

- (a) When emergency pole replacements are required, SWBT shall promptly make a good faith effort to contact AT&T to notify AT&T of the emergency and to determine whether AT&T 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, AT&T 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 AT&T is unable to respond to the emergency situation immediately, AT&T 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 AT&T's behalf.

15.08 AT&T to Bear Expenses. AT&T shall bear all reasonable 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 made in accordance with the provisions of this article.

- (a) AT&T 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 AT&T's facilities.
- (b) AT&T agrees to reimburse SWBT for the cost incurred by SWBT for transferring or reattaching facilities on AT&T's behalf in accordance with the provisions of this article; provided, however, that AT&T reserves the right to challenge any costs billed to it for such work, and further provided that when the cost incurred by SWBT is for work performed in part for AT&T and in part for SWBT or third parties, AT&T shall only reimburse SWBT for its share of the cost incurred.

ARTICLE 16: INSPECTION BY SWBT OF AT&T'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 AT&T'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 Appendix and licenses hereunder. SWBT may charge AT&T for inspection expenses only if the inspection reflects that AT&T is in substantial noncompliance with the terms of this Appendix. If the inspection reflects that AT&T's facilities are not in compliance with the terms of this Appendix, AT&T 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 AT&T the results of any inspection of AT&T's facilities performed under Section 16.01 of this Appendix.

ARTICLE 17: TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

17.01 Facilities to Be Marked. AT&T shall tag or otherwise mark all of AT&T's facilities placed on or in SWBT's poles, ducts, conduits, and rights-of-way in a manner sufficient to identify the facilities as AT&T's facilities.

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

- (a) Before removing any such untagged or unmarked facilities, SWBT shall first attempt to determine whether the facilities are being used by AT&T or any other firm, are subject to any license subject to this Appendix, or are otherwise lawfully present on SWBT's poles or in SWBT's conduit system.
- (b) SWBT shall not remove untagged or unmarked facilities which are thought to be operational without first making reasonable efforts to (1) determine the identity of the owner or other person or entity thought to be responsible for the facilities and (2) give advance written notice to such person or entity.

- (c) If the facilities appear to be facilities which are subject to a current license granted to AT&T under this Appendix, or if the facilities are AT&T facilities otherwise lawfully present on SWBT's poles or in SWBT's conduit system, SWBT shall give written notice to AT&T requesting AT&T to tag or mark the facilities within 60 days and AT&T shall either tag the facilities within the 60-day period, advise SWBT in writing of its schedule for tagging the facilities, or notify SWBT in writing that it disclaims ownership of or responsibility for the facilities. If AT&T disclaims ownership of or responsibility for the facilities, AT&T shall disclose to SWBT the identity of the owner or other person or entity thought by AT&T to be responsible for the facilities.

17.03 Updating of Plant Location Records. AT&T agrees to furnish SWBT, upon request, with such information as may from time to time be necessary for SWBT to correct and update SWBT's pole and conduit maps and records, cable plat maps, and other plant location records, if any, recording or logging assignments of pole, duct, and conduit space.

ARTICLE 18: REMOVAL OF AT&T'S FACILITIES

18.01 AT&T Responsible for Removing Facilities. AT&T shall be responsible for removing its facilities from SWBT's poles, ducts, conduits, and rights-of-way and shall bear all expenses arising out of or in connection with the removal of its facilities from SWBT's poles, ducts, conduits, and rights-of-way in accordance with the provisions of this article.

- (a) AT&T shall give SWBT, when practicable, at least 30 days' advance notice in writing of its intent to remove facilities from any part of SWBT's conduit system and the proposed method of removal. The notice shall include the locations of the facilities to be removed, the name and telephone number of the manager responsible for the removal of the facilities, and the estimated dates when removal of the facilities will begin and end.
- (b) AT&T shall, if requested by SWBT to do so, place a pull mandrel (slug) through all or any specified part of the duct which was occupied by AT&T.
- (c) Except as otherwise agreed upon in writing by the parties, AT&T must, after removing its facilities, plug all previously occupied ducts at the entrances to SWBT's manholes (if SWBT would itself plug the ducts under the same circumstances) in accordance with the standards set by SWBT for its operations, provided that such standards have

been communicated in writing to AT&T at least 60 days in advance of the removal of AT&T's facilities.

