

APPENDIX POLES, CONDUITS, AND RIGHTS-OF-WAY

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

This Appendix Poles, Conduits, and Rights-of-Way to Attachment Ancillary Functions to the Agreement sets forth the rates, terms, conditions, and procedures under which Southwestern Bell Telephone Company shall afford AT&T access to SWBT's poles, ducts, conduits, and rights-of-way, pursuant to the Pole Attachment Act and the Telecommunications Act of 1996.

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 AT&T Communications of the Southwest Inc. AT&T Communications of the Southwest Inc. ("AT&T") is a corporation chartered in the State of Delaware. AT&T maintains an office in Texas at 5501 LBJ Freeway, Dallas, Texas 75240.

ARTICLE 2: PURPOSE OF APPENDIX

2.01 Applicable Law. The Communications Act of 1934, as amended by the Telecommunications Act of 1996, states (at 47 U.S.C. § 251(b)(4)) 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. In Paragraph 1156 of the FCC's First Interconnection Order in CC Docket No. 96-98, the FCC has ordered that "[W]here access is mandated, the rates, terms, and conditions of access must be uniformly applied to all telecommunications carriers and cable operators that have or seek access." In Paragraph 1157 of the First Interconnection Order, the FCC has further stated that except as specifically noted elsewhere in that Order, "a utility may not favor itself over other parties with respect to the provision of telecommunications or video programming services." This Appendix has been drafted and shall be construed to effectuate these principles.

2.02 Nondiscriminatory Access. SWBT will provide AT&T nondiscriminatory access, in accordance with the Pole Attachment Act, the Telecommunications Act of 1996, and applicable rules, regulations, and commission orders to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT.

2.03 Effect on Rights and Remedies. This Appendix is intended by the parties to implement, rather than abridge, their respective rights and remedies under federal and state law.

ARTICLE 3: DEFINITIONS

3.01 Definitions in general. As used in this Appendix, the terms defined in this article shall have the meanings set forth below in Sections 3.02 to 3.39 except as the context otherwise requires.

3.02 Agreement. When capitalized, the terms "Agreement," and "Interconnection Agreement," refer to the Interconnection Agreement by and between SWBT and AT&T dated _____, 1997.

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. When capitalized, the term "Appendix" refers to this Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way by and between SWBT and AT&T.

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 Appendix, no person or entity shall have the right to occupy space assigned to another person or entity (other than on a temporary basis in the event of emergency) until the assignment has been released or lapsed. Assignment is further described in Section 8.02 of this Appendix.

3.06 Authorized contractor. "Authorized contractors" are contractors selected by AT&T who may, subject to AT&T's direction and control, perform facilities modification or make-ready work which would ordinarily be performed by SWBT or persons acting on SWBT's behalf. As used in this Appendix, the term "authorized contractor" does not refer to contractors performing routine installation, maintenance, or repair work on AT&T's behalf or other contractors who may be selected by AT&T to perform work on AT&T's behalf without SWBT's approval. More specifically, the term "authorized contractor" refers only to those contractors included on a list of contractors mutually approved by AT&T and SWBT to perform one or more of the following tasks within a specified SWBT construction district: (a) installation of those sections of AT&T's ducts or facilities which connect to SWBT's conduit system as provided in Section 6.08(c); (b) installation of inner duct as provided in Section 10.02(b); (c) excavation work in connection with the removal of retired or inactive (dead) cables as provided in Section 10.02(c); or (d) make-ready work as provided in Sections 10.04 and

10.05. A person or entity approved as an authorized contractor is only an authorized contractor with respect to those tasks for which such person or entity has been approved by both parties and is an authorized contractor only in those SWBT construction districts agreed to by both parties. Designation of an authorized contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an authorized contractor for other purposes, nor shall approval of an authorized contractor by one SWBT construction district constitute approval of such authorized contractor for the area served by a different SWBT construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an authorized contractor shall, for the purposes of that job, be deemed to have been approved by all SWBT construction districts in which the work is to be performed. As ordered by the Arkansas Public Service Commission in Order No. 5 in Docket No. 96-395-U, AT&T shall be considered to be an authorized contractor and may perform all tasks specified in this Appendix as tasks that an authorized contractor may perform.

