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CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT - ARKANSAS
POLES, CONDUITS, AND RIGHTS-OF-WAY

Issue	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
		<p>contaminants (resolved), and whether SWBT must notify AT&T of environmental hazards in space AT&T proposes to occupy (AT&T's LBO adopted). Arbitrator's Order, page 44.</p> <p>SWBT has implied in other states that by refusing to accept the term "hazardous substances" instead of "environmental contaminants" that AT&T is attempting to absolve itself from responsibility for a clean environment. This is simply not the case. From the outset, the Poles Appendix has provided a clear, simple statement that AT&T and all persons acting on its behalf will abide by all applicable federal, state and local environmental laws, including statutes, ordinances, rules and regulations. Further, the Terms and Conditions section of the Interconnection Agreement contains provision under which AT&T and SWBT will indemnify each other regarding certain environmental issues. SWBT's overly broad definitions and proposed contractual language regarding environmental liability add nothing to these already existing provisions and instead can be read to impose liability on AT&T even if SWBT's negligence played a part in the environmental contamination.</p> <p>The language proposed by AT&T is clear, brief and strikes a balance of responsibility. SWBT's proposed modifications and proposed new language, on the other hand, obscure these responsibilities and attempt to establish in this contract language that shirks the advantage to SWBT in an possible future lawsuits.</p>			<p>at such sites of hazardous substances. SWBT will assist AT&T, at AT&T's request and expense, in the performance of such inspections and tests.</p> <p>(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 hazardous substances 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 hazardous substances are present and conduct their work operations accordingly.</p> <p>(c) Each party shall promptly notify the other of hazardous substances known by such party to be present on, within or in the vicinity of poles, ducts, conduits, or rights-of-way occupied by or assigned to AT&T if, in the sole judgment of such party, such hazardous substances create a serious danger to (1) the health or safety of personnel working within or in the vicinity of the conduit or (2) the physical condition of the other party's facilities placed or to be placed within the conduit.</p> <p>(d) Nothing contained in this Appendix (including but not limited to the acknowledgments and representations set forth in this section) shall relieve either party from its responsibility to comply with all applicable environmental laws or its</p>

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					<p>responsibility for any liability arising out of such party's failure to comply with such laws. Nothing contained in this Appendix shall be construed as relieving SWBT of liability for hazardous substances present at any site subject to this Appendix or as relieving either party of liability for introducing hazardous substances to the site or causing or contributing to the release of any such substances. Failure to comply with the requirements of this section may, however, be considered in determining issues relating to negligence, causation of injury, and comparative responsibility for injuries to persons, property, and the environment.</p> <p>10.01 <u>Response Within 45 Days.</u> Within 45 days of AT&T's submission of a license application pursuant to Section 9.02 of this Appendix, or within such other period of time as may be mutually agreed upon in writing by the parties, SWBT shall respond to the application. The response shall state whether the application is being granted or denied. If denial is anticipated, or if SWBT personnel involved in the processing of AT&T's request for access become aware of hazardous substances at the site requested by AT&T, SWBT shall promptly advise AT&T and shall, at AT&T's request, discuss alternatives to denial and issues associated with the presence of such hazardous substances. SWBT will notify AT&T of known hazardous substances at the site within 20 days of AT&T's submission of an application.</p>

