of self-insurance as permitted in Section 23.02 below:

- (a) **Applicant shall obtain and maintain in full force and effect, for so long as this Agreement remains in effect, insurance policies specified in APPENDIX IV of this Agreement. Each policy shall name SWBT as an additional insured and shall include provisions requiring the insurer to give SWBT notice of any lapse, cancellation, or termination of the policy or any modification to the policy affecting SWBT's rights under the policy, including but not limited to any decrease in coverage or increase in deductibles.**
- (b) **Exclusions from coverage or deductibles, other than those expressly permitted in APPENDIX 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 Applicant's behalf shall be required to meet the same insurance requirements applicable to contractors performing similar work on SWBT's behalf. Applicant shall be**

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

- (d) Self-insurance shall be permitted for entities meeting the self-insurance requirements set forth in Section **23.02** of this Agreement.

23.02 Proof of Insurance or Self-insurance. Applicant shall submit to **SWBT** adequate proof (as determined by **SWBT**) that the companies insuring Applicant are providing all coverages required by this Agreement. Applicant's insurers shall provide **SWBT** with certifications that required coverages will not be cancelled, changed or materially altered (e.g., by increasing deductibles or altering exclusions from coverage) except after 30 days Written notice to **SWBT**. **SWBT** will accept certified proof of Applicant's qualification as a self-insurer for Workers' Compensation and Employers *Liabil*, where self-insurance is permitted, only 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 Applicant in lieu of other Commercial General Liability and Automobile Liability Coverage if Applicant warrants that its net worth, as shown by its most recent audited financial statement with no negative notes, is at least 10 times the minimum liability limits set forth in APPENDIX IV and **SWBT** is satisfied that Applicant will be able to meet its liability obligations under this Agreement.

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

23.04 Default. Failure to obtain and maintain the required levels and types of insurance coverage required under this Agreement may be grounds for termination of licenses granted under Agreement. If an insurance carrier shall at any time notify Applicant or **SWBT** that any policy or policies of insurance required under this Agreement will be cancelled or changed in any manner which will result in Applicant's failure to meet the requirements of this Agreement, this Agreement shall terminate upon the effective date of such cancellation or change unless Applicant has made arrangements to obtain the required coverage from another source or **SWBT**, in its sole discretion, elects to take such action as may be necessary to keep the policy in effect with the required coverages.

ARTICLE 24: ASSIGNMENT OF RIGHTS

24.01 Assignment Permitted. Neither Applicant nor **SWBT** may assign or otherwise transfer its rights or obligations under this Agreement except as provided in this section.

- (a) **SWBT** may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Applicant's consent, to any subsidiary or affiliate which is 100% owned, directly or indirectly, by **SWBT** or by its corporate parent, **SBC communications Inc.**

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- (b) **Either party may assign or transfer rights or obligations under this Agreement on such terms and conditions as are mutually acceptable to the other party and with such party's prior written consent, which consent may be withheld only for due cause and justification. In this regard, the parties contemplate that Applicant may, from time to time, desire to assign its rights under this Agreement to an affiliate, to an entity under common control with Applicant, to an entity which controls Applicant or is controlled by Applicant, or to an entity acquiring all or substantially all of the assets of Applicant, and that consent to any such assignment should, in the absence of exceptional circumstances, be promptly given upon Applicant's request.**
 - (c) **No assignment or transfer by Applicant of rights under this Agreement, licenses issued pursuant to this Agreement, or authorizations granted under this Agreement shall be effective unless Applicant, its successors, and assigns have complied with the provisions of this article and secured SWBT's prior written consent to the assignment or transfer.**
 - (d) **Neither this Agreement, nor any licenses or authorizations granted under this Agreement, shall inure to the benefit of Applicant's successors or assigns without SWBT's prior written consent.**

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

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

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

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

24.06 Consent to Assignment Conditioned on Satisfaction of All Other Licensing Requirements. SWBT may condition approval of any requested assignment or transfer on the assignee's or successor's providing proof satisfactory to SWBT that such assignee or successor

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has complied or will comply with all licensing requirements established under this Agreement, including but not limited to requirements ~~that~~ such assignee or successor verify that all facilities owned or used by such assignee or successor and presently attached to SWBT's poles or placed within any portion of SWBT's conduit system within this State have been disclosed to SWBT and are subject to existing licenses as provided in Section 17.03, that such assignee or successor has complied with the bonding requirements under Article 20, and that such assignee or successor has complied with the insurance requirements under Article 23 of this Agreement.

24.07 Consent. If SWBT consents to any assignment or transfer requested by Applicant, Applicant's assignee or successor shall:

- (a) sign this Agreement as an assignee or successor expressly agreeing to be bound by all provisions of this Agreement and licenses issued hereunder;
- (b) provide proof, satisfactory to SWBT, of such assignee's assumption of the obligations of this Agreement; and
- (c) pay an administrative record-keeping fee as provided in APPENDIX I of this Agreement.

24.08 Sublicenses Prohibited. Nothing contained in this Agreement shall be construed as granting Applicant the right to sublicense any rights under this Agreement or licenses granted hereunder to any person or entity other than Applicant. Applicant shall not allow any person or entity other than Applicant to attach or place facilities to or in pole or conduit space occupied by or assigned to Applicant or to utilize such space.

ARTICLE 25: TERMINATION

25.01 Termination of Agreement Due to Non-Use of Facilities. Applicant shall, by written notice to SWBT, terminate this Agreement if Applicant 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.

25.02 Limitation, Termination or Refusal of Access for Certain Material Breaches. Applicant's access to SWBT's poles, ducts, conduits, and rights-of-way 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 Applicant violates this provision; provided, however, that such limitation, termination or refusal will be limited to Applicant's access to poles, ducts, conduits, and rights-of-way located in the SWBT engineering or construction district in which the violation occurs, shall be as narrowly limited in time and geographic scope as may be necessary to enable Applicant to adopt suitable controls to prevent further violations, and shall be subject to review, at Applicant's request, pursuant to the dispute resolution procedures set forth in this Agreement or the parties'

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Interconnection Agreement or, as permitted by law, before any court, agency, or other tribunal having jurisdiction over the subject matter. In the event Applicant invokes dispute resolution procedures or seeks review before a court, agency, or other tribunal having jurisdiction of the subject matter, the limitation, termination, or refusal of access may be stayed or suspended by agreement of the parties or by order of the tribunal having jurisdiction over the parties' dispute.

25.03 Notice and Opportunity to Cure Breach. SWBT may, at any time after determining that Applicant is in breach of this Agreement, give notice to Applicant of the breach.

(a) The notice shall:

- (1) describe the breach and SWBT's basis for concluding that Applicant has committed a breach;
- (2) state the curative steps, if any, which Applicant may take to cure the breach;
- (3) state the deadline, if any, for completing the corrective actions required;
- (4) state the manner in which Applicant shall demonstrate to SWBT that the corrective actions required have been performed, and
- (5) state SWBT's anticipated response if the breach is not cured.

(b) If the notice provides that Applicant shall be given an opportunity to cure the breach, Applicant shall take the corrective actions required and notify SWBT in writing when the corrective actions have been completed. If Applicant fails to take corrective action or give the required confirmation within the time prescribed in the declaration and notice, SWBT may immediately limit, terminate, or refuse access under Section 25.02 of this Agreement, if applicable, or seek such other relief against Applicant as is authorized under the terms of this Agreement, other provisions of the Interconnection Agreement, or applicable law.