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 shall not be considered "available" for assignment. All other unassigned ducts, inner ducts, sub-ducts, and partitioned conduits in a conduit system owned or controlled by SWBT shall be deemed available for assignment.

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

3.09 Conduit occupancy. The term "conduit occupancy" refers to the presence of wire, cable, optical conductors, or other 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 Appendix, the term "conduit system" refers to conduit systems owned or controlled by SWBT and does not include central office vaults, controlled environment vaults, and other SWBT structures (such as huts and cabinets) the conduit system,

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

3.12 Duct. The term “duct” refers to all ducts subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, a “duct” is a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities. As used in this Appendix, the term “duct” includes “inner ducts” created by subdividing a duct into smaller channels.

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

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

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

3.16 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.

3.17 License. The term “license” refers to a written instrument confirming that SWBT has afforded AT&T or another joint user access to specific space on or within a pole, duct, conduit, or right-of-way owned or controlled by SWBT in accordance with applicable federal and state laws and regulations. The term “license” includes licenses issued by SWBT pursuant to this Appendix and may, if the context requires, refer to licenses issued by SWBT prior to the date of this Appendix.

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

3.19 Maintenance duct. The term “maintenance duct” refers to a full-sized duct (typically three inches in diameter or larger) which may be used by SWBT and joint users (including AT&T) on a short-term basis for maintenance, repair, or emergency restoration activities. No more than one full-sized duct within any given conduit system cross-section shall be designated by SWBT as the maintenance duct. In those locations where,

on the effective date of this Appendix, there is not a full-sized duct available to be used as a maintenance duct, SWBT will designate an inner duct, if one is available, as the maintenance duct although such inner duct may be too small to accommodate some of the cables occupying the conduit section in which such inner duct is located. The term "maintenance duct" does not include ducts and conduits extending from a SWBT manhole to customer premises. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term emergency repairs by SWBT, AT&T, and other local service providers and joint users with facilities in the conduit section in which the maintenance duct is located as provided in Article 15 of this Appendix. Maintenance ducts shall also be available, on a non-discriminatory basis, for short-term non-emergency maintenance or repair activities by SWBT, AT&T, and other local service providers and other joint users with facilities in the conduit section in which the maintenance duct is located as provided in Articles 12 and 13 of this Appendix. Maintenance ducts shall not be considered "available" (as defined in Section 3.07) for assignment to SWBT, AT&T, or joint users for purposes other than short-term use as contemplated in this section; provided, however, that SWBT may assign the duct currently designated as a maintenance duct if another suitable full-sized duct will be made available to serve as a replacement maintenance duct.

3.20 Make-ready work. The term "make-ready work" refers to all work performed or to be performed to prepare SWBT's conduit systems, poles or anchors and related facilities for the requested occupancy or attachment of AT&T'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 AT&T's facilities (as contrasted 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, conduits, ducts, handholes and manholes), consolidating services into fewer cables, or the performance of other work required to make a pole, anchor, conduit or duct usable for the initial placement of AT&T's facilities.

3.21 Manhole/Handhole. The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron, cast aluminum, steel, or concrete manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in a conduit. The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter.

3.22 Occupancy. The term "occupancy" refers to the physical presence of facilities on a pole, or wire, cable, optical conductors, or other facilities in a conduit or duct or within a right-of-way.

3.23 Overlashing. The term "overlashing" refers to the practice of placing an additional cable or inner duct by lashing such cable or inner duct with spinning wire over existing cable(s) and strands.

3.24 Person acting on AT&T's behalf. The terms "person acting on AT&T's behalf," "personnel performing work on AT&T'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 AT&T's behalf," "personnel performing work on AT&T's behalf," and similar terms specifically include, but are not limited to, AT&T, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by AT&T, and their respective officers, directors, employees, agents, and representatives.

3.25 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.

3.26 Pole. The term "pole" refers to all poles subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). Except as the context otherwise requires, the term "pole" refers only to utility poles and anchors which are owned or controlled by SWBT.