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17. May AT&T be reimbursed on a pro rata basis by parties benefiting from a modification for which AT&T has paid, and must SWBT establish a methodology for reimbursement?	Attachment 13, Appendix Poles, Conduits, and Rights-of-Way, Secs. 10.02(a) and, 10.08, 19.03	<p>Yes. The Arbitrator ruled in poles issue no. 17 at page 49 of the Order that AT&T may be reimbursed on a pro-rata basis for modifications for which AT&T has paid, and that SWBT must establish a methodology for reimbursement.</p> <p>SWBT, however, leaves to AT&T the determination regarding reimbursement for modifications made by AT&T that later benefit others, including SWBT, while the Arbitrator adopted AT&T's LBO that SWBT should establish a methodology for pro-rata reimbursement by parties benefiting from a modification paid for by AT&T. If AT&T has borne the entire cost of a modification that benefits others, pro rata reimbursement is fair and appropriate. See FCC First Report and Order, ¶1214. The requirement that SWBT establish a methodology for the reimbursement is also appropriate, because, as noted by the Arbitrator, SWBT will be the only party in possession of applications and records relating to the use of the space affected by the modification. SWBT is the only entity that knows the identities of other attachees to capacity provided by AT&T, and thus it should provide the methodology, as the Arbitrator ruled.</p>	<p>10.02(a) SWBT agrees to modify its outside plant facilities to the extent that AT&T agrees to pay for the modification at cost, <u>such as but not limited to cable consolidations, as long as such modifications are consistent with capacity, safety, reliability, and engineering considerations which SWBT would apply to itself if the work were performed for SWBT's own benefit. SWBT may recover from AT&T the costs of modifying its outside plant facilities for AT&T's space. SWBT may not require payment of the full amount in advance. AT&T will pay half of the contractors' costs after 50% completion of work, and the remainder at completion. To facilitate the sharing of costs by all parties benefiting from the modification, SWBT will establish a methodology whereby AT&T will be reimbursed on a pro rata basis for any portion of the facility later used by SWBT and other telecommunications providers, including, but not limited to, telecommunications carriers and cable television systems.</u></p> <p>10.08 <u>Reimbursement for the Creation or Use of Additional Capacity.</u> AT&T acknowledges that as a result of make-ready work performed to accommodate AT&T's facilities, additional capacity may become available on SWBT's poles or in its conduit system. In such event, AT&T shall not have any preferential right to utilize such additional capacity in the future and</p>	<p>There is no issue concerning AT&T's right to reimbursement. The parties' differences relate to methods and logistics.</p> <p>The Arbitrator has directed SWBT to develop a methodology. SWBT has responded by stating that it will provide notice to AT&T and others who pay for facilities modifications when SWBT or subsequent users occupy space created by the modification work. Further, SWBT will directly reimburse AT&T if SWBT uses space created at AT&T's expense. Finally, when reimbursement is due by a third party to AT&T, SWBT will provide as much information as it has to assist AT&T and third parties to work out their differences concerning reimbursement rights. In this regard, it should be noted that only AT&T knows the full extent of its facilities modification costs because in many cases, as AT&T has requested, AT&T will elect to perform directly the facilities modification, capacity expansion, and make-ready work required to create additional space. These costs borne by AT&T are part of AT&T's accounting records, not SWBT's. In addition, AT&T will likely have incurred costs from third parties, the amounts of such costs, unknown to SWBT. To the extent that AT&T chooses to avail itself of the cost-saving mechanism or seeking reimbursement from other parties, AT&T will incur its own record keeping obligations. See First Interconnection Order, ¶ 1214.</p>	<p>SWBT objects to the inclusion of AT&T's proposed language in 10.02(a), 10.08 and 19.03.</p> <p>10.02(a) SWBT agrees to modify its outside plant facilities to the extent that AT&T agrees to pay for the modification at cost, as long as such modifications are consistent with capacity, safety, reliability, and engineering considerations which SWBT would apply to itself if the work were performed for SWBT's own benefit. SWBT may recover from AT&T the costs of modifying its outside plant facilities for AT&T's space. SWBT may not require payment of the full amount in advance. AT&T will pay half of the contractors' costs after 50% completion of work, and the remainder at completion. AT&T shall be entitled to partial reimbursement for its capacity expansion costs in accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders and as provided in Section 10.08 of this Appendix.</p>