- (d) AT&T shall be solely responsible for the removal of its own facilities and for (1) paying all persons and entities which provide materials, labor, access to real or personal property, or other goods or services in connection with the removal of AT&T's facilities from SWBT's poles, ducts, conduits, or rights-of-way and (2) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.
- (e) When AT&T no longer intends to occupy space on a pole or in a conduit AT&T will provide written notification to SWBT that it wishes to terminate the license with respect to such space and will remove its facilities from the space described in the notice. Upon removal of AT&T's facilities, the license shall terminate and the space shall be available for reassignment.

18.02 Removal of Facilities Not in Active Use. At SWBT's request, AT&T shall remove from SWBT's poles, ducts, conduits, and rights-of-way any of AT&T's facilities which are no longer in active use; provided, however, that AT&T shall not be required to remove such facilities when due cause and justification exists for allowing them to remain in place. AT&T shall not be required to remove retired or inactive (dead) cables that have been overlashed by other facilities which remain in active use unless removal expenses are paid by the person or entity requesting removal of such facility. AT&T shall not be required to remove cables that would require excavation to remove unless the person or entity requesting removal of such cables bears the expenses of excavation in a manner analogous to the provisions of Section 10.02(c) of this Appendix. AT&T shall not abandon any of its facilities by leaving them on SWBT's poles, in SWBT's ducts, conduits, or rights-of-way, at any location where they may block access to or obstruct SWBT's poles, ducts, conduits, or rights-of-way, or on any public or private property (other than property owned or controlled by AT&T) in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

18.03 Removal Following Termination of License. AT&T shall remove its facilities from SWBT's poles, ducts, conduits, or rights-of-way within 60 days, or within such other period of time as shall be mutually agreeable to the parties, after termination of the license authorizing the attachment of such facilities to SWBT's poles or the placement of such facilities in SWBT's ducts, conduits, or rights-of-way.

18.04 Removal Following Replacement of Facilities. Except as provided in Section 18.02, AT&T shall remove facilities no longer in service from SWBT's poles or conduit system within 60 days, or within such other period of time as shall be mutually agreeable to the parties, after the date AT&T replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit; provided,

however, that removal of facilities from the maintenance duct shall be governed by Sections 12.04, 13.03, and 15.02 of this Appendix and not by this subsection.

18.05 Notice of Completion of Removal Activities. AT&T shall give written notice to SWBT stating the date on which the removal of its facilities from SWBT's poles, ducts, conduits, and rights-of-way has been completed. Charges shall continue to accrue with respect to such facilities until AT&T's facilities have been removed, AT&T has plugged all previously occupied ducts at the entrances to SWBT's manholes as required by Section 18.01(c) of this Appendix, and the notice required by this section has been given.

18.06 Notice of SWBT's Intent to Remove Facilities. If AT&T fails to remove its facilities from SWBT's poles or conduit system in accordance with the provisions of Sections 18.01-18.05 of this Appendix, SWBT may remove such facilities 60 days after giving AT&T written notice of its intent to do so. The notice shall state:

- (a) the date when SWBT plans to commence removal of AT&T's facilities, and that AT&T may remove the facilities at AT&T's sole cost and expense at any time before the date specified;
- (b) SWBT's plans with respect to disposition of the facilities removed; and
- (c) that AT&T's failure to remove the facilities or make alternative arrangements with SWBT for removal and disposition of the facilities shall constitute an abandonment of the facilities and of any interest therein.

18.07 Removal of Facilities by SWBT. If SWBT removes any of AT&T's facilities pursuant to this article, AT&T shall reimburse SWBT for SWBT's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.

