

6.13 Environmental Contaminants in SWBT's Conduit System. 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 employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.

- (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 PRE-OCCUPANCY INSPECTIONS

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

and the timely processing of Applicant's applications for access to SWBT's poles, ducts, conduits, and rights-of-way located within this State. Designations of primary points of contact will be made by written notices including the name, title, address, phone number, and fax number of the person designated as the primary point of contact. 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 (SWBT Pole, 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 two business days advance notice; provided, however, that Applicant will, as a courtesy, when feasible, provide SWBT with 10 business days advance notice of its intent to examine such records.
- (b) 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 6.11 relating to the opening of manholes.

ARTICLE 8: POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

8.01 Selection of Space. Applicant will select the space Applicant will occupy on

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

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 sites 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 such cables, and the anticipated number and types of strands, if any, to be used to support the cables, such information to be sufficient to give notice to SWBT and other joint users of the remaining space on the pole available and what 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 make-ready 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, make-ready 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-LICENSE SURVEYS

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

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 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, make-ready work, and facilities modifications, if any, as may be necessary to accommodate Applicant's facilities.
- (h) Applicant may include multiple cables in a single license application and may provide multiple services (e.g., CATV and non-CATV services) under the same cable sheath or jacket. When 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 event Applicant shall either accept such conditions, initiate good faith negotiations to explore other potential accommodations, or withdraw its request for access. If SWBT does not offer to expand capacity and denies Applicant's request for access, SWBT shall promptly notify Applicant of such determination. SWBT shall not deny Applicant's request for access on lack of capacity grounds when capacity can be expanded as provided in this section and in Section 6.03 (infrequent construction techniques and connectivity solutions).

- (a) At Applicant's request, SWBT will 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 cables 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 I of this Agreement.
- (b) SWBT will, at its own expense, install inner duct in SWBT's conduit system as necessary to make space available for Applicant's facilities. Inner duct installations to accommodate Applicant's facilities will be performed by SWBT within the same time intervals which would apply if SWBT were performing such installations for itself. If SWBT's intervals for beginning or completing inner duct installation do not meet Applicant's needs, Applicant may 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 contractors. 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 section of cable is "frozen" in a duct and would require excavation to remove, Applicant may, at its option, request that SWBT excavate the obstruction or, in the alternative, arrange for 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.

- (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 make-ready work proposed by SWBT or to advise SWBT of its willingness to perform the proposed make-ready work itself. If Applicant advises SWBT that it is willing to perform the make-ready work proposed by SWBT in accordance with 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 premium 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 section.

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

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

10.08 Reimbursement for the Creation or Use of Additional Capacity. Applicant 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 make-ready 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 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 FACILITIES

13.01 Notification of Planned Modifications. Applicant shall notify SWBT in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities attached to a pole or anchor or located in any part of SWBT's conduit system. The notice shall contain sufficient information to enable 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/Overlapping Additional Cables.** Applicant may replace existing facilities with new facilities occupying the same pole, duct, or conduit space, and may spin or overlap 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 lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The parties shall exercise good faith in assigning priorities and shall base their decisions on the best information then available to them at the site in question.
- (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