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<p>contaminants" be replaced by the term "hazardous substances"?</p> <p><u>SWBT:</u> Should the term "environmental contaminants" be replaced by the term "hazardous substances, should the term "hazardous substances" be defined as proposed by SWBT, and should SWBT's proposed Section 6.13(d) be approved as proposed by SWBT?</p>		<p>compliance with the requirements of Section 6.13 is not a release or limitation of liability of either party as to environmental laws. This agreement is now embodied in the first sentence of Section 6.13(d). SWBT proposes additional language, however, in an attempt to expand the parties' agreement to provide grounds for future lawsuits between the parties regarding negligence liability for environmental contamination. Provisions regarding the parties' environmental liability are included in the Terms and Conditions section of the Interconnection Agreement [CHECK THIS]. SWBT's proposed expansion of Section 6.13 goes far beyond the parties' agreement and should not be included in the Poles, Conduits, and Rights-of-Way Appendix. SWBT also objects to the use of the term "environmental contaminants" and desires to replace it with the statutory phrase "hazardous substances." However, the phrase "hazardous substances" is defined in different ways in different statutes and the use of such phrase could lead to confusion. Since the parties have not agreed to a definition of "hazardous substances," however, the contractual language should be left as is in this paragraph.</p> <p>In its LBO, SWBT proposed the term "environmental contaminants" as well, but withdrew its agreement to the term during negotiations after the Arbitrator's Order was entered. The Arbitrator was presented with two environmental issues (Poles Issues Nos. 6 and 7), whether SWBT could relieve itself of liability it would otherwise have for environmental</p>	<p>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 <u>environmental contaminants</u>.</p> <p>(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 <u>environmental contaminants</u> 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 <u>contaminants</u> are present and conduct their work operations accordingly.</p> <p>(c) Each party shall promptly notify the other of <u>environmental contaminants</u> 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 <u>environmental contaminants</u> 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.</p>	<p>for violating environmental laws relating to the discharge of contaminants and attempting elsewhere to force SWBT to indemnify it for so doing.</p> <p>For more than two months, SWBT has proposed a definition of the term "hazardous substances" and sought AT&T's approval of this definition. When AT&T pointed out that SWBT's definition did not refer to OSHA, SWBT added a reference to OSHA. When AT&T pointed out that SWBT's definition did not refer to petroleum, SWBT added a reference to petroleum. To date, AT&T has neither accepted SWBT's definition or proposed an alternative. Because SWBT has disclosure obligations, it is important that the scope of SWBT's disclosure obligations be defined with an appropriate definition of the term "hazardous substances." The term undefined term "environmental contaminants" has no ascertainable core of meaning, unlike the term "hazardous substances" which has an established core of meaning in environmental law. The term "hazardous substances" should replace the term "environmental contaminants" wherever that term appears in the Poles Appendix.</p> <p>Although SWBT is confident AT&T has an excellent environmental compliance program, SWBT is disturbed by AT&T's refusal to agree to even-handed proposals relating to environmental issues. SWBT's proposals on these issues are reasonable and should be approved.</p>	<p>Appendix, including but not limited to the Occupational Safety and Health Act ("OSHA"). In general, the term "hazardous substances" refers to any substance the presence, use, transport, abandonment or disposal of which (a) requires investigation, remediation, compensation, fine, or penalty under health, safety, and environmental laws, ordinances, statutes, rules, and regulations applicable to sites subject to this Appendix or (2) poses risks to human health, safety, or the environment and is regulated under any such laws, ordinances, statutes, rules, and regulations. For the purposes of this Appendix, the term "hazardous substances" shall also include petroleum, natural gas, and other combustible or noxious liquids, gases, or solids which may accumulate at sites subject to this Appendix.</p> <p>6.13 Hazardous Substances. AT&T acknowledges that, from time to time, hazardous substances (as defined in Section 3.14A of this Appendix) may enter SWBT's conduit system and accumulate in manholes or other conduit facilities, and that hazardous substances may be present at other sites where SWBT's poles, ducts, conduits, or rights-of-way are located.</p> <p>(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</p>

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			<p>AT&T shall not conduct conduit excavation activities in any manner which jeopardizes or degrades the integrity of SWBT's structures. AT&T shall indemnify SWBT under Section 7.2.1 of the Terms and Conditions of the Agreement for injuries or damages that are the result of the performance of excavation work under this subsection by AT&T or any authorized contractor selected by AT&T.</p>	<p>merits, has directed that indemnity provisions be included in the general terms and conditions. Therefore, the propriety of the cross-reference will depend upon whether the indemnity provisions adopted are sufficiently developed to cover outside plant issues appropriately. In this regard, SWBT notes that AT&T has continued to insist on indemnity provisions which would shift liability from AT&T to SWBT in the event AT&T discharges hazardous substances from SWBT manholes, a provision which is totally inappropriate.</p>	
<p>24.</p> <p>AT&T: May SWBT charge AT&T a fee for inner duct that is not assigned to or occupied by AT&T by charging a half-duct rate regardless of the portion actually assigned to or occupied by AT&T?</p> <p>SWBT: SWBT: May SWBT charge AT&T a half-duct rate for inner ducts assigned to or occupied by AT&T instead of a charging a full duct rate or a variable rate which will depend on the number of inner ducts in placed in individual ducts?</p>	<p>Attachment 13, Appendix Poles, Conduits, and Rights-of-Way, Sec. 19.01; AT&T Exhibit 1; SWBT proposed Sec. 19.02; SWBT EXHIBIT I.</p>	<p>No. This issue relates to the Arbitrator's ruling on poles issue no. 22, pages 50-51 of the Arbitrator's Order ("what compensation should SWBT receive for AT&T's use of its poles, ducts, conduits, or rights-of-way?"), on which the parties need further clarification.</p> <p>The Arbitrator found that the parties were in agreement on the rates for pole attachment and conduit occupancy. Both SWBT's and AT&T's LBOs did state a pole attachment rate of \$2.35 per attachment per year, and \$0.40 per foot per year for conduit. Only AT&T's LBO addressed the rate for inner duct, supported by Attachment DCK-3 (as revised at the hearing) to Mr. Keating's testimony. AT&T proposes an inner duct rate that is proportionate to the percentage of the duct actually used. If AT&T uses half the duct, for example, it would pay half of the full duct rate; if it uses only one-third of the duct, it would pay one-third of the full duct rate. SWBT proposes to charge a half-</p>	<p>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. <u>No other ancillary or administrative fees will be charged by SWBT. Rates will be fixed for the duration of the Interconnection Agreement. Inner-duct occupancy rates will be proportionate to the number of inner-ducts contained in the full-sized conduit, if not fixed for all cases at one-third of the full duct rate. SWBT shall not collect more than one attachment fee for each attachment space (pole space or conduit space) that it owns or controls.</u></p>	<p>The Arbitrator, in Issue X.22, approved SWBT's LBO relating to compensation for AT&T's use of SWBT's poles, ducts, conduits, and rights-of-way. SWBT's LBO included the half-duct rate for inner duct.</p> <p>In Texas, AT&T stipulated to the half-duct rate for inner duct. In AT&T Exhibit No. 63 in the Texas "mega-arbitration" proceeding, AT&T agreed to pay "2. Annual "license fee" for the use of the space in Texas at \$2.85/year per pole attachment, \$0.63/ft per year for a full-sized conduit, and \$0.315/ft per year for an inner duct (i.e. half duct rate)."</p> <p>The number of inner ducts in a full duct will vary from location to location. In many SWBT locations, there are only two inner ducts in a full-sized duct. In others, there are three. It is possible to squeeze four inner ducts into some full-sized ducts, although this is not considered by SWBT to be good practice at most locations.</p>	<p>In addition to the existing language in 19.01, 19.02 and SWBT Exhibit 1, the following language should be added: *each inner duct is billed at the half duct rate. Also,</p> <p>e) When AT&T's facilities are installed within inner duct, a single semi-annual one-half duct conduit occupancy fee will apply to each inner duct occupied.</p>