ARTICLE 26: FAILURE TO ENFORCE

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

ARTICLE 27: EFFECTIVE DATE AND TERM OF AGREEMENT

27.01 Effective Date. This Agreement shall be effective as of the ___ day of _____, 199_, or the date of approval of the Interconnection Agreement, whichever date first occurs.

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

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

27.04 Elective Termination. Either party may terminate this Agreement by giving the other party at least six months prior written notice as provided in this section. Applicant may terminate with or without cause. SWBT may terminate for cause only during the first five years following the effective date and may thereafter terminate this Agreement with or without cause. SWBT's termination shall be subject to the provisions of Section 27.05 below. The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the initial term of this Agreement or six months after the date the notice is given.

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

ARTICLE 28: AMENDMENTS

28.01 Amendments Shall Be in Writing. Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

ARTICLE 29: NOTICES

29.01 Notices to Applicant. All written notices required to be given to Applicant shall be delivered or mailed to Applicant's duly authorized agent or attorney, as designated in this section.

- (a) Such notice may be delivered to Applicant's duly authorized agent or attorney in person or by agent or courier receipted delivery.
- (b) Such notice may be mailed to Applicant's duly authorized agent or attorney by registered or W e d mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a

postpaid, properly addressed wrapper, in a post office or official depository under the **care** and control of **the United States Postal Service** and shall be deemed to have **been** given **three** days after **the** date of deposit.

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

Name: _____

Title: _____

Firm: _____

Address: _____

City/State/Zip: _____

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

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

Name: _____

Title: Utility Liaison Supervisor

Firm: Southwestern Bell Telephone Company

Address: 1111 W. Capitol Room 525

City/State/Zip: Little Rock, Arkansas 72201

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

ARTICLE 30: DISPUTE RESOLUTION

30.01 Purpose. The parties desire to resolve *disputes arising out of this Agreement* without litigation. The provisions of this article are intended to minimize litigation between the parties with respect to disputes arising in connection with this Agreement and shall be construed accordingly.

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

30.03 Prerequisite to Litigation. The provisions of this article shall also apply to all disputes, without regard to the amount in controversy, in which Applicant contests charges billed by SWBT to Applicant under the terms of this agreement. No suit, except for actions seeking injunctive relief related to the purposes of this Agreement or suits to compel compliance with the dispute resolution processes set forth in this article, shall be filed by either party against the other with respect to such contested charges until the parties have exhausted their remedies under this article.

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

- (a) With respect to any dispute subject to the provisions of this article, either party may initiate negotiation proceedings by writing a certified or registered letter to the other party setting forth the particulars of the dispute, the terms of the Agreement that are involved, and a suggested resolution of the problem.
- (b) The recipient of the letter shall respond within 21 days to the proposed solution. The recipient shall either agree to the proposed solution or explain its

- disagreement.
- (c) If the correspondence **does** not resolve the dispute, each party, **at the request** of either party, **will** appoint a knowledgeable, **responsible** representative to **meet** and negotiate in good **faith** to resolve the dispute. **The** location, form, frequency, duration, **and** conclusion of **these** discussions **shall be left to the** discretion of the representatives. Upon *agreement*, **the** representatives may **utilize** other alternative **dispute** resolution procedures such **as** mediation **to assist** in the negotiations.
- (d) **Discussions** and correspondence among the **representatives as** provided by this section are for purposes of settlement, are exempt **from discovery** and production, **and shall not be admissible** in **arbitration**, judicial, regulatory, or other proceedings in **any forum**.

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

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

rely on, or introduce as evidence in any **arbitration, judicial, or other** proceeding:

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

30.06 Arbitration. If negotiations and mediations do not resolve the dispute within **90 days** after the initiation of **dispute resolution proceedings** as provided in subsection (a) of Section 30.05 of this **Agreement**, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the **Commercial Arbitration Rules of the American Arbitration Association** if the dispute involves any controversy or **claim of \$25,000 or less** which arises out of or in **connection** with this **Agreement**. The parties may voluntarily elect to arbitrate disputes in which the amount in controversy **exceeds \$25,000**, but they **shall** not be required by this **Agreement** to do so.

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

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

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

- (a) A party seeking discovery shall reimburse the responding party for the costs of production of documents (including search time and reproduction costs).
- (b) The parties shall equally split the fees of the arbitration and the arbitrator.

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

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

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

ARTICLE 32: GENERAL PROVISIONS

32.01 **Entire Agreement**. This Agreement sets forth the entire understanding and agreement of the parties.

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

32.03 **Effect on Licenses Issued Under Prior Agreements**. All currently effective licenses granted to Applicant shall, on the effective date of this Agreement, be subject to the terms and conditions of this Agreement.

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

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

32.06 **Choice of Law**. This Agreement shall be interpreted and construed under the laws of this state.

32.07 **Changes in the Law**. Because the primary purpose of this Agreement is to provide access to poles, ducts, conduits, and rights-of-way in accordance with the Pole Attachment Act, the parties contemplate that changes in this Agreement may from time to time be necessary or

desirable to conform to changes in the Pole Attachment Act as that Act is amended, interpreted, and applied. This Agreement is based in large part on regulatory decisions by the FCC, which has jurisdiction over the rates, terms, and conditions of access to poles, ducts, conduits, and rights-of-way (except to the extent that such jurisdiction has been pre-empted by individual states) and regulatory decisions by the Public Service Commission of Arkansas (PSC). More specifically, this Agreement is based in large part on the FCC's First Report and Order in CC Docket 96-98, on FCC rules announced with the First Report and Order, and on the PSC's Arbitration Award in PSC Docket Nos. _____

- [] Applicant desires to have access to SWBT's poles, ducts, conduits, and rights-of-way on terms that are not less favorable than those obtained by firms participating in interconnection arbitration proceedings before the PSC. Applicant also desires to have access to SWBT's poles, ducts, conduits, and rights-of-way to the full extent permitted under the FCC's First Report and Order in CC Docket No. 9698. SWBT is required by law to provide nondiscriminatory access to SWBT's poles, ducts, conduits, and rights-of-way and is entering into this Agreement for the purpose of providing nondiscriminatory access in compliance with the Pole Attachment Act and regulatory decisions thereunder. This Agreement, therefore, includes terms required by or based on rulings by the PSC in interconnection arbitration proceedings in which Applicant is not a party and includes terms based on decisions by regulatory agencies which may be challenged in further legal proceedings. For the same reasons, this Agreement includes terms which contemplate or depend on further actions to be taken by the PSC. In the event of any changes in the Pole Attachment Act, changes in applicable FCC or PSC rulings, or judicial determinations that such rulings are erroneous or invalid, each party shall, at the request of the other, engage in good faith negotiations to supplement, amend or replace any provisions of this Agreement affected by such changes or determinations and to conform this Agreement to changes in the underlying laws on which the Agreement is based.
- [] This Agreement has been entered into as a result of private negotiation between the parties and arbitration by the Public Service Commission of Arkansas (PSC), acting pursuant to the Telecommunications Act of 1996. If the actions of federal or Arkansas legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws or regulations that were the basis for a provision of this Agreement (including but not limited to any provision of this Agreement required by any arbitration award approved by the PSC), the affected provision shall be invalidated, modified, or stayed as required by action of the legislative body, court, or regulatory agency. In the event of such a change in the law, each party shall expend diligent efforts to arrive at an agreement respecting the modifications to the Agreement required by the law or requested in good faith by the other party. If negotiations fail, disputes between the parties concerning interpretation of the actions required or provisions affected by such

- governmental actions shall be resolved pursuant to the dispute resolution process provided for in the Interconnection Agreement or this Agreement; provided, however, that this section shall not be construed as precluding either party from seeking appropriate relief from the FCC in connection with the parties' *rights* and obligations under the Pole Attachment Act. In the event of any material change in the law, each party agrees to enter into good faith negotiations to conform this Agreement to the changes in the law.