18.08 Reattachment or Subsequent Attachment Following Removal. After AT&T's facilities have been properly removed pursuant to the provisions of this article, neither the removed facilities nor replacement facilities shall be attached to SWBT's poles or placed in SWBT's conduit system until AT&T has first submitted new applications for the facilities and complied with the provisions of this Appendix.

ARTICLE 19: FEES, CHARGES, AND BILLING

19.01 Semiannual Attachment and Occupancy Fees. SWBT's semiannual fees for attachments to SWBT's poles and occupancy of SWBT's ducts and conduits are specified in Exhibit I. For all attachments to SWBT's poles and occupancy of SWBT's

ducts and conduits under this Appendix, AT&T agrees to pay SWBT's semiannual charges as specified in Exhibit I.

19.01

19.02 Billing for Attachment and Occupancy Fees. Semiannual attachment and occupancy fees under this Appendix and licenses subject to this Appendix shall be due and payable in advance. Fees for pole attachments shall be based on the number of AT&T's pole attachments as of the date of billing by SWBT, and shall be payable semiannually in advance. For billing purposes, a single pole attachment includes the point of attachment and all facilities located in the usable space on the pole six inches above and six inches below the point of attachment, together with routine ancillary apparatus such as anchors, dead-end clamps, strands, drop-wire, drive rings, J-hooks, and other ancillary apparatus that does not interfere with the ability of SWBT and others to occupy usable space on the pole other than usable space assigned to AT&T. Fees for conduit occupancy shall be based on the number of duct feet occupied by or assigned to AT&T as of the date of billing by SWBT, and shall be payable semiannually in advance. Pole attachment and conduit occupancy space occupied by or assigned to AT&T shall be subject to billing whether or not a current license for such space is in effect.

- (a) Bills shall be submitted to AT&T for two semiannual billing periods, the first period including charges for the months of January through June and the second including charges for the months of July through December.
- (b) Charges associated with new pole attachments and conduit occupancy shall be prorated on a daily basis and billed with the next semi-annual bill.
- (c) Charges shall be prorated on a daily basis following the removal of AT&T's facilities and shall be retroactively adjusted as a credit on the next semiannual bill.

19.02 Schedule of Rates, Fees, and Charges.

19.03 Make-Ready Charges. SWBT may not require payment of the full amount of make-ready charges in advance. As ordered by the Arkansas Public Service Commission in Order No. 5 in Docket No. 96-395-U, AT&T will pay half of SWBT's make-ready charges after 50% completion of work, and the remainder at completion. Bills and invoices submitted by SWBT to AT&T for make-ready charges shall be due and payable 30 days after the date of the bill or invoice.

19.03 Pole Attachment and Conduit Occupancy Fees.

19.04 Due Date for Payment. For all fees and charges other than make-ready charges, each bill or invoice submitted by SWBT to AT&T for any fees or charges under this Appendix shall state the date that payment is due, which date shall be not less than 60 days after the date of the bill or invoice. AT&T agrees to pay each such bill or invoice on or before the stated due date.

19.05 Application Fees.

19.06 Charges for Pre-License Survey Work.

19.07 Charges for Facilities Modifications, Capacity Expansions, and Make-ready Work.

19.08 Contract Administration Fee.

19.09 Administrative Record-keeping Fees.

19.10 Modification of Rates, Fees and Charges.

(a)

(1)

(2)

(3)

(b)

19.11 Disputes Over Charging Methodologies.

ARTICLE 20: PERFORMANCE AND PAYMENT BONDS

20.01 Bond May Be Required. SWBT may require AT&T, authorized contractors and other persons acting on AT&T's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of their respective obligations arising out of or in connection with this Appendix only as provided in subsections (a) -(b) of this section. Bonds shall not be required for entities meeting all self-insurance requirements of Section 23.02 of this Appendix.

- (a) If AT&T elects to perform make-ready or facilities modification work under Section 6.08(c) or Sections 10.02 - 10.05 of this Appendix, SWBT may require AT&T, authorized contractors, and other persons acting on AT&T's behalf to execute bonds equivalent to those which would be required by SWBT if the work had been performed by

contractors, subcontractors, or other persons selected directly by SWBT. No bonds shall be required of AT&T, authorized contractors, or other persons acting on AT&T's behalf except in those situations where a bond would be required if the work were being performed on SWBT's behalf.