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		<p>duct rate regardless of whether AT&T is actually using or has even been assigned one-third of a duct or some other fractional portion. AT&T's proposal of charging a rate proportional to the number of inner ducts contained in the conduit is more reasonable and fair. In fact, Section 6.07 of the Appendix (originally proposed by SWBT in the Master Agreement attached to the testimony of Mr. Hearst) provides: "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 four-inch duct)." This statement recognizes that it will be more common for duct to be divided into 3 or 4 inner ducts so that the half-duct rate proposed by SWBT will result in overcollection by SWBT.</p>		<p>SWBT installs inner duct at its own expense and is called on to install inner duct at SWBT's expense in order to make room for AT&T's facilities. The cost of installing a single foot of inner duct will greatly exceed the total revenues received for the use of that inner duct for many years to come. It is administratively cumbersome to count up the number of inner ducts and base charges at individual locations on the number of inner ducts at specific sites. Under the circumstances, charging a single half-duct rate for inner duct is reasonable and appropriate.</p> <p>The FCC is now reviewing pole attachment and conduit occupancy rates. Should the FCC rule on the inner duct issue, SWBT will adjust its agreements to comply with the FCC rulings. In the meantime, SWBT encourages adoption of the half-duct rate in Arkansas as agreed to by AT&T in Texas.</p>	
<p>25.</p> <p>AT&T: Should the Appendix require payment of numerous ancillary and administrative fees imposed by SWBT?</p> <p>SWBT: Is it appropriate for SWBT to be compensated for ancillary and administrative work performed by SWBT personnel which is not recoverable as part of</p>	<p>Attachment 13, Appendix Poles, Conduits, and Rights-of-Way, Sec. 19.01; AT&T Exhibit 1; SWBT proposed Secs. 19.02, 19.05, 19.06, 19.08, 19.09, EXHIBIT I.</p>	<p>No. This issue relates to the Arbitrator's ruling on poles issue no. 22, pages 50-51 of the Arbitrator's Order ("what compensation should SWBT receive for AT&T's use of its poles, ducts, conduits, or rights-of-way?"), on which the parties need further clarification.</p> <p>When AT&T agreed to accept SWBT's rates for pole attachment and conduit occupancy, it did so with the understanding that no additional administrative or ancillary fees would be assessed. As explained on AT&T's Exhibit 1 (based on Appendix DCK-3 introduced at the hearing), the fees charged by SWBT for pole</p>	<p>[See above for text of Sec. 19.01]</p> <p>[AT&T objects to the inclusion of SWBT's proposed Secs. 19.02, 19.05, 19.06, 19.08, 19.09, as well as SWBT's EXHIBIT I.]</p>	<p>The Arbitrator, in issue X.22, approved SWBT's LBO relating to compensation for AT&T's use of SWBT's poles, ducts, conduits, and rights-of-way. SWBT's LBO included provisions for ancillary and administrative fees.</p> <p>A basic principle of the Pole Attachment Act is that utilities should be paid for the costs they incur due to the exercise of access rights by other parties. The costs incurred include costs for the personnel who process applications, provide access to records, and perform make-ready work. SWBT's proposed charges are reasonable and should be approved.</p>	<p>19.01 Rates, Charges and Fees Subject to Applicable Laws, Regulations, rules, and Commission Orders. All rates, charges and fees set forth in this Appendix, including rates, charges and fees set forth in EXHIBIT I (Schedule of Rates, Fees, and Charges), shall be subject to all applicable federal and state laws, rules, regulations, and commission orders, including but not limited to (a) the Pole Attachment Act and rules, regulations, and commission orders issued thereunder and (b) applicable orders of the State Commission in interconnection arbitration proceedings.</p>