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

SOUTHWESTERN BELL TELEPHONE COMPANY

By: _____
Signature of SWBT's Authorized Officer/Employee

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

Position/Title of SWBT's Authorized Officer/Employee

Date

City and State of Execution by SWBT

GABRIEL COMMUNICATIONS OF ARKANSAS, INC.
Applicant's Name (Printed or Typed)

By: _____
Signature of Applicant's Authorized Officer/Employee

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

Position/Title of Applicant's Authorized Officer/Employee

Date

City and State of Execution by Applicant

Agreement No. _____

ADDENDUM NO. 1

This Addendum, effective as of the _____ day of _____, 1999, is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-way between Southwestern Bell Telephone Company (SWBT) and the undersigned Applicant.

This Master Agreement is and shall be construed as an interim agreement intended to enable Applicant to have access to poles, ducts, conduits, and rights-of-way prior to the execution of a complete Interconnection Agreement between the parties. The parties agree that their execution of this Agreement is without prejudice to any positions either party may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered by this Agreement. In addition, the parties agree that the execution of this Agreement shall not affect the rights or duties of the parties to engage in good faith negotiations under the Federal Telecommunications Act of 1996 ("FTA96") and to replace this Agreement through the negotiation (and, if necessary, arbitration) of a comprehensive Interconnection Agreement or a revised Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-way. In this regard, SWBT acknowledges that Applicant has proposed the modification of Articles 21 and 22 of the Master Agreement and that SWBT and Applicant will continue negotiations with respect to the proposed modifications.

Applicant has requested that SWBT make available to Applicant the same terms and conditions regarding any pole attachment agreement, including access to poles, ducts, conduits, and rights-of-way, provided by SWBT to any other telecommunications carrier. At Applicant's request, SWBT will replace this Agreement with a new agreement incorporating the terms of any agreement relating to access to poles, ducts, conduits, or rights-of-way approved by the Arkansas Public Service Commission through the FTA96 interconnection negotiation and arbitration process.

Gabriel Communications of Arkansas, Inc.
Applicant's Name (Printed or Typed)

Southwestern Bell Telephone Company

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

ATTACHMENT 14: PORT

1.0 Interim Number Portability

1.1 SWBT and CLEC will provide Interim Number Portability in accordance with requirements of the Act. Interim Number Portability (INP) will be provided by each Party to the other upon request. INP will be provided with minimum impairment of functionality, quality, reliability and convenience to subscribers of CLEC or SWBT. The Parties will provide Local Number Portability (LNP) as soon as it is technically feasible, in conformance with FCC rules and the Act, and will participate in development of LNP in the state, in accordance with the FCC's First Report and Order in Docket No. 95-116 (hereinafter called the LNP Order).

2.0 Non-Geographical Numbers

2.1 Neither Party will be required to provide Interim Number Portability for non-geographic services (e.g., 500 and 900 NPAs, and 976 NXX number services) lines under this Agreement, unless otherwise ordered by the FCC.

3.0 Availability

3.1 INP will be made available to either Party by the other on a reciprocal basis. INP will be provided through INP-Remote (remote call forwarding or like service) or INP-Direct (direct inward dialing trunks or like service). The requesting Party will specify either INP-Remote, or INP-Direct, on a per telephone number basis, and the providing Party will provide such method to the extent technically feasible.

4.0 INP-Remote

4.1 INP-Remote is a service that uses existing remote call forwarding technology to provide INP by redirecting calls within the telephone network. When INP-Remote is used, calls to the ported number will first route to the original local service provider's switch to which the ported number was assigned. Such Party's switch will then forward the call to the assigned number of the new local service provider's end user customer. When more than a total of three (3) paths are required to handle simultaneous calls to the same ported telephone number, the requesting Party will order from the providing Party additional paths.

5.0 INP-Direct

5.1 INP-Direct is an existing service which uses DID or like technology to provide for the delivery of the calling (dialed) number to the requesting Party's switch for subsequent routing and call completion.

- 5.2 INP-Direct is available either on a per voice grade channel basis or a per DS1 (24 equivalent voice grade channels) basis.
- 5.3 Where the location of the requesting Party's switch is outside the area served by the providing Party's switch, the requesting Party is responsible for providing appropriate transport facilities.
- 5.4 INP-Direct must be established with a minimum configuration of two (2) voice grade channels and one (1) unassigned telephone number per switch. INP-Direct may not be mixed with any other type of trunk group. Outgoing calls may not be placed over trunk groups arranged for INP-Direct service.

6.0 **Other Interim Portability Provisions**

- 6.1 Either Party will exchange with the other SS7 TCAP messages as required for the implementation of Customer Local Area Signaling Services (CLASS) or other features available.
- 6.2 Either Party will notify the other of any technical or capacity limitations that would prevent use of a requested INP implementation in a particular switching office.
- 6.3 SWBT will cooperate with CLEC to ensure 911 service is fully available to ported end users consistent with state provisions. CLEC will have the right to verify the accuracy of the information regarding the CLEC customer in the ALI database.
- 6.4 Either Party will pass all Calling Party Number (CPN) or Automatic Number Identification (ANI) information to and from the ported number, whenever technically feasible.
- 6.5 SWBT agrees to populate its Line Information Database (LIDB) with information, such as TLN calling cards and Billing Number Screening (BNS), regarding ported numbers for billing. SWBT will provide access to LIDB database interfaces to accomplish this function, or make input on behalf of CLEC pursuant to LIDB data storage and administrative contracts.
- 6.6 SWBT agrees not to issue Telephone Line number (TLN) based calling card numbers when a customer ports their number to CLEC.
- 6.7 SWBT and CLEC will cooperate in all service cut-overs involving the other Party's service, to avoid unnecessary service outages.
- 6.8 Each Party will comply with all final state and federal orders relating to competitively neutral cost recovery as defined in the FCC NP Order. Neither Party waives its rights to advocate its views on INP cost recovery, or to present before any appropriate regulatory agency or court its views on FCC or Commission actions pertaining to INP cost recovery.

7.0 **Cut-Over Process**

- 7.1 For a Coordinated Cutover Environment (where the loop is being purchased by CLEC as an unbundled Network Element at the time of INP implementation), SWBT will update switch translations where necessary as close to the requested time as possible in a mutually agreed upon time frame.
- 7.2 For a Non-Coordinated Cutover Environment (where the loop is supplied by CLEC) SWBT will schedule a mechanized update of switch translations at the CLEC requested cutover time (frame due time). SWBT will provide an Operation contact whom CLEC can reach in the event manual intervention is needed to complete the cutover. In the event of manual intervention, completion will be negotiated by the parties.