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

(or otherwise associated with facilities occupying the same usable space on a pole) shall be treated as a single attachment for billing purposes.

3.28 Pole Attachment Act. The term "Pole Attachment Act" refers to the Pole Attachment Act, 47 U.S.C. § 224, as amended by the Telecommunications Act of 1996 and future amendatory acts.

3.29 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, duct, or conduit and identifying capacity, safety, reliability, or engineering concerns, if any, relating to AT&T's application;
- (b) determining the extent, if any, to which modifications to the pole, duct, or conduit are required to accommodate AT&T's facilities;
- (c) determining what make-ready work, if any, will be required to prepare the pole, duct, or conduit to accommodate AT&T's facilities; and
- (d) estimating the costs, if any, that AT&T will be required to pay for any such make-ready work or facilities modifications.

3.30 Pre-occupancy survey. The term "pre-occupancy survey" refers to work and activities performed or to be performed by AT&T or persons acting on behalf of AT&T for the primary purpose of enabling AT&T to determine:

- (a) the existing capacity of a pole, duct, conduit, or right-of-way and whether those facilities are suitable for AT&T's use;
- (b) the extent, if any, to which modifications to the pole, duct, conduit, or right-of-way are required to accommodate AT&T's facilities; and
- (c) what make-ready work, if any, is required to prepare the pole, duct, conduit, or right-of-way to accommodate AT&T's facilities.

3.31 Rights-of-way. As used in this Appendix, the term "rights-of-way" refers to all rights-of-way subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, rights-of-way are legal rights to pass over or 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" refers only to rights-of-way owned or controlled by SWBT.

3.32 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.

3.33 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."

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

3.35 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 or supporting wires, cables, and associated facilities.. The term "strand" includes, but is not limited to, strands sometimes referred to as "anchor strands," "anchor/guy strands," "down guys," "guy strands," "pole-to-pole guys," and "messengers."

3.36 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.

3.37 Third party. The terms "third party" and "third parties" refer to persons and entities other than the parties to this Appendix (that is, persons and entities other than AT&T and SWBT).

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

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

ARTICLE 4: NATURE AND SCOPE OF AGREEMENT

4.01 Scope of Agreement. This Appendix establishes procedures for grants of non-discriminatory access to SWBT poles, ducts, conduits, and rights-of-way located within this State, without regard to whether the site is located on public or private property. SWBT will provide AT&T and other telecommunications carriers, cable television systems, and competing providers of telecommunications services with nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by SWBT and located within this State on rates, terms, and conditions that are consistent with the Pole Attachment Act, 47 U.S.C. §224. Separate facilities collocation agreements or tariffs, including other portions of the parties' Interconnection Agreement, and not this Appendix, shall govern AT&T's access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Appendix: (a) SWBT's central office vaults (b) controlled environment vaults, huts, cabinets, and other similar outside plant structures and (c) ducts, conduits, and risers located within SWBT buildings.

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

- (a) SWBT shall give AT&T no less than 60 days written notice prior to abandoning, conveying, or transferring any pole, duct, conduit, or right-of-way (1) to or in which AT&T has attached or placed facilities pursuant to this Appendix or (2) with respect to which AT&T has been assigned pole attachment or conduit occupancy space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or right-of-way is to be conveyed or transferred.
- (b) SWBT will consent to other occupants assuming ownership in case of abandonment, as it does with other utilities.

4.03

- (a) SWBT shall give AT&T no less than 60 days written notice prior to abandoning, conveying, or transferring any pole, duct, conduit, or right-of-way (1) to or in which AT&T has attached or placed facilities

pursuant to this Appendix or (2) with respect to which AT&T has been assigned pole attachment or conduit occupancy space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or right-of-way is to be conveyed or transferred.

- (b)
- (c)
- (d)
- (e) SWBT will consent to other occupants assuming ownership in case of abandonment, as it does with other utilities.

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

4.05

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

4.07 Third-party Beneficiaries. This Appendix does not provide and shall not be construed to provide third-parties with any remedy, claim, right of reimbursement, cause of action, or other privilege.