- (b) No other bond shall be required of AT&T to secure obligations arising under this Appendix in the absence of due cause and justification.
- (c) If a bond or similar form of assurance is required of AT&T, an authorized contractor, or other person acting on AT&T's behalf, AT&T shall promptly submit to SWBT, upon request, adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be canceled, changed or materially altered without first providing SWBT 60 days written notice.
- (d) SWBT may communicate directly with the issuer of any bond required by SWBT pursuant to this section to verify the terms of the bond, to confirm that the bond remains in force, and to make demand on the issuer for payment or performance of any obligations secured by the bond.

ARTICLE 21: INSURANCE

21.01 Insurance Required. AT&T shall comply, and cause its contractors and subcontractors acting on its behalf to comply, with the insurance requirements specified in this section:

- (a) Unless AT&T has provided proof of self-insurance as permitted in section 21.02 below, AT&T shall obtain and maintain in full force and effect, for so long as this Appendix remains in effect, insurance policies specified in Exhibit IV of this Appendix. Each policy shall name SWBT as an additional insured and shall include provisions requiring the insurer to give SWBT notice of any lapse, cancellation, or termination of the policy or any modification to the policy affecting SWBT's rights under the policy, including but not limited to any decrease in coverage or increase in deductibles.
- (b) Exclusions from coverage or deductibles, other than those expressly permitted in Exhibit IV, must be approved in writing by SWBT.
- (c) Authorized contractors and other contractors performing work on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-

of-way on AT&T's behalf shall be required to meet the same insurance (or self-insurance) requirements applicable to contractors performing similar work on SWBT's behalf.

- (d) Self-insurance shall be permitted for entities (including but not limited to AT&T and authorized contractors) meeting the self-insurance requirements set forth in Section 21.02 of this Appendix.

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

21.03 Licensing Contingent on Proof of Insurance. All insurance required in accordance with Exhibit IV, or self-insurance as permitted in Section 21.02, must be in effect before SWBT will issue pole attachment or conduit occupancy licenses under this Appendix and shall remain in force until all of AT&T's facilities have been removed from SWBT's poles, ducts, conduits, and rights-of-way.

21.04 Failure to Obtain or Maintain Coverage. AT&T's failure to obtain and maintain the required levels and types of insurance coverage required under this Appendix may be grounds for termination of licenses subject to this Appendix. If an insurance carrier shall at any time notify AT&T or SWBT that any policy or policies of insurance required under this Appendix will be canceled or changed in any manner which will result in AT&T's failure to meet the requirements of this Appendix, SWBT may terminate this Appendix and all licenses subject to this Appendix not less than 60 days after giving AT&T written notice of its intention to do so, and such termination shall be effective on the termination date specified in the notice unless AT&T has obtained (or made arrangements satisfactory to SWBT to obtain) the required coverage from another source. In the alternative, SWBT may, in its sole discretion, elect to take such action as may be necessary to keep any such policy in effect with the required coverages.

ARTICLE 22: ASSIGNMENT OF RIGHTS

22.05 Sublicenses Prohibited. Nothing contained in this Appendix shall be construed as granting AT&T the right to sublicense any rights under this Appendix or licenses subject to this Appendix to any third party. AT&T shall not allow any third party to attach or place facilities to or in pole or conduit space occupied by or assigned to AT&T or to utilize such space.

ARTICLE 23: TERMINATION

23.01 Termination of Appendix Due to Non-Use of Facilities. AT&T shall, by written notice to SWBT, terminate this Appendix and all licenses subject to this Appendix if AT&T ceases to do business in this State, ceases to have authority to provide cable television or telecommunications services in this State, or ceases to make active use of or have intent to use SWBT's poles, ducts, conduits, and rights-of-way in this State.