8.0 **Testing**

- 8.1 SWBT and CLEC will cooperate in conducting testing to ensure interconnectivity between systems. The Parties will inform each other of any system updates that may affect either Party's network and will, perform tests to validate the operation of the network.

9.0 **Recording and Billing**

- 9.1 The Parties will provide to each other the Exchange Message Records (EMR) for all alternately billed calls.
- 9.2 The Parties will supply each other with originating billing records which will enable them to bill each other a local interconnection charge.

10.0 **Pricing**

- 10.1 The Parties will comply with all effective FCC, Commission and/or court orders governing INP cost recovery and compensation. The Parties acknowledge that the LNP Order is subject to pending Petitions for Reconsideration and may be subject to appeal. As such, the LNP Order may be reconsidered, revised and remanded, or vacated, and subject to further proceedings before the FCC. As such, until a final decision is rendered on INP cost recovery, the Parties agree to track the costs associated with the implementation and provision of INP and to "true-up" INP-related accruals to reflect the final terms of any such order.
- 10.2 Neither Party waives its rights to advocate its views on INP cost recovery, or to present before any appropriate regulatory agency or court its views on FCC or Commission actions pertaining to INP cost recovery.

11.0 Local Number Portability (LNP)

11.1 General

The technology that meets the FCC's performance criteria as set forth in FCC 2nd Report & Order released August 18, 1997, paragraph 8 is Location Routing Number (LRN). LRN is currently being used by the telecommunications industry to provide LNP.

11.2 TERMS, CONDITIONS UNDER WHICH SWBT SHALL PROVIDE LNP TO CLEC

11.2.1 Service Provided

1. SWBT provides CLEC the use of the SWBT LNP database via the Service Provider Number Portability (SPNP) Database Query. CLEC's STP, tandem, and/or end office's LRN software will determine the need for, and triggers, the query. SWBT's PNP database will determine if a number has, or has not, been ported and will provide LRN if a number is ported.
2. SWBT will provide CLEC the use of the SWBT PNP database, PNP software, and SS7 network via the SPNP Query.
3. SWBT shall only provide SPNP Dbase Query and SPNP Query services and facilities where technically feasible, subject to the availability of facilities, and only from properly equipped central offices.
4. SWBT does not offer LNP services and facilities for NXX codes 555,976, 950.

11.2.2 Obligations of SWBT

1. After December 31, 1998, SWBT will deploy LRN in other MSAs within six (6) months after receipt of Bona Fide Request (see ATTACHMENT 1) from CLEC.

11.2.3 Obligations Of CLEC

1. When purchasing the SPNP Database Query, CLEC will access SWBT's facilities via an SS7 link (SWBT Section 23 and 32 of FCC 73 Access Service Tariff) to the SWBT STP.
2. When purchasing the SPNP Query - Prearranged, CLEC will advise SWBT of the entry point(s) of queries to the SWBT network and provide a query forecast for each entry point.

3. CLEC is responsible for advising the Number Portability Administration Center (NPAC) of telephone numbers that they import and the associated data as identified in industry forums as being required for LNP.
4. When, after the initial deployment of LNP in an MSA, CLEC shall submit a bona fide request (see ATTACHMENT 1) to request that a SWBT switch become LRN capable. The requested switch will be made LRN capable within time frame stipulated by the FCC.
5. When CLEC requests that an NXX in an LRN capable SWBT switch to become portable, CLEC shall follow the industry standard LERG procedure.
6. CLEC shall be certified by the Regional NPAC prior to scheduling Intercompany testing of LNP.

11.2.4 Obligations of Both Parties

1. When a ported telephone number becomes vacant, e.g., the telephone number is no longer in service by the original end user, the ported telephone number will be released back to the carrier owning the switch in which the telephone number's NXX is native.
2. Each party has the right to block default routed call entering a network in order to protect the public switched network from overload, congestion, or failure propagation.
3. Industry guidelines shall be followed regarding all aspects of porting numbers from one network to another.
4. Intracompany testing shall be performed prior to scheduling to intercompany testing.
5. Each Party will designate a single point of contact (SPOC) to schedule and perform required testing. These tests will be performed during a mutually agreed time frame and must meet the criteria set forth by the Southwest Region for porting.
6. Each Party shall abide by NANC and Southwest Region provisioning and implementation process.
7. The Parties shall adhere to reserved number national standards.

11.2.5 Limitations Of Service

1. Telephone numbers can be ported only within SWBT toll rate centers as approved by State Commissions.
2. Telephone numbers in the following SWBT NXXs shall not be ported: wireless NXXs, SWBT Official Communications Services (OCS) NXXs.
3. Telephone numbers with NXXs dedicated to choke networks are not portable via LRN. Choke numbers will be ported as described in Section IV of this.

11.2.6 Service Descriptions

1. The switch's LRN software determines if the called party is in a portable NXX. If the called party is in a portable NXX, a query is launched to the PNP database to determine whether or not the called number is ported.
2. When the called number with a portable NXX is ported, an LRN is returned to the switch that launched the query. Per industry standards, the LRN appears in the CPN (Called Party Number) field of the **SS7** message and the called number then appears in the GAP (Generic Address Parameter) field.
3. When the called number with a portable NXX is not ported, the call is completed as in the pre-LNP environment.
4. The FCI (Forward Call Identifier) field's entry is changed from 0 to 1 by the switch triggering the query when a query is made, regardless of whether the called number is ported or not.
5. The N-1 carrier (N carrier is the responsible party for terminating call to the end user) has the responsibility to determine if a query is required, to launch the query, and to route the call to the switch or network in which the telephone number resides.
6. If CLEC chooses not to fulfill their N-1 carrier responsibility, SWBT will perform queries on calls to telephone numbers with portable NXXs received from the N-1 carrier and route the call to the switch or network in which the telephone number resides.
7. CLEC shall be responsible for payment of charges to SWBT for any queries made on the N-1 carrier's behalf.

11.2.7 Pricing

The price of LNP queries shall be the same as those in Section 34 of the FCC No. 73 Access Services Tariff

11.3 INP to LNP Transition

11.3.1 CLEC shall issue LSRs to change their INP accounts to LNP within a 90 day window or otherwise agreed, for all selected switches in an MSA which starts immediately after the LNP Phase completes for that MSA, e.g. for all selected switches in the Little Rock MSA, the window starts 12/31/98 and completes 3/31/99.

11.3.2 INP will not be provided in a SWBT switch once LRN has been deployed in that switch.

11.3.3 The Parties shall coordinate each MSA's transition from INP to LNP. When a service provider's INP lines exceed eight (8) in an NXX and/or fifty (50) lines in a MSA, they shall send advance notice to the owner of the switch(es) in which those TNs are homed indicating the volume of orders involved in the INP to LNP transition.

11.4 Mass Calling Codes

11.4.1 General

Mass calling codes, i.e., choke NXXs, are used in a network serving arrangement provided by SWBT special circumstances where large numbers of incoming calls are solicited by an End User and the number of calls far exceeds the switching capacity of the terminating office, the number of lines available for terminating those calls, and/or the STP's query capacity to the PNP database. The following two different sets of End User objectives usually create this condition: low call completion; and (b) high call completion.