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the pole attachment and conduit occupancy fees charged to AT&T?		attachment and conduit occupancy are at a high enough level in the permitted range that additional fees should not be necessary to cover SWBT's costs. To avoid the necessity for cost studies to establish these amounts, AT&T simply agreed to attachment and occupancy rates higher than it otherwise would have, with the expectation that no other administrative and ancillary fees would be necessary.			<p>19.02 Schedule of Rates, Fees, and Charges. SWBT's current schedule of rates, fees, and charges is attached to this Appendix as EXHIBIT I and incorporated herein as an integral part of this Appendix.</p> <p>19.05 Application Fees. SWBT does not currently charge application fees for individual license applications or assignment requests under this Appendix. SWBT does, however, impose charges, on a case by case basis, for work performed in processing applications for access and preparing SWBT's poles, ducts, conduits, and rights-of-way to accommodate the facilities of parties seeking access.</p> <p>19.06 Charges for Pre-Licensing Survey Work. Subject to applicable commission orders, AT&T will pay SWBT's charges for pre-license survey work associated with the processing of AT&T's request for access. SWBT's pre-license survey charges are not set on a fixed fee basis and will vary from case to case depending on such factors as the number and location of poles, ducts, conduits, and rights-of-way subject to AT&T's access request, the completeness and quality of information submitted by AT&T in its application, the nature of the facilities to be placed by AT&T, and the nature and extent of facilities modification, capacity expansion, and make-ready work proposed by AT&T.</p> <p>19.08 Contract Administration Fee. Subject to applicable commission orders, SWBT may</p>

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					<p>charge AT&T a one time contract administration fee as provided in EXHIBIT I. This fee, if applicable, shall be assessed for work performed in the initial processing of this Appendix and shall be nonrefundable upon acceptance of this Appendix by SWBT.</p> <p>19.09 Administrative Record-keeping Fees. Subject to applicable commission order, SWBT may charge AT&T cost-based administrative record-keeping fees (e.g., fees associated with records and billing changes resulting from the sale, consolidation, or other transfer of AT&T's business or facilities, name changes, and the like, as provided in EXHIBIT I.</p> <p>C) Application Fees. No application fees shall be charged for the submission of access applications or provisional space assignments. Charges for processing applications are set forth below.</p> <p>D) Pre-license Survey Work. Charges for pre-license survey work are not set on a fixed fee basis and will be determined on a case-by-case basis. If pre-license survey work is performed by SWBT's contractors, AT&T shall reimburse SWBT for the actual out-of-pocket costs incurred by SWBT for such work (plus the applicable additive, if any, to compensate SWBT for administrative costs). If pre-license survey work is performed by SWBT employees, pre-license</p>

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					<p>survey charges shall be computed by multiplying the applicable hourly rates times the number of hours reasonably spent by SWBT's employees on pre-license survey work.</p> <p>E) <u>Facilities Modification, Capacity Expansion, and Make-ready Work.</u> Charges for facilities modification, capacity expansion, and make-ready work are not set on a fixed fee basis and will be determined on a case-by-case basis. If such work is performed by SWBT's contractors, AT&T shall reimburse SWBT for the actual out-of-pocket costs incurred by SWBT for such work (plus the applicable additive, if any, to compensate SWBT for administrative costs). If such work is performed by SWBT employees, charges for such work shall be computed by multiplying the applicable hourly rates times the number of hours reasonably spent by SWBT's employees on the work. In all cases, except as otherwise specifically provided to the contrary in the Master Agreement, such charges shall include the costs of materials required to perform the work. No later than 45 days after receipt by SWBT of AT&T's completed application, or within such other period as may be</p>

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					<p>mutually agreed upon in writing by the parties, SWBT will furnish AT&T an estimate of the charges for facilities modification, capacity expansion, and make-ready work. Except as otherwise specifically provided in other parts of the Master Agreement, AT&T will pay (1) half of SWBT's charges for the project at 50 percent job completion and the remainder at 100 percent completion and (2) if outside contractors are involved, half of the total compensation to be paid to outside contractors at 50 percent job completion and the remainder of SWBT's total charges at 100 percent completion. SWBT may, at its election, require AT&T to pay SWBT's out-of-pocket costs for materials as those costs are incurred and may require AT&T to pay outside contractor costs on the same schedule SWBT pays such outside contractors; provided, however, that this provision shall be subject to applicable rulings, if any, of the State Commission. 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.</p> <p>F) Construction Inspectors.</p>