ARTICLE 5: ACCESS TO RIGHTS-OF-WAY

5.01 Public Rights-of-Way. SWBT and AT&T agree that neither party has the right to restrict or interfere with the other party's access to public rights-of-way. Except as specifically provided in Section 5.03 below, SWBT and AT&T shall each be responsible for obtaining their own rights-of-way and permission to use real or personal property owned or controlled by any governmental body.

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

5.03 Access to Associated Rights-of-Way. Each pole attachment and conduit occupancy license made under this Appendix shall include access to and use of all associated rights-of-way, including, but not limited to, rights-of-way required by AT&T for ingress, egress, or other access to any sites where SWBT's solely or partly owned or controlled poles, manholes, conduit, ducts, or other parts of SWBT's solely or partly owned or controlled conduit system are located, but only to the extent, if any, that SWBT has the legal authority to grant such access and use. SWBT also agrees to provide nondiscriminatory access to rights-of-way containing Controlled Environment Vaults (CEVs), huts, cabinets, and other similar structures to the extent that collocation to such facilities is agreed or required by order of any court or governmental agency having jurisdiction over the subject matter. SWBT agrees that it shall place no restrictions on AT&T's ability to construct, maintain, and monitor its facilities at these sites that are more restrictive than those SWBT places on itself. This section relates only to access to the rights-of-way and not to the CEVs, huts, cabinets, and similar structures placed by SWBT on such rights-of-way. Neither this section nor any other part of this Appendix establish collocation rights with respect to CEVs, huts, cabinets, and similar structures.

- (a) Although SWBT shall afford access to rights-of-way owned or controlled by it and permit AT&T to utilize SWBT's rights-of-way to the extent that SWBT has legal authority to do so, AT&T acknowledges that SWBT may not own or control certain rights-of-way to the extent necessary to permit AT&T full access to such rights-of-way. The following general principles shall be applied with respect to access to rights-of-way on third-party real estate:
- (1) AT&T shall first attempt to obtain right-of-way directly from the property owner.
 - (2) If SWBT has legal authority to permit access by AT&T to a right-of-way on third-party property, SWBT will not restrict AT&T's use of the right-of-way.
 - (3) If AT&T has the right of eminent domain under state law, AT&T shall independently attempt to obtain the right-of-way it seeks through the exercise of that right.

- (4) If AT&T is unable to obtain access to a right-of-way under paragraphs (1), (2), and (3) above, AT&T will request in writing that SWBT exercise its right of eminent domain to condemn the right-of-way for AT&T's use and SWBT shall respond to AT&T's written request within 45 days. SWBT shall exercise its right of eminent domain on AT&T's behalf only if permitted to do so under applicable state law, and only if AT&T agrees to bear all costs and expenses, including but not limited to legal fees arising out of or in connection with the condemnation proceedings.

ARTICLE 6: SPECIFICATIONS

6.01 Compliance with Requirements, Specifications, and Standards. AT&T agrees that AT&T's facilities attached to SWBT's poles or occupying space in SWBT's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Appendix.

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, and/or engineering practices, SWBT agrees to permit AT&T 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. AT&T acknowledges that use of the above techniques will be rare and will be permitted only on a case-by-case basis.

6.04 Published Standards. SWBT and AT&T agree that the following standards equally apply to either party with respect to facilities attached to or placed in SWBT's poles, ducts, conduits, and rights-of-way and further agree that facilities shall be placed, constructed, maintained, repaired, and removed in accordance with, current (as of the date when such work is performed) editions of the following publications:

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

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

- (a) Except as otherwise specifically agreed in this Appendix or licenses issued hereunder, AT&T'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

(which deals with 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 AT&T and other joint users; provided, however, that SWBT shall not be required to install inner duct in anticipation of potential future requests for access by AT&T and other joint users.