Given the potentially hazardous effect calling conditions of this nature could have on the network, SWBT will provide mass calling code portability using a non-LRN solution.

11.4.2 Service Provided

SWBT will offer the ability to port telephone numbers with mass calling NXX code via the use of pseudo codes or route index numbers. In this non-LRN scenario, calls to the SWBT mass calling NXX code will leave the originating end office over dedicated MF trunk groups to the SWBT mass calling tandem. The mass calling tandem will then route the calls over dedicated MF trunks to the

SWBT choke serving central office (CSO). The CSO will translate the dialed mass calling number to a non-dialable pseudo code or a route index number that routes the call to the mass calling customer.

When CLEC requests that a SWBT number with mass calling NXX code be ported to their network and that the NXX code continues as a mass calling NXX, SWBT will build translations at the CSO to route the incoming calls to CLEC provided dedicated Direct Inward Dial (DID) MF trunk group from the CSO to the CLEC central office.

11.4.3 Obligations of SWBT

SWBT will port its numbers with mass calling NXXs upon request by CLEC. Non-LRN porting will be done via pseudo code or route index translation in the SWBT CSO rather than STP queries to the PNP database. This method of porting mass call numbers will be used during both INP and LNP period in each market.

SWBT will not charge CLEC for the use of its choke network by CLEC's mass calling customer. In exchange, SWBT shall not be responsible to pay intercompany terminating compensation for terminating minutes of use (MOU) for ported mass calling NXX choke calls.

SWBT shall agree to adhere to national standards, when developed, regarding Local Service Request (LSR) format and mass calling due date intervals.

11.4.4 Obligations of CLEC

CLEC shall agree to adhere to national standards, when developed, regarding Local Service Request (LSR) format and mass calling due date intervals.

CLEC shall provide the facility and DID trunk group from the SWBT CSO to CLEC's serving office. CLEC shall size this one-way MF trunk group.

CLEC shall forego any inter-company terminating MOU compensation for termination ported mass calling NXX code calls coming in on this trunk group.

11.4.5 CLEC Mass Calling Codes

Should CLEC assign a mass calling NXX code(s) and establish a mass calling interface for traffic destined to its CSO(s), CLEC shall home its CSO(s) on a SWBT mass calling tandem and a similar mass calling trunking arrangement (one-way outgoing with MF signaling) will be provided from SWBT's tandem to CLEC. In order to allow the parties time to order and install such mass calling trunks, CLEC shall provide SWBT notification of its intention to deploy mass calling NXX code(s) at least 90 days before such codes are opened in the LERG.

See Attachment ITR for more information regarding this mass local interconnection trunk group

MF and **SS7** trunk groups shall not be provided within a DS1 facility. A separate DS1 facility per signaling type must be used. Where SWBT and CLEC both provide mass calling trunking, both parties' mass calling trunks may ride the same DS 1 facility.

11.4.6 Limitations of Service

The Parties shall adhere to reserved number national standards. When a ported number with a mass calling NXX code becomes vacant, e.g., the ported number is no longer in service by the original end user, the ported number shall be released back to the carrier owning the switch in which the telephone number's NXX is native.

11.5 PROVISION OF INP AND LNP BY CLEC TO SWBT

CLEC shall provide INP and LNP to SWBT under no less favorable terms and conditions as when SWBT provides such services to CLEC.

12.0 Applicability of Other Rates, Terms and Conditions

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

ATTACHMENT 1

LOCAL NUMBER PORTABILITY (LNP) BONA FIDE REQUEST (BFR) PROCESS

The Local Number Portability (LNP) Bona Fide Request (BFR) is a process which Competitive Local Exchange Carrier (CLECs) shall use to request that LNP be deployed

- in a Metropolitan Statistical Area (MSA) beyond the 100 largest MSAs in the country and
- additional switch(es) in an MSA in which LNP has been deployed.

Per the FCC First Report And Order And Further Notice Of Proposed Rulemaking (July, 1996, page 50), CLEC can request that LNP be deployed in additional MSAs beginning January 1, 1999. SWBT is to provide LNP in that MSA in the requested switches within six (6) months of receipt of BFR.

Per the FCC's First Memorandum Opinion And Order On Reconsideration (March 1997, pages 65,66), switches that were not requested to be LNP capable in the initial LNP deployment in the top 100 MSAs can be requested to be made LNP capable. The following time frames begin after an MSA's Phase end date has been reached:

1. equipped remote switches within 30 days
2. hardware capable switches within 60 days
3. capable switches requiring hardware within 180 days
4. non-capable switches within 180 days

These time frames begin after the receipt of a **BFR**.

REQUEST FOR INSTALLATION OF PNP SOFTWARE

The request to make one or more switches in an MSA LNP capable shall be made in the form of a letter or the form on pages 3 through 5 of this Attachment from CLEC to its SWBT Account Manager which shall specify the following:

- The MSA in which requested switch(es) are located.
- The switch(es), by CLLI code, that are to become LNP capable.
- The date when LNP capability is requested with the FCC established time frames being the least amount of time.
- The projected quantity of queries that result from this new capability with a demand forecast per tandem or end office with which CLEC interconnects.
- An initial response from the SWBT Account Manager, acknowledging receipt of the BFR and the date when requested switch(es) will be LNP capable, must be made to CLEC within ten (10) business days of receipt of the BFR.

ATTACHMENT 1

Local Number Portability (LNP) Bona Fide Request (BFR)

Southwest Region LNP Network Operations Team

DATE: _____ (date of request)

TO: _____ (name of service provider)
_____ (address of service provider)
_____ (contact name/number)

FROM: _____ (requester/service provider name/ID)
_____ (requester switch(es)/CLLI)
_____ (authorized by name)
_____ (authorized by title)
_____ (contact name/address/number)

Affidavit attesting requester as authorized agent should accompany request.

SWITCH(ES):

CLLI ¹	Rate Center Name ²	Rate Center VC/HC ²	NPA-NXX(s) ³
_____	_____	_____	All: Y or N
_____	_____	_____	All: Y or N
_____	_____	_____	All: Y or N
_____	_____	_____	All: Y or N
_____	_____	_____	All: Y or N

DATES: Requested date switch(es) should be LNP capable: _____ (mm/dd/yy)
Requested code opening date⁴: _____ (mm/dd/yy)

Notes: See following page.

Acknowledgment of BFR is to be sent to the requester within ten business days.

Local Number Portability (LNP) Bona Fide Request (BFR)

Southwest Region LNP Network Operations Team (Continued)

Notes:¹ List each switch targeted for LNP by its specific CLLI code.

² Enter associated Rate Center information from LERG, including: Rate Center Name and Associated V&H Terminating Point Master Coordinates; Source of the LERG information: Destination Code Record (DRD) Screen.

³ Circle or highlight **Y** if requesting all eligible NPA-NXX codes in that specific switch to be opened. Circle or highlight **N** if only certain NPA NXX codes are being requested, then provide list of desired NPA NXX(s).

Note: Tarsetting of specific NPA-NXX codes should be carefully considered. A traditional ILEC may serve a single rate center with multiple switches (CLLIs and NXX codes) while CLEC may serve multiple rate centers with a single switch. In the latter case, use of a specific NXX code will determine the rate center.