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Issue	Attachment and Sections	Reason why language should be included or excluded	AT&T Language	SWBT Language	SWBT Language
					<p>Subject to all applicable commission orders, where work is being performed on AT&T's behalf in SWBT's manholes or other portions of SWBT's conduit system, AT&T shall pay SWBT's full costs attributable to having a construction inspector present; provided, however, that SWBT shall not charge AT&T for more than one such construction inspector per site at any given time. If the construction inspector is a SWBT contractor, AT&T shall reimburse SWBT for the actual out-of-pocket costs (without additives for administrative costs) incurred by SWBT in connection with the presence of such inspector. If the construction inspector is a SWBT employee, charges for the construction inspector shall be computed by multiplying the applicable hourly rate times the number of hours reasonably spent by the employee as a construction inspector in connection with the project.</p> <p>G) <u>Other Work Performed Pursuant to the Master Agreement.</u> For all other work performed by SWBT's contractors pursuant to the Master Agreement, including but not limited to work performed in opening manholes and participating</p>

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CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT - ARKANSAS
POLES, CONDUITS, AND RIGHTS-OF-WAY

Issue	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
					<p>In work operations at AT&T's request, AT&T shall reimburse SWBT for the actual out-of-pocket costs incurred by SWBT in connection with the performance of such work (plus the applicable additive, if any, to compensate SWBT for administrative costs). For all other work performed by SWBT's employees pursuant to the Master Agreement, including but not limited to work performed in opening manholes, providing access to and copies of records, and participating in work operations at AT&T's request, SWBT's charges shall be computed by multiplying the applicable hourly rates times the number of hours reasonably spent by SWBT's employees on such work.</p> <p>H) <u>Contract Administration Fee and Administrative Record-keeping Fees.</u> Subject to applicable commission orders, a one time contract administration fee of \$250.00 shall be due and payable at the time of the execution of the Master Agreement. Subject to applicable commission orders, SWBT may charge administrative record-keeping fees not exceeding \$125.00 in connection with</p>

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CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT - ARKANSAS
POLES, CONDUITS, AND RIGHTS-OF-WAY

Issue	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
					<p>records and billing changes resulting from the sale, consolidation, or other transfer of AT&T's business or facilities, name changes, and the like. SWBT shall provide AT&T, on AT&T's request, a statement of the basis for the fees.</p> <p>I) Other Administrative and Ancillary Fees. No other administrative or ancillary fees are charged by SWBT on a fixed fee basis.</p> <p>J) Hourly Rates. Except as otherwise provided by any applicable law, rule, regulation, or commission order, hourly rates charged for SWBT employees shall be such employees' fully loaded hourly rates</p>
<p>26. Should the Appendix include additional terms regarding payment of invoices?</p>	<p>Attachment 13, Appendix Poles, Conduits, and Rights-of-Way, Secs. 19.02, 19.04; SWBT proposed Secs. 19.01, 19.02, 19.03, and 19.07, and 19.11, EXHIBIT I.</p>	<p>No. This issue relates to the Arbitrator's ruling on poles Issue no. 22, pages 50-51 of the Arbitrator's Order ("what compensation should SWBT receive for AT&T's use of its poles, ducts, conduits, or rights-of-way?"), on which the parties need further clarification.</p> <p>The parties have agreed to payment terms in Secs. 19.02, 19.03, and 19.04. Article 19 as proposed by AT&T, and AT&T's Exhibit 1, cover the necessary terms and include the parties' agreements which SWBT now attempts to revise and re-word in its new proposed sections. SWBT now desires to add provisions in its Sections 19.01-19.03, 19.07, and Exhibit 1 regarding payment of fees,</p>	<p>[AT&T objects to inclusion of SWBT sections 19.01, 19.02, 19.07, 19.11, and SWBT Exhibit I.]</p>	<p>There appears to be confusion between the parties relating to the numbering of various sections. SWBT has withdrawn its proposed Section 19.11 because the subject "Disputes Over Charging Methodologies" was not arbitrated and was not agreed to by the parties. It is one of many subjects which the present Appendix does not address.</p> <p>In SWBT's form Agreement, Section 19.11 deals with the "Due Date for Payment, Interest on Past Due Invoices, Remedies for Non-payment, and Procedures for Disputing Charges." These issues were not arbitrated and not agreed to by the parties. Although SWBT believes that its provisions are</p>	<p>19.01 Rates, Charges and Fees Subject to Applicable Laws, Regulations, rules, and Commission Orders. All rates, charges and fees set forth in its Appendix, including rates, charges and fees set forth in EXHIBIT I (Schedule of Rates, Fees, and Charges), shall be subject to all applicable federal and state laws, rules, regulations, and commission orders, including but not limited to (a) the Pole Attachment Act and rules, regulations, and commission orders issued thereunder and (b) applicable orders of the State Commission in interconnection arbitration proceedings.</p> <p>19.02 Schedule of Rates, Fees, and Charges. SWBT's current</p>

