

Through this Agreement, the Interconnector is placing telecommunications equipment and facilities on SWBT property for the purpose of accessing SWBT's unbundled network elements pursuant to 47 U.S.C. § 251(c)(3) or interconnecting with SWBT pursuant to 47 U.S.C. § 251(c)(2) only. 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 form that SWBT has agreed or acquiesced that any piece of Interconnector equipment or facility is "equipment necessary for interconnection or access to unbundled network elements" under 47 U.S.C. § 251(c)(6).

ARTICLE XXV - MISCELLANEOUS

25.1 Exhibits. The following Exhibits are attached hereto and made part hereof:

Exhibit _____
Exhibit _____
Exhibit _____
Exhibit _____

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

25.3 Governing Law. This Agreement shall be governed by the laws of the State in which the Premises are located, without regard to the choice of law principles thereof.

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

25.5 Future Negotiations. SWBT may refuse requests for additional space in the Eligible Structure in which the Premises is located or in any other SWBT Eligible Structure if the Interconnector is in material breach of this Agreement, including having any past due charges hereunder. In any and each such event, the Interconnector hereby releases and shall hold SWBT harmless under Article XV from any duty to negotiate with the Interconnector or any of its affiliates for any additional space or physical collocation.

25.6 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.

25.7 Construction. This Agreement shall be interpreted and governed without regard to which Party drafted this Agreement.

25.8 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.

25.9 Binding Effect. (a) This Agreement is binding upon the Parties hereto, their respective executors, administrators, heirs, assigns and successors in interest.

(b) All obligations by either party which expressly or by their nature survive the expiration or termination of this Appendix 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.

25.10 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.

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: _____

LSP

By: _____

Title: _____

Date: _____

ATTACHMENT A

Southwestern Bell Telephone Company
[Address and to the attention of per notice provision]

Re: [Reference Identifier on Cover Sheet]

Pursuant to the referenced Physical Collocation Agreement ("Agreement"), this letter constitutes a request to place the following additional equipment and/or facilities in the Premises:

<u>Generic Name</u>	<u># of Bays</u>	<u>Floor Loading</u>	<u>Power Req.</u>	<u>Heat Release</u>
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If this request is acceptable to Southwestern Bell Telephone Company ("SWBT"), please indicate that acceptance by executing both originals and returning one to the undersigned. With the return of an executed original, the Agreement shall be deemed amended to reflect that the listed equipment and facilities may be located in the Premises. In all other respects, the Agreement shall be unaffected.

If not acceptable, please let me know of SWBT's objections or conditions to its acceptance.

All capitalized terms not defined in this letter but defined in the Agreement shall have the meaning ascribed to such term in the Agreement.

LSP

By: _____

Title: _____

Name: _____

AGREED AND ACCEPTED:

**SOUTHWESTERN BELL TELEPHONE
COMPANY**

By: _____

Title: _____

Name: _____

Date: _____

APPENDIX POLE

Agreement No. _____

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

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 Housings 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 Licensee**
- SW-9436C: Notification of Unauthorized Attachments/Conduit Occupancy by Applicant**

APPENDIX IV: Insurance Requirements

APPENDIX V: Nondisclosure Agreement (SWBT Pole, 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-entable 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" refers 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 enclosed 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 smaller 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" refers 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 provider” and “LSP” refer to telecommunications carriers authorized by applicable federal and state laws and regulations to provide local exchange service. As used in this 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 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 make-ready 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 make-ready 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 Oklahoma.

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

ARTICLE 4: NATURE AND SCOPE OF AGREEMENT

4.01 Scope of Agreement. This Agreement establishes 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 serve its own customers, avail itself of new business opportunities, or otherwise meet its own business needs or (b) enter into new agreements or arrangements with other persons or entities permitting them to attach or place their facilities on or in SWBT's poles, ducts, conduits, or rights-of-way.

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 interfere in any way with the facilities of the other party or joint users or with the use of or access to such facilities by the other party or joint users.

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 Controlled by SWBT. 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 agrees 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 Poles and Conduits. 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 Conduit. 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 contractors, 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 contractors shall have sole responsibility for the safety of all personnel performing work on Applicant's behalf, for the safety of bystanders, and for insuring that all operations 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 48 hours in advance before entering SWBT's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the parties. The notice shall state the general nature of the work to be performed. As a courtesy, Applicant shall, when feasible, provide SWBT with

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

- (b) An authorized employee or representative of SWBT may be present 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 ~~one-half of~~ 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.