⁴ As documented in the Southwest Region Code Opening Process.

Acknowledgment of LNP Bona Fide Request (BFR)

Southwest Region LNP Network Operations Team

DATE: _____ (date of response)

TO: _____ (requester/CLEC name/ID)
_____ (contact name/address/number)
_____ (requester switch(es)/CLLI)

FROM: _____ (name of service provider)
_____ (address of provider)
_____ (contact name/number)

Switch request(s) accepted:

CLLI Accepted	LNP Effective Date	or	Modified Effective Date	Ineligible NPA-NXXs
_____ (CLLI 1)	_____		_____	_____
_____ (CLLI 2)	_____		_____	_____
_____ (CLLI 3)	_____		_____	_____
_____ (CLLI 4)	_____		_____	_____

Switch request(s) denied/reason for denial:

_____ (CLLI 1): _____

_____ (CLLI 2): _____

_____ (CLLI 3): _____

Authorized company representative signature/title: _____

ATTACHMENT 15: E911

TERMS AND CONDITIONS FOR PROVIDING CONNECTION TO E911 UNIVERSAL EMERGENCY NUMBER SERVICE

This Attachment E911 sets forth the terms and conditions under which SWBT will provide the connection between CLEC's local switch and E911 Universal Emergency Number Service.

1.0 Definitions

As used herein and for the purposes of this Attachment the following terms will have the meanings set forth below:

- 1.1 E911 Universal Emergency Number Service (also referred to as Expanded 911 Service or Enhanced 911 Service) - A telephone exchange communication service whereby a public safety answering point (PSAP) designated by the E911 customer may receive and answer telephone calls placed by dialing number 911. E911 includes the service provided by the lines and equipment associated with the service arrangement for the answering, transferring, and dispatching of public emergency telephone calls dialed to 911.
- 1.2 E911 Universal Emergency Number Service customer - A municipality or other state or local governmental unit, or an authorized agent of one or more municipalities or other state or local government units to whom authority has been lawfully delegated to respond to public emergency telephone calls, at the minimum, for emergency police and fire service through the use of one telephone number, 911.
- 1.3 Public Safety Answering Point (PSAP) - An answering location for 911 calls originating in a given area. The E911 customer may designate a PSAP as primary or secondary, which refers to the order in which calls are directed for answering. Primary PSAPs respond first, secondary PSAPs receive calls on a transfer basis only. PSAPs are public safety agencies such as police, fire, emergency medical, etc., or a common bureau serving a group of such entities.
- 1.4 Centralized Automatic Message Accounting (CAMA) Trunk - A trunk capable of transmitting Automatic Number Identification associated with E911 customer calls from a switch to the E911 Network.
- 1.5 Automatic Number Identification (ANI) - A feature that automatically forwards the telephone number of the calling party to the E911 Control Office from which it is switched to the PSAP and is displayed at an attendant position console.
- 1.6 Automatic Location Identification (ALI) - A feature that forwards the name, street address, class of service, and other pre-determined information associated with the calling party's telephone number (identified by **AM**) to the PSAP for display.

- 1.7 Selective Routing (SR) - A feature that provides the capability to selectively route a 911 call to the designated primary PSAP based upon the identified number of the calling party.
- 1.8 Database Management System (DBMS) - A system of manual procedures and computer programs used to create, store and update the data required for the SR and ALI service features and database of E911 service.
- 1.9 ALI Database - A database which stores information associated with end user customers' telephone numbers.

2.0 **Responsibilities**

- 2.1 SWBT will provide and maintain equipment at the E911 Control Office and the DBMS as is necessary to perform the E911 services set forth herein. SWBT will also be responsible for the following:
 - 2.1.1 when requested by CLEC, transporting the E911 calls from the interconnection point with CLEC facilities connecting CLEC's switches to the Control Offices of the E911 System. The CLEC switches will be listed in the form attached hereto as Addendum I as the CLEC switches are deployed.
 - 2.1.2 switching the E911 calls through the E911 Control Office to the designated primary PSAP or to designated alternate locations, according to routing criteria specified by the E911 Customer;
 - 2.1.3 storing the names, addresses, and associated telephone numbers from CLEC's exchanges in the electronic data processing database for the E911 DBMS. (CLEC is responsible for downloading and updating this information);
 - 2.1.4 transmission of the ANI and ALI information associated with CLEC's end users accessing E911 service to the **PSAP** for display at an attendant position console.
- 2.2 SWBT will provide and maintain sufficient dedicated E911 circuits, in accordance with the provisions of the E911 tariff and specifications of the E911 customer.
- 2.3 SWBT will provide CLEC with a description of the geographic area and PSAPs served by the E911 Control Office(s) according to industry standards for E911 information sharing.
- 2.4 SWBT will provide CLEC with a file containing the Master Street Address Guide (**MSAG**) for the exchanges or communities specified in Addendum I, in accordance with the methods and procedures described in the document "Operating Methods for Downloading and Maintaining End User Records in SWBT's DBMS" (dated July 31, 1996), and as subsequently modified consistent with industry standards. SWBT will provide CLEC additional files with the entire MSAG, including subsequent additions or

updates to the MSAG in accordance with the intervals specified in Addendum I. In addition, SWBT will provide CLEC with a statistical report in a timely fashion and in accordance with the methods and procedures described in the above mentioned document for each file downloaded by CLEC to SWBT's DBMS, so that CLEC may ensure the accuracy of the end user records.

- 2.5 At a reasonable time prior to establishment of E911 Service, CLEC will download and maintain thereafter all information required by SWBT to establish records necessary for furnishing connection to E911 Service and will promptly notify SWBT in writing of any changes to be made in such records. CLEC will adopt and comply with operating methods applicable to downloading and maintaining CLEC's end user records in SWBT's DBMS, as set forth in the document referenced in Section 2.4, above.
- 2.6 CLEC acknowledges that its end users in a single local calling scope may be served by different PSAPS. CLEC will be responsible for providing facilities to route calls from its end users to the proper E911 Control Office.
- 2.7 At a reasonable time prior to establishment of E911 service, CLEC will populate E911 databases using the NENA Version 2 record format, as adapted in the document referenced in Section 2.4 above.
- 2.8 During the period when interim number portability is utilized, SWBT and CLEC will coordinate their databases to provide for the display of ported numbers at the PSAP as part of the ALI screen display, subject to PSAP capability.

3.0 **Methods and Practices**

- 3.1 With respect to all matters covered by this Attachment, each Party will adopt and comply with standard industry operating methods and practices and will observe the terms and conditions of SWBT's tariffs, and the rules and regulations of the FCC and the Arkansas Corporation Commission that apply to the provision of E911 Service.