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CONTRACTUAL DISPUTED ISSUES MATRIX
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Issue	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
		<p>dispute resolution, and other provisions regarding payment terms not agreed to by AT&T. EXHIBIT 1 has not been negotiated by the parties and is repetitive of portions of Article 19. Further, dispute resolution and termination are already covered in the Appendix. AT&T's Article 19.01 and Exhibit 1 should be adopted.</p>		<p>entirely appropriate and are necessary in order to have a complete agreement, SWBT is withdrawing its proposed language because the issue was not arbitrated or agreed to.</p> <p>SWBT does not understand the relationship of the other sections cited by AT&T to the issue in question.</p>	<p>schedule of rates, fees, and charges is attached to this Appendix as EXHIBIT I and incorporated herein as an integral part of this Appendix.</p> <p>19.03 Pole Attachment and Conduit Occupancy fees. Until such time as the FCC authorizes the charging of different rates to cable television systems and telecommunications carriers, SWBT's annual rates for access to poles, ducts, conduits, and rights-of-way shall be the same for cable television systems and telecommunications carriers. For all attachments to SWBT's poles and occupancy of SWBT's ducts and conduits, AT&T will pay SWBT's semiannual pole attachment and conduit occupancy fees as specified in EXHIBIT I. Pole attachment and conduit occupancy fees shall be assessed and billed with respect to (a) occupied space whether or not subject to a current license and (b) assigned space as well as occupied space. 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 calculated in accordance with applicable FCC rules, regulations, and orders.</p> <p>19.07 Charges for Facilities Modifications, Capacity Expansions, and Make-ready Work. Subject to applicable commission orders, AT&T will pay SWBT's charges for facilities modification, capacity expansion, and make ready work performed</p>

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CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT - ARKANSAS
POLES, CONDUITS, AND RIGHTS-OF-WAY

Issue	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
					<p>by SWBT, or by persons acting on SWBT's behalf, as provided in other provisions of the Appendix and EXHIBIT I.</p> <p>19.11 Disputes Over Charging Methodologies. The parties acknowledge that the Pole Attachment Act grants the FCC regulatory authority over the rates, terms, and conditions of access to poles, ducts, conduits, and rights-of-way. The parties further acknowledge that, as of the date of this appendix, this State has not elected to assume reverse preemptive regulatory authority over such rates, terms, and conditions by certifying to the FCC that it has made such election. Accordingly, complaints concerning and challenges to SWBT's charging methodologies shall be brought, in the first instance, before the FCC in accordance with FCC procedural rules unless this State elects to preempt FCC regulation of the pole attachment rates, terms, and conditions of access; provided, however, that nothing contained in this section shall be construed as affecting the right of either party to seek relief from any court or agency of competent jurisdiction in connection with the negotiation, arbitration, and approval of interconnection agreements under 47 U.S.C. Sec. 252.</p>
27. Should SWBT be permitted to modify the rates, fees, and charges agreed to by the parties?	Attachment 13, Appendix Poles, Conduits, and Rights-of-Way. Sec. 19.01, Exhibit	No. This Issue relates to the Arbitrator's ruling on poles issue no. 22, pages 50-51 of the Arbitrator's Order ("what compensation should SWBT receive for AT&T's use of its	[See above for text of Sec. 19.01]	The Arbitrator, in issue X.22, approved SWBT's LBO relating to compensation for AT&T's use of SWBT's poles, ducts, conduits, and rights-of-way. Despite AT&T's	19.12 Modification of Rates, Fees and Charges. Subject to applicable federal and state laws, rules, regulations, and commission orders, SWBT

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POLES, CONDUITS, AND RIGHTS-OF-WAY