23.02 Limitation, Termination, or Refusal of Access for Certain Material Breaches. AT&T's access to SWBT's poles, ducts, conduits, and rights-of-way shall not materially interfere with or impair service over any facilities of SWBT or any joint user, cause material damage to SWBT's plant or the plant of any joint user, impair the privacy of communications carried over the facilities of SWBT or any joint user, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of SWBT's poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, SWBT may limit, terminate or refuse access if AT&T violates this provision; provided, however, that such limitation, termination or refusal will be limited to AT&T's access to poles, ducts, conduits, and rights-of-way located in the SWBT engineering or construction district in which the violation occurs, shall be as narrowly limited in time and geographic scope as may be necessary to enable AT&T to adopt suitable controls to prevent further violations, and shall be subject to review, at AT&T's request, pursuant to the dispute resolution procedures set forth in the Agreement or, as permitted by law, before any court, agency, or other tribunal having jurisdiction over the subject matter. In the event that AT&T invokes dispute resolution procedures or seeks review before a court, agency, or other tribunal having jurisdiction over the subject matter, the limitation, termination, or refusal of access may be stayed or suspended by agreement of the parties or by order of the tribunal having jurisdiction over the parties' dispute.

23.03 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Appendix by either party, the aggrieved party may give written notice of such claimed breach as provided in this section.

- (a) The notice shall set forth in reasonable detail:
 - (1) the conduct or circumstances complained of, together with the complaining party's legal basis for asserting that a breach has occurred;

- (2) the action believed necessary to cure the alleged breach; and
 - (3) any other matter the complaining party desires to include in the notice.
- (b) Except as provided in Section 23.02 and subsection (c) of this section, the complaining party shall not be entitled to pursue any remedies available under this Appendix or relevant law unless such notice is given and (1) the breaching party fails to cure the breach within 30 days of such notice, if the breach is one which can be cured within 30 days, or (2) the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure; provided, however, that nothing contained in this section shall preclude either party from invoking the dispute resolution procedures set forth in Article 25 of this Appendix, or any dispute resolution procedures offered by the FCC or Arkansas Public Service Commission, at any time.
- (c) Nothing contained in this section shall preclude either party from filing a complaint or bringing suit in any court, agency, or other tribunal of competent jurisdiction to restrain or enjoin any conduct of the other party which threatens the complaining party with irreparable injury, loss, or damage without first giving the notice otherwise required by subsection (b).

ARTICLE 24: EFFECTIVE DATE AND TERM OF APPENDIX

24.01 Effective Date. This Appendix shall be effective as of the date of approval of the Agreement.

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

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

24.04 Elective Termination. Either party may terminate this Appendix by giving the other party at least months prior written notice as provided in this section. AT&T may terminate this Appendix with or without cause. SWBT may only terminate this Appendix for cause. Thereafter, SWBT may terminate this Appendix with or without cause. termination of this Appendix by SWBT shall be subject to the provisions of 24.05 below. The notice of termination shall state the effective date of termination, which date

shall be no earlier than the last to occur of the following dates: the last day of the initial term of this Appendix or twelve months after the date the notice is given.

24.05 Effect of Elective Termination. Elective termination of this Appendix, as permitted under Section 24.04 of this Appendix, shall not affect AT&T's liabilities and obligations incurred under this Appendix prior to the effective date of termination and shall not entitle AT&T to the refund of any advance payment made to SWBT under this Appendix. Elective termination of this Appendix by SWBT shall not affect SWBT's obligations to afford access to SWBT's poles, ducts, conduits, and rights-of-way as required by the Pole Attachment Act, the Telecommunications Act of 1996 and subsequent amendments, and other applicable laws, regulations, and commission orders..

ARTICLE 25: DISPUTE RESOLUTION

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

25.02 Exclusive Remedy for Claims or Controversies Under \$25,000. Except for actions seeking injunctive relief related to the purposes of this Appendix or suits to compel compliance with the dispute resolution processes set forth in this article, and except as provided in Section 25.08, the parties agree to use the dispute resolution processes set forth in this Appendix as their sole remedy with respect to any claim or controversy of \$25,000 or less which arises out of or in connection with this Appendix.