4.0 **Contingency**

- 4.1 The Parties agree that the E911 service is provided for the use of the E911 Customer, and recognize the authority of the E911 Customer to establish service specifications and grant final approval (or denial) of service configurations offered by SWBT and CLEC. The terms and conditions of this Appendix represent a negotiated plan for providing E911 service, for which CLEC must obtain documentation of the E911 Customer's approval. CLEC will provide such documentation to SWBT prior to use of CLEC's E911 connection for actual emergency calls.
- 4.2 The Parties designate the following representatives who shall have the authority to execute additional Addenda I to this Attachment when necessary to accommodate expansion of CLEC's geographic area into the jurisdiction of additional PSAPs or to increase the number of CAMA trunks:

SWBT representative:

General Manager - Regional Sales
Southwestern Bell Telephone Company
Room 08-E-11
1010 Pine Street
St. Louis, MO 63101

CLEC representative:

Gabriel Communications of Arkansas, Inc.
16090 Swingley Ridge Rd., Suite 500
Chesterfield, MO 63017

4.2.1 Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving seven (7) days prior written notice to the other Party in compliance with this Section. Any notice or other communication will be deemed given when received.

4.3 The terms and conditions of this Attachment are subject to renegotiation in the event that the E911 customer orders changes to the E911 service that necessitate revision of this Attachment.

5.0 **Basis of Compensation**

5.1 Compensation to SWBT for provision of connection to E911 Service provided hereunder will be based upon the charges set forth in Addendum II, Basis Of Compensation, and applied as specified in Addendum I.

5.2 For computation in Addendum II, during the initial year that SWBT provides CLEC connection to E911 service, the number of lines (business and consumer) as shown in Addendum I will be counted as of the first day of January, and the number so obtained will be used in computing compensation under this Attachment until the end of the 1st Quarter of the current year. A new count of lines, as of the first day of April (2Q), July (3Q) and October (4Q), will be used in the computation of compensation under this Attachment for that Quarter. At the end of the first full year, a new count of lines will be made and it will be used for the second full year. For each succeeding year, a new count of lines, as of the first day of January, will be used in the computation of compensation under this Attachment for that year. Each count of lines will be rounded to the nearest thousand for compensation purposes.

5.3 Charges will begin on the date connection to E911 Service commences.

6.0 **Monthly Billing**

6.1 SWBT will render to CLEC monthly statements in advance, showing the amounts determined as provided in Section 5 above, and CLEC will make payment in full within thirty (30) days from the date of the bill.

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

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

Addendum I to Attachment 9-1-1

LSP SERVING AREA DESCRIPTION AND E9-1-1 INTERCONNECTION DETAILS					
LSP NAME & CONTACTS	LSP "OCN"	LSP Switch	Switch Type	LSP NPA/NXX(s) included	
E9-1-1 Coordinator			CLLI Code		
	LSP Telco ID		"Connect Digits" ⁽⁴⁾ Signal		Estimated # of EAAs
			1-1		# 9-1-1 Trunks Requested
9-1-1 Database Manager	LSP Service Area Definition		ETST Code	Requested Service Date	
Switch Site Contact			"Default" PSAP		

SWBT E9-1-1 SYSTEM CONFIGURATION ASSOCIATED WITH DESIGNATED E9-1-1 CONTROL OFFICE

E9-1-1 CONTROL OFFICE: CLLI Code:	EXCHANGES FOR MSAG PULL ⁽¹⁾	PSAPs INCLUDED	E9-1-1 CUSTOMER and AGENCY TYPE ^(see legend below)
Features Required:			
# of 9-1-1 Trunks from LSP:			
MSAG Update Interval:	Monthly		
OOTNOTES: (1)			
(2)			
(3)	Only areas within the listed exchanges and also within the jurisdiction of this PSAP are included. The remainder of the PSAP's jurisdiction is not included.		
(4)	Refer to network interface specifications.		
"TYPE OF AGENCY" LEGEND:	HRC = Home Rule City ECD = Emergency Communications District COG = Council of Governments or Regional Planning Commission GLC = General Law City Cnty = County with special provisions		
			Date Prepared

ATTACHMENT E911
ADDENDUM II
BASIS OF COMPENSATION

This Addendum II is attached to and made a part of Attachment 15: E911.

- A. The following compensation amounts will be due SWBT for the provision of services under the above-mentioned Attachment for CLEC exchanges and the feature configurations shown in Addendum I.

<u>E911 Feature Configuration</u>	<u>Monthly Charge Per 1000 Access Lines</u>	<u>Nonrecurring Charge Per 1000 Access Lines</u>
Automatic Number Identification - AnyPSAP	\$10.00	\$80.00
Combined Automatic Number Identification and Selective Routing - AnyPSAP	\$60.00	\$490.00
Combined Automatic Number and Automatic Location Identification - AnyPSAP	\$105.00	\$440.00
Combined Automatic Number Automatic Location Identification, And Selective Routing - AnyPSAP	\$105.00	\$660.00

- B. The following trunk charges will be paid to SWBT for each E911 control office to which CLEC connects.

<u>Trunk Charge Channel (Each)</u>	<u>Monthly Recurring</u>	<u>Nonrecurring</u>
	\$70.00 per trunk	\$110.00 per trunk

ATTACHMENT 15: E911

TERMS AND CONDITIONS FOR PROVIDING CONNECTION TO E911 UNIVERSAL EMERGENCY NUMBER SERVICE

This Attachment E911 sets forth the terms and conditions under which SWBT will provide the connection between CLEC's local switch and E911 Universal Emergency Number Service.

1.0 Definitions

As used herein and for the purposes of this Attachment the following terms will have the meanings set forth below:

- 1.1 E911 Universal Emergency Number Service (also referred to as Expanded 911 Service or Enhanced 911 Service) - A telephone exchange communication service whereby a public safety answering point (PSAP) designated by the E911 customer may receive and answer telephone calls placed by dialing number 911. E911 includes the service provided by the lines and equipment associated with the service arrangement for the answering, transferring, and dispatching of public emergency telephone calls dialed to 911.
- 1.2 E911 Universal Emergency Number Service customer - A municipality or other state or local governmental unit, or an authorized agent of one or more municipalities or other state or local government units to whom authority has been lawfully delegated to respond to public emergency telephone calls, at the minimum, for emergency police and fire service through the use of one telephone number, 911.
- 1.3 Public Safety Answering Point (PSAP) - An answering location for 911 calls originating in a given area. The E911 customer may designate a PSAP as primary or secondary, which refers to the order in which calls are directed for answering. Primary PSAPs respond first, secondary PSAPs receive calls on a transfer basis only. PSAPs are public safety agencies such as police, fire, emergency medical, etc., or a common bureau **servicing** a group of such entities.
- 1.4 Centralized Automatic Message Accounting (CAMA) Trunk - A trunk capable of transmitting Automatic Number Identification associated with E911 customer calls from a switch to the E911 Network.
- 1.5 Automatic Number Identification (ANI) - A feature that automatically forwards the telephone number of the calling party to the E911 Control Office from which it is switched to the PSAP and is displayed at an attendant position console.
- 1.6 Automatic Location Identification (ALI) - A feature that forwards the name, street address, class of service, and other pre-determined information associated with the calling party's telephone number (identified by **ANI**) to the PSAP for display.

- 1.7 Selective Routing (SR) - A feature that provides the capability to selectively route a 911 call to the designated primary PSAP based upon the identified number of the calling party.
- 1.8 Database Management System (DBMS) - A system of manual procedures and computer programs used to create, store and update the data required for the SR and ALI service features and database of E911 service.
- 1.9 ALI Database - A database which stores information associated with end user customers' telephone numbers.