6.08 Specifications Applicable to Connections: Conduit. Except as otherwise specifically agreed in this Appendix or licenses issued hereunder, or as mutually agreed upon by the parties in writing, the following specifications apply to connections of AT&T's conduit to SWBT's conduit system:

- (a) AT&T shall not bore, make, or enlarge any hole in, or otherwise structurally modify or alter any manhole, handhole, duct, conduit, or other facility which is part of SWBT's conduit system except as provided in this Appendix or licenses issued hereunder, or as mutually agreed upon by the parties in writing.
- (b) Nothing contained in subsection (a) shall be construed as precluding AT&T 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 AT&T's cable.
- (c) Where AT&T's duct or facility physically connects with SWBT's manhole, the section of AT&T's facility which connects to SWBT's manhole shall be installed by SWBT or its contractor at AT&T's expense (which shall be SWBT's actual costs or the price charged SWBT by the contractor). SWBT will perform this work in an

interval consistent with the intervals SWBT performs work for itself. If SWBT's interval for beginning or completing this work does not meet AT&T's needs, AT&T as an authorized contractor may perform the work itself or arrange for the work to be performed by an authorized contractor selected by AT&T from a list, jointly developed by AT&T and SWBT, of mutually agreed contractors qualified to perform such work.

- (d) SWBT shall have the option to monitor the entrance and exit of AT&T's facilities into SWBT's conduit system and the physical placement of AT&T'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 Appendix.
- (e) If AT&T 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 AT&T'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 AT&T, its contractors, and other persons acting on its behalf will perform work for AT&T 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, AT&T and joint users, to protect the health and safety of persons working on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, and to protect the public at large.

- (a) Neither party nor any person acting on such party's behalf shall permit any person to climb or work on SWBT's poles or in the vicinity of SWBT's poles, or enter SWBT's manholes or work within or in the vicinity of SWBT's conduit system, unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to the pole or conduit system and to perform the work safely.
- (b) Neither party nor any person acting on such party's behalf shall permit any person acting on its behalf to perform any work on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way without first verifying, to the extent practicable, on each date when such work is to be performed, that conditions at the work site (including but not limited to the physical condition of the pole or any

part of SWBT's conduit system) are safe enough for the work to be performed. If AT&T or any person acting on AT&T's behalf determines that the condition of the pole, duct, conduit, or right-of-way is not sufficiently safe for the work to be performed, AT&T shall notify SWBT of conditions at the site and shall not proceed with the work until AT&T is satisfied that the work can be safely performed.

- (c) Neither party nor any person acting on such party's behalf shall knowingly permit defective equipment or materials to be used on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.
- (d) When AT&T or personnel performing work on AT&T'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, AT&T and all personnel performing work on AT&T's behalf shall follow procedures which AT&T deems appropriate for the protection of persons and property. AT&T shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. AT&T and its contractors shall provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers, and property from danger. AT&T and its contractors shall have sole responsibility for the safety of all personnel performing work on AT&T's behalf, for the safety of bystanders, and for insuring that all operations performed by persons acting on AT&T's behalf conform to current OSHA regulations and all other governmental rules, ordinances or statutes.
- (e) Neither party nor any persons acting on such party's behalf shall engage in any conduct which damages public or private property in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way or creates a hazard or nuisance on such property (including but not limited to a hazard or nuisance resulting from any abandonment of or failure to remove its facilities or any construction debris from the property, failure to erect warning signs or barricades as may be necessary to exclude others from the premises or give notice to others of unsafe conditions on the premises while work performed on its behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).
- (f) AT&T shall promptly suspend activities on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way (other than sites owned or controlled by AT&T) if notified by SWBT that such

activities create an unreasonable risk of injury to persons or property (including unreasonable risks of service interruptions). AT&T shall not resume such activities on or in the vicinity of SWBT's poles or rights-of-way until AT&T 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 AT&T 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 AT&T to suspend work activities and it is later determined that there was no reasonable basis for the work suspension, SWBT agrees to compensate AT&T for the cost resulting from the delay.

- (g) All personnel acting on AT&T's behalf shall, while working on or in SWBT's poles, ducts, conduits, or rights-of-way, carry with them suitable identification and shall, upon the request of any SWBT employee or representative, produce such identification.
- (h) AT&T (and any person acting on AT&T's behalf) may report unsafe conditions on, within, or in the vicinity of SWBT's poles or conduit system to SWBT.