25.03 Prerequisite to Litigation. The provisions of this article shall also apply to all disputes, without regard to the amount in controversy, in which AT&T contests charges billed by SWBT to AT&T under the terms of this Appendix. No suit, except for actions seeking injunctive relief related to the purposes of this Appendix or suits to compel compliance with the dispute resolution processes set forth in this article, shall be filed by either party against the other with respect to such contested charges until the parties have engaged in good faith negotiation as provided in Section 25.04, and, if the parties agree, in mediation under Section 25.05.

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

- (a) With respect to any dispute subject to the provisions of this article, either party may initiate negotiation proceedings by writing a certified or registered letter to the other party setting forth the particulars of the dispute, the terms of the Appendix that are involved, and a suggested resolution of the problem.

- (b) The recipient of the letter shall respond within 21 days to the proposed solution. The recipient shall either agree to the proposed solution or explain its disagreement.
- (c) If the correspondence does not resolve the dispute, each party, at the request of either party, will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve the dispute. The location, form, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations.
- (d) Discussions and correspondence among the representatives as provided by this section are for purposes of settlement, are exempt from discovery and production, and shall not be admissible in arbitration, judicial, regulatory, or other proceedings in any forum.

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

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

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

25.06 Arbitration. If negotiations and mediations do not resolve the dispute within 90 days after the initiation of dispute resolution proceedings as provided in subsection (a) of Section 25.05 of this Appendix, the dispute shall be submitted to

binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association (or pursuant to the rules of such other provider of arbitration services as the parties may agree) if the dispute involves any claim or controversy of \$25,000 or less which arises out of or in connection with this Appendix. The parties may voluntarily elect to arbitrate disputes in which the amount in controversy exceeds \$25,000, but they shall not be required by this Appendix to do so.

- (a) Either party may demand such arbitration in accordance with the procedures set out in the Commercial Arbitration Rules or pursuant to the rules of such other provider of arbitration services as the parties may agree.
- (b) Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this subsection.
 - (1) Each party may submit in writing to any other party, and such other party shall so respond, to a maximum of any combination of 35 of the following: interrogatories, document production requests, and requests for admissions. The interrogatories, document production requests, and requests for admissions shall not have subparts.
 - (2) Additional discovery may be permitted upon mutual agreement of the parties or upon order of the arbitrator on a showing of good cause.
- (c) The arbitrator shall control the scheduling so as to process the matter expeditiously. The times set forth in this subsection shall apply unless extended upon mutual agreement of the parties or by the arbitrator on a showing of good cause.
 - (1) The arbitration hearing shall be commenced within 60 days of the demand for arbitration and, in the absence of agreement by the parties to a different venue, the arbitration will be held in Little Rock, Arkansas.
 - (2) The parties shall submit written briefs five days before the hearing.
 - (3) The arbitrator shall rule on the dispute by issuing a written opinion within 30 days after the close of hearings.
 - (4) The arbitrator shall have no authority to order punitive or consequential damages.

- (5) Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

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

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

25.08 No Abridgment of Rights under the Communications Act of 1934 or the Pole Attachment Act. Nothing contained in this article shall abridge the rights of either party to seek relief from the FCC with respect to any dispute subject to the jurisdiction of the FCC under the Communications Act of 1934 or the Pole Attachment Act, or from the Arkansas Public Service Commission ("PSC") for any dispute subject to its jurisdiction, except that the parties may not seek relief from the FCC or the PSC for any dispute that has already been resolved by mediation under Section 25.05 or by binding arbitration under Section 25.06.