2.0 **Responsibilities**

- 2.1 SWBT will provide and maintain equipment at the E911 Control Office and the DBMS as is necessary to perform the E911 services set forth herein. SWBT will also be responsible for the following:
 - 2.1.1 when requested by CLEC, transporting the E911 calls from the interconnection point with CLEC facilities connecting CLEC's switches to the Control Offices of the E911 System. The CLEC switches will be listed in the form attached hereto as Addendum I as the CLEC switches are deployed.
 - 2.1.2 switching the E911 calls through the E911 Control Office to the designated primary PSAP or to designated alternate locations, according to routing criteria specified by the E911 Customer:
 - 2.1.3 storing the names, addresses, and associated telephone numbers from CLEC's exchanges in the electronic data processing database for the E911 DBMS. (CLEC is responsible for downloading and updating this information);
 - 2.1.4 transmission of the ANI and ALI information associated with CLEC's end users accessing E911 service to the **PSAP** for display at an attendant position console.
- 2.2 SWBT will provide and maintain sufficient dedicated E911 circuits, in accordance with the provisions of the E911 tariff and specifications of the E911 customer.
- 2.3 SWBT will provide CLEC with a description of the geographic area and PSAPs served by the E911 Control Office(s) according to industry standards for E911 information sharing.
- 2.4 SWBT will provide CLEC with a file containing the Master Street Address Guide (MSAG) for the exchanges or communities specified in Addendum I, in accordance with the methods and procedures described in the document "Operating Methods for Downloading and Maintaining End User Records in SWBT's DBMS" (dated July 31, 1996), and as subsequently modified consistent with industry standards. SWBT will provide CLEC additional files with the entire MSAG, including subsequent additions or

updates to the MSAG in accordance with the intervals specified in Addendum I. In addition, SWBT will provide CLEC with a statistical report in a timely fashion and in accordance with the methods and procedures described in the above mentioned document for each file downloaded by CLEC to SWBT's DBMS, so that CLEC may ensure the accuracy of the end user records.

- 2.5 At a reasonable time prior to establishment of E911 Service, CLEC will download and maintain thereafter all information required by SWBT to establish records necessary for furnishing connection to E911 Service and will promptly notify SWBT in writing of any changes to be made in such records. CLEC will adopt and comply with operating methods applicable to downloading and maintaining CLEC's end user records in SWBT's DBMS, as set forth in the document referenced in Section 2.4, above.
- 2.6 CLEC acknowledges that its end users in a single local calling scope may be served by different PSAPS. CLEC will be responsible for providing facilities to route calls from its end users to the proper E911 Control Office.
- 2.7 At a reasonable time prior to establishment of E911 service, CLEC will populate E911 databases using the NENA Version 2 record format, as adapted in the document referenced in Section 2.4 above.
- 2.8 During the period when interim number portability is utilized, SWBT and CLEC will coordinate their databases to provide for the display of ported numbers at the PSAP as part of the ALI screen display, subject to PSAP capability.

3.0 **Methods and Practices**

- 3.1 With respect to all matters covered by this Attachment, each Party will adopt and comply with standard industry operating methods and practices and will observe the terms and conditions of SWBT's tariffs, and the rules and regulations of the FCC and the Arkansas Corporation Commission that apply to the provision of E911 Service.

4.0 **Contingency**

- 4.1 The Parties agree that the E911 service is provided for the use of the E911 Customer, and recognize the authority of the E911 Customer to establish service specifications and grant final approval (or denial) of service configurations offered by SWBT and CLEC. The terms and conditions of this Appendix represent a negotiated plan for providing E911 service, for which CLEC must obtain documentation of the E911 Customer's approval. CLEC will provide such documentation to SWBT prior to use of CLEC's E911 connection for actual emergency calls.
- 4.2 The Parties designate the following representatives who shall have the authority to execute additional Addenda I to this Attachment when necessary to accommodate expansion of CLEC's geographic area into the jurisdiction of additional PSAPs or to increase the number of CAMA trunks:

SWBT representative:

General Manager - Regional Sales
Southwestern Bell Telephone Company
Room 08-E-11
1010 Pine Street
St. Louis, MO 63101

CLEC representative:

Gabriel Communications of Arkansas, Inc.
16090 Swingley Ridge Rd., Suite 500
Chesterfield, MO 63017

- 4.2.1 Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving seven (7) days prior written notice to the other Party in compliance with this Section. Any notice or other communication will be deemed given when received.
- 4.3 The terms and conditions of this Attachment are subject to renegotiation in the event that the E911 customer orders changes to the E911 service that necessitate revision of this Attachment.
- 5.0 **Basis of Compensation**
- 5.1 Compensation to SWBT for provision of connection to E911 Service provided hereunder will be based upon the charges set forth in Addendum II, Basis Of Compensation, and applied as specified in Addendum I.
- 5.2 For computation in Addendum II, during the initial year that SWBT provides CLEC connection to E911 service, the number of lines (business and consumer) as shown in Addendum I will be counted as of the first day of January, and the number so obtained will be used in computing compensation under this Attachment until the end of the 1st Quarter of the current year. A new count of lines, as of the first day of April (2Q), July (3Q) and October (4Q), will be used in the computation of compensation under this Attachment for that Quarter. At the end of the first full year, a new count of lines will be made and it will be used for the second full year. For each succeeding year, a new count of lines, as of the first day of January, will be used in the computation of compensation under this Attachment for that year. Each count of lines will be rounded to the nearest thousand for compensation purposes.
- 5.3 Charges will begin on the date connection to E911 Service commences.

6.0 **Monthly Billing**

6.1 SWBT will render to CLEC monthly statements in advance, showing the amounts determined as provided in Section 5 above, and CLEC will make payment in full within thirty (30) days from the date of the bill.

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

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

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E9-1-1 Coordinator			CLLI Code		
	LSP Telco ID				
			"Connect Digits" ⁽⁴⁾ Signal		Estimated # of EAAs
9-1-1 Database Manager	LSP Service Area Definition		1-1		
			ETST Code		# 9-1-1 Trunks Requested
			"Default" PSAP		Requested Service Date
Switch Site Contact					
SWBT E9-1-1 SYSTEM CONFIGURATION ASSOCIATED WITH DESIGNATED E9-1-1 CONTROL OFFICE					
E9-1-1 CONTROL OFFICE: CLLI Code:		EXCHANGES FOR MSAG PULL ⁽¹⁾	PSAPs INCLUDED	E9-1-1 CUSTOMER and AGENCY TYPE <small>(see legend below)</small>	
E9-1-1 Features Required:					
# of 9-1-1 Trunks from LSP:	Monthly				
MSAG Update Interval:	Monthly				
FOOTNOTES: (1)					
(2)					
(3)	Only areas within the listed exchanges and also within the jurisdiction of this PSAP are included. The remainder of the PSAP's jurisdiction is not included.				
(4)	Refer to network interface specifications.				
"TYPE OF AGENCY" LEGEND:	HRC = Home Rule City ECD = Emergency Communications District COG = Council of Governments or Regional Planning Commission GLC = General Law City Cnty = County with special provisions				
				Date Prepared	

ATTACHMENT E911

ADDENDUM II
BASIS OF COMPENSATION

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Combined Automatic Number and Automatic Location Identification - AnyPSAP	\$105.00	\$440.00
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B. The following trunk charges will be paid to SWBT for each E911 control office to which CLEC connects.

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