6.10 Specific Requirements Relating to Personnel, Equipment, Materials, and Construction Practices Within or in the Vicinity of SWBT's Conduit Systems. When SWBT or AT&T, their contractors, and other persons acting on their behalf perform work on and within SWBT's ducts, conduits, and rights-of-way, they will be guided by the following:

- (a) Except as may be mutually agreed upon by the parties in writing, AT&T shall not "rod" or clear any duct or inner duct in SWBT's conduit system other than a duct or inner duct assigned to AT&T. Following the assignment of a specific duct or inner duct to AT&T, AT&T may request that SWBT rod or clear the duct or inner duct. If the duct or inner duct cannot be cleared, SWBT shall assign the next available duct or inner duct to AT&T.
- (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 AT&T's facilities shall be firmly secured and supported in accordance with Bellcore and industry standards.
- (e) AT&T's facilities shall be plainly identified with AT&T's name in each manhole with a firmly affixed permanent tag that meets the identification standards set by SWBT for its own facilities.
- (f) Manhole pumping and purging required in order to allow work operations to proceed shall be performed in accordance with the requirements of Sections 6.14 and 6.15.
- (g) Planks or other types of platforms shall be supported only by cable racks.
- (h) Any leak detection liquid or device used by AT&T or personnel performing work on AT&T's behalf within or in the vicinity of SWBT's conduit system shall be of a type approved by SWBT and included on SWBT's then-current list of approved types of leak-detection liquids and devices; provided, however, that AT&T may use any type of leak detection liquid or device which meets Bellcore's published standards if SWBT has not provided AT&T SWBT's list of approved types of leak detection liquids or devices at least 60 days in advance of AT&T's work.
- (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 by AT&T, will be provided by AT&T. Only explosion-proof lighting fixtures shall be used.
- (l) Neither SWBT nor AT&T nor personnel performing work on either party'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) AT&T shall comply with the standards set by SWBT for its own personnel restricting the use of spark producing tools, equipment, and devices (including but not limited to such tools as electric drills and hammers, meggers, breakdown sets, induction sets, and the like) in manholes and other portions of SWBT's conduit system, provided that such standards have been communicated in writing to AT&T at least 60 days in advance of AT&T's work.
- (n) Cable lubricants used in conduit systems shall be of a type or types approved by SWBT and included on SWBT's then-current list of approved types of cable lubricants; provided, however, that AT&T may use any type of cable lubricant which meets Bellcore's published standards if SWBT has not provided AT&T SWBT's list of approved types of cable lubricants at least 60 days in advance of AT&T's work.

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

- (a) AT&T 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, AT&T shall, when feasible, provide SWBT with 10 working days' advance notice before entering SWBT's conduit system.
- (b) An authorized employee or representative of SWBT may be present at any time when AT&T or personnel acting on AT&T's behalf enter or perform work within SWBT's manhole.
- (c) The parties contemplate that AT&T may need to perform operations in SWBT's conduit system other than during normal business hours and may occasionally require access to manholes on short notice. Under these circumstances, AT&T 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 reasonable procedures enabling SWBT to receive notices from AT&T 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, AT&T shall pay SWBT's costs attributable to having such employee or representative present. SWBT shall not charge AT&T for more than one such construction inspector per site at any given time.
- (f) If the actual participation of SWBT personnel in work activities at the site is requested by AT&T or in AT&T's opinion is integral to successful completion of AT&T's work, AT&T shall pay the costs of having such personnel present.

6.12 OSHA Compliance. Each party agrees that:

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

6.13 AT&T acknowledges that, from time to time, may enter SWBT's conduit system and accumulate in manholes or other conduit facilities, and that environmental contaminants may be present at other sites where SWBT's poles, ducts, conduits, or rights-of-way are located.