25.09

ARTICLE 26: CONFIDENTIALITY OF INFORMATION

26.01 Information Provided by AT&T to SWBT. Except as otherwise specifically provided in this Appendix, all company-specific and customer-specific information submitted by AT&T to SWBT in connection with this Appendix (including but not limited to information submitted in connection with AT&T's applications for the assignment of pole attachment and occupancy space and for pole attachment and conduit occupancy licenses) shall be deemed to be "Confidential" or "Proprietary" information of AT&T and shall be subject to the terms set forth in this article. Confidential or Proprietary information specifically includes information or knowledge related to AT&T's review of records regarding a particular market area, or relating to assignment of space to AT&T in a particular market area, and further includes knowledge or information about the timing of AT&T's request for or review of records or its inquiry about SWBT facilities. This article does not limit the use by SWBT of aggregate information relating to the occupancy and use of SWBT's poles, ducts, conduits, and rights-of-way by firms other than SWBT (that is, information submitted by AT&T and aggregated by SWBT in a manner that does not directly or indirectly identify AT&T).

26.02 Access Limited to Persons with a Need to Know. Confidential or Proprietary information provided by AT&T to SWBT in connection with this Appendix shall not be disclosed to, shared with, or accessed by any person or persons (including but not limited to personnel involved in sales, marketing, competitive intelligence,

competitive analysis, strategic planning, and similar activities) other than those who have a need to know such information for the limited purposes set forth in Sections 26.03 to

26.03 Permitted Uses of AT&T's Confidential or Proprietary Information.

SWBT and persons acting on SWBT's behalf, except for personnel involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities, may utilize AT&T's Confidential or Proprietary information for the following purposes, and no others: (a) posting information, as necessary, to SWBT's outside plant records; (b) placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SWBT's poles, ducts, conduits, and rights-of-way and any SWBT facilities located on, within, or in the vicinity of such poles, ducts, conduits, and rights-of-way; (c) performing SWBT's obligations under this Appendix and similar agreements with third parties; (d) performing SWBT's general obligations to afford nondiscriminatory access to telecommunications carriers and cable television systems under the Pole Attachment Act; (e) determining which of SWBT's poles, ducts, conduits, and rights-of-way are (or may in the future be) available for SWBT's own use, and making planning, engineering, construction, and budgeting decisions relating to SWBT's poles, ducts, conduits, and rights-of-way; (f) preparing cost studies; (g) responding to regulatory requests for information; (h) maintaining SWBT's financial accounting records; and (i) complying with other legal requirements relating to poles, ducts, conduits, and rights-of-way.

26.04 Access by Third Parties. Information reflecting the assignment of pole attachment and conduit occupancy space to AT&T may be made available to personnel of third parties seeking access to SWBT's records pursuant under provisions equivalent to those contained in Section 7.03 of this Appendix.

26.05 Defense of Claims. In the event of a dispute between SWBT and any person or entity, including AT&T, concerning SWBT's performance of this Appendix, satisfaction of obligations under similar agreements with third parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, SWBT may utilize Confidential or Proprietary information submitted by AT&T in connection with this Appendix as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that SWBT shall not disclose AT&T's Proprietary or Confidential Information without first, at SWBT's option, (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of the information; (b) seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing AT&T notice of the subpoena or order and the opportunity to protect the Proprietary or Confidential Information.

26.06 Response to Subpoenas, Investigative Demands, Court Orders, and Agency Orders. Nothing contained in this Article shall be construed as precluding

SWBT from complying with any subpoena, civil or criminal investigative demand, or order issued or entered by a court or agency of competent jurisdiction; provided, however, that SWBT shall not disclose AT&T's Proprietary or Confidential Information without first, at SWBT's option, (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of the information; (b) seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing AT&T notice of the subpoena, demand, or order and the opportunity to protect the Proprietary or Confidential Information.

26.07 Other Uses of Confidential Information. No other uses of Confidential or Proprietary information received from AT&T pursuant to this Appendix are authorized or permitted without AT&T's express written consent.

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

Appendix Poles, Conduits, and Rights-of-Way
Exhibit I

AT&T's Exhibits I through 5 were all disputed.

Appendix Poles, Conduits, and Rights-of-Way
Exhibit I

SWBT's Exhibit I was disputed.