- (a) AT&T may, at its expense, perform such inspections and tests at the site of any pole, duct, conduit, or right-of-way occupied by or assigned to AT&T as AT&T may deem necessary to determine the presence at such sites of .
- (b) SWBT makes no representations to AT&T or personnel performing work on AT&T's behalf that SWBT's poles, ducts, conduits, or rights-of-way will be free from at any particular time. Before entering a manhole or performing any work within or in the vicinity of SWBT's conduit system or any other site subject to access under this Appendix, AT&T or personnel acting on AT&T's behalf shall

independently determine, to their satisfaction, whether such are present and conduct their work operations accordingly.

- (c) Each party shall promptly notify the other of known by such party to be present within or in the vicinity of poles, ducts, conduits, or rights-of-way occupied by or assigned to AT&T pursuant to this Appendix if, in the sole judgment of such party, such create a serious danger to (1) the health or safety of personnel working at the site or (2) the physical integrity of the other party's facilities placed or to be placed on, within, or in the vicinity of such poles, conduits, or rights-of-way.
- (d) The acknowledgments and representations set forth in this section shall not relieve either party from its responsibility to comply with applicable environmental laws or from any liability arising out of such party's failure to comply with such laws.

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

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

6.15 Compliance with Other Governmental Requirements (Including Aeronautical Navigation Safeguards). AT&T 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). AT&T 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 AT&T's Responsibility for the Condition of Its Facilities. AT&T shall 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 rules, regulations, ordinances, and laws.

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

7.01 Designation of Primary Points of Contact. Each party shall, at the request of the other party, designate a primary point of contact to facilitate communications between the parties and the timely processing of AT&T's applications for access to SWBT's poles, ducts, conduits, and rights-of-way located within this State. Designations of primary points of contact shall 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 shall not affect notice requirements or other legal requirements set forth in other provisions of this Appendix or the Agreement.

7.02 Determinations by AT&T of Suitability and Availability. AT&T shall make its own, independent assessment of the suitability of SWBT's poles, ducts, conduits, and rights-of-way for AT&T'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 AT&T. Access to such records and information shall be conditioned on AT&T's execution of a nondisclosure agreement equivalent in substance to the Nondisclosure Agreement attached to this Appendix as Exhibit V or such other nondisclosure agreement as shall be mutually acceptable to the parties, and no person acting on AT&T's behalf shall be granted access to such records and information without first signing such a nondisclosure agreement. AT&T shall reimburse SWBT for the reasonable cost incurred by SWBT in granting AT&T's requests for access to records and information under this section.

- (a) AT&T shall, after the effective date of this Appendix, have reasonable access to (1) SWBT's pole and conduit maps and records, (2) SWBT's cable plat maps, and, (3) in addition, other SWBT plant location records recording or logging assignments of pole, duct, and conduit space. AT&T shall be permitted to examine these records during regular business hours at a location where copies of such records are maintained or at such other location as may be mutually agreed upon by the parties. Access to such maps and records shall be by appointment only, and SWBT shall make such maps and records available for inspection by AT&T on two business days notice; provided, however, that AT&T shall, as a courtesy, whenever feasible, provide SWBT with additional advance notice (e.g., 10 business days) of its intent to examine such records.
- (b) The access described in subsection (a) shall include the right to make copies, at AT&T's expense, except for cable plat maps, which shall

be made available for inspection only. In all instances, such access shall include the ability to take notes and make drawings with references to those maps and records. No references to cable counts or circuit information may be included in any such copies, notes, or drawings. With respect to other cable-specific or customer-specific information, AT&T's copies, notes, or drawings may include only such information as needed for engineering purposes (e.g., proposing cable consolidations and identifying plant discrepancies) and not for sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities. AT&T's copies, notes, and drawings may include estimates regarding the physical characteristics (such as size and weight) of cables when necessary to make engineering determinations regarding the capacity, safety, reliability, or suitability of SWBT's poles, ducts, conduits, and rights-of-way for AT&T's intended uses.

- (c) SWBT shall provide AT&T 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 AT&T's facilities or that the pole, duct, or conduit depicted is suitable for AT&T's intended use.

7.04 Pre-Occupancy Inspection of Poles, Ducts, Conduits, and Rights-of-Way.
AT&T 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.