ATTACHMENT 14: INTERIM NUMBER PORTABILITY

1.0 Interim Number Portability

1.1 SWBT and AT&T will provide Interim Number Portability in accordance with requirements of the Act. Interim Number Portability (INP) will be provided by each Party to the other upon request. INP will be provided with minimum impairment of functionality, quality, reliability and convenience to subscribers of AT&T or SWBT. The Parties will provide Permanent Number Portability (PNP) as soon as it is technically feasible, in conformance with FCC rules and the Act, and will participate in development of PNP in the state, in accordance with the FCC's First Report and Order and First Memorandum Opinion and Order on Reconsideration in Docket No. 95-116 (hereinafter called the LNP Order).

2.0 Non-Geographical Numbers

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

3.0 Availability

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

4.0 INP-Remote

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

5.0 INP-Direct

- 5.1 INP-Direct is an existing service which uses DID or like technology to provide for the delivery of the calling (dialed) number to the requesting Party's switch for subsequent routing and call completion.
- 5.2 INP-Direct is available either on a per voice grade channel basis or a per DS1 (24 equivalent voice grade channels) basis.
- 5.3 Where the location of the requesting Party's switch is outside the area served by the providing Party's switch, the requesting Party is responsible for providing appropriate transport facilities.
- 5.4 INP-Direct must be established with a minimum configuration of 2 voice grade channels and one unassigned telephone number per switch. INP-Direct may not be mixed with any other type of trunk group. Outgoing calls may not be placed over trunk groups arranged for INP-Direct service.

6.0 Other Interim Portability Provisions

- 6.1 Either Party will exchange with the other SS7 TCAP messages as required for the implementation of Customer Local Area Signaling Services (CLASS) or other features available.
- 6.2 Either Party will notify the other of any technical or capacity limitations that would prevent use of a requested INP implementation in a particular switching office.
- 6.3 SWBT will cooperate with AT&T to ensure 911 service is fully available to ported end users consistent with state provisions. AT&T will have the right to verify the accuracy of the information regarding the AT&T customer in the ALI database.
- 6.4 Either Party will pass all Calling Party Number (CPN) or Automatic Number Identification (ANI) information to and from the ported number, whenever technically feasible.
- 6.5 SWBT agrees to populate its Line Information Database (LIDB) with information, such as TLN calling cards and Billing Number Screening (BNS), regarding ported numbers for billing. SWBT will provide access to LIDB database interfaces to accomplish this function, or make input on behalf of AT&T pursuant to LIDB data storage and administrative contracts.
- 6.6 SWBT agrees not to issue Telephone Line Number (TLN) based calling card numbers when a customer ports their number to AT&T.

6.7 SWBT and AT&T will cooperate in all service cutovers involving the other Party's service, to avoid unnecessary service outages.

6.8 Each Party will provide competitively neutral cost recovery as defined by the Commission which reflects the FCC NP Order.

7.0 Cutover Process

7.1 For a Coordinated Cutover Environment (where the loop is being purchased by AT&T as an unbundled Network Element at the time of INP implementation), SWBT will update switch translations where necessary as close to the requested time as possible, not to exceed 30 minutes after the physical cutover is completed.

7.2 For a Non-Coordinated Cutover Environment (where the loop is supplied by AT&T) SWBT will schedule a mechanized update of switch translations at the AT&T requested cutover time (frame due time). SWBT will provide an operation contact whom AT&T can reach in the event manual intervention is needed to complete the cutover. In the event of manual intervention, completion will be negotiated by the parties.

8.0 Testing

8.1 SWBT and AT&T will cooperate in conducting testing to ensure interconnectivity between systems. The Parties will inform each other of any system updates that may affect either Party's network and will perform tests to validate the operation of the network.

9.0 Recording and Billing

9.1 The Parties will provide to each other the Exchange Message Records (EMR) for all alternately billed calls.

9.2 The Parties will supply each other with originating billing records which will enable them to bill each other or any other LSP for any local interconnection charge.

10.0 Line Status Verification/Busy Line Verify

10.1 When a Line Status Verification or Busy Line Interrupt request for a ported number is directed to either Party's operator and the query is not successful if the operator is aware that the number is a ported number, then the operator will direct the caller to the appropriate operator.