Issues	Attachment and Sections	Reason Why Language Should Be Included or Excluded (AT&T)	Reason Why Language Should Be Included or Excluded (AT&T)	Reason Why Language Should Be Included or Excluded (SWBT)	SWBT Language
	1; SWBT's proposed Sec. 19.10, EXHIBIT I.	<p>poles, ducts, conduits, or rights-of-way?"), on which the parties need further clarification.</p> <p>As noted in the discussion of Section 19.01 above, AT&T's agreement to SWBT's attachment and occupancy rates was contingent upon those rates remaining fixed for the duration of the Appendix. Further, the Arbitrator did not rule, and AT&T did not agree, that the agreed-upon and ordered rates could be modified at SWBT's discretion. Adoption of SWBT's proposed Section 19.12 would undermine the basis for AT&T's agreement to SWBT's rates.</p>		<p>contentions to the contrary, SWBT's proposals have always included provisions for annual rate adjustments. The basic proposal has been to charge the same rate applicable to CATV providers and to adjust that rate annually in accordance with the FCC formula. In Oklahoma, where this issue was first arbitrated, the Arbitrator ruled in SWBT's favor.</p> <p>Rates are based on costs. Over time, costs change. Rates may go up or down as the applicable accounting data change. Annual adjustments are entirely appropriate. AT&T may at any time challenge any annual adjustment which it believes is contrary to the law.</p> <p>SWBT notes that the FCC, in Paragraph 1156 of the First Interconnection Order in CC Docket No. 96-98, has clearly stated 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." AT&T will, under SWBT's proposal, pay the same rates as other telecommunications carriers and cable operators, and they may all challenge these rates, either singly or collectively, in FCC complaint proceedings if they believe that any changes in SWBT's rates are inappropriate.</p>	<p>shall have the right to modify all rates, charges and fees set forth in this Appendix, including but not limited to those listed in EXHIBIT I, as provided in this section.</p> <p>(a) Upon written notice to AT&T, SWBT may change, on a going forward basis, the amounts of any rates, fees or charges assessed under this Appendix. Pole attachment and conduit occupancy rates shall not be increased more than once annually. (1) The notice shall state the effective date of the changes, which, in the event of a rate increase, shall be no earlier than the 60th day after the notice is given. (2) The changes shall be effective on the effective date stated in the notice unless stayed or prohibited by a court or agency of competent jurisdiction. (3) The changes shall be reflected on the first semiannual bill issued on or after the effective date specified in the notice.</p> <p>(b) If the rates, fees and charges set forth in the notice are not acceptable to AT&T, AT&T may, notwithstanding any other provisions of this appendix, at AT&T's option (1) seek the renegotiation of this Appendix, (2) terminate this Appendix, or (3) seek relief through the dispute resolution process or before a court or agency of competent jurisdiction.</p>
30.a. Should the terms and conditions	Attachment 13, Appendix Poles,	The terms should apply equally to both parties. In certain limited	22.01(a) SWBT may assign its rights, delegate its benefits, and		

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AT&T - SWBT INTERCONNECTION AGREEMENT - ARKANSAS
POLES, CONDUITS, AND RIGHTS-OF-WAY

Issue	Attachment and Sections	Reason why language should be included or excluded	AT&T Language	Reason why language should be included or excluded	SWBT Language
<p>regarding assignment of rights under the Poles, Conduits, and Rights-of-Way Appendix apply equally to both parties, or should SWBT be permitted to impose additional restrictions and limitations on assignment by AT&T?</p>	<p>Conduits, and Rights-of-Way, Secs. 22.01(a), (d), (e), Sec. 22.03, Sec. 22.04.</p>	<p>circumstances, AT&T has agreed in negotiations to consider inclusion of SWBT language on topics that are covered in the Terms and Conditions of the Interconnection Agreement, although the Arbitrator ruled that the Terms and Conditions of the Interconnection Agreement would apply to the Poles, Conduits, and Rights-of-Way Appendix. AT&T has agreed to provisions on assignment of rights and confidentiality that are more detailed than the Terms and Conditions, and in some cases include terms relevant only in the outside plant context. AT&T's agreement to SWBT's assignment provisions, however, is contingent upon those provisions setting forth the rights and obligations of both parties in an equal and balanced manner. AT&T has accepted most of SWBT's terms for assignment (such as 60-day notice, a guarantee of obligations, payment of fees due, etc.) as long as they apply equally to both parties. The provisions set forth in this matrix impose obligations on SWBT that SWBT desires to impose on AT&T in the event of an assignment.</p> <p>In light of the Arbitrator's Order that the Poles Appendix need not contain provisions on assignment, as that subject is covered in the Terms and Conditions of the Interconnection Agreement (poles issue no. 21, Arbitrator's Order page 30), AT&T requests that the Arbitrator reject Article 22 in its entirety if AT&T's proposed language to balance Article 22's terms are rejected.</p>	<p>delegate its duties and obligations under this Appendix, without AT&T's consent, to any entity controlling, controlled by, or under common control with SWBT or which acquires or succeeds to ownership of substantially all of SWBT's assets, <u>provided that SWBT has guaranteed the performance of its assignee or successor and that the assignee or successor has assumed all outstanding obligations of SWBT under this Appendix, including but not limited to all liabilities and contingent liabilities of SWBT out of or in connection with this Appendix.</u></p> <p><u>(d) No assignment or transfer by either party of rights under this Appendix, licenses subject to this Appendix, or authorizations granted under this Appendix shall be effective until the assignor and its successors and assigns have complied with the provisions of this article, secured the other party's prior written consent to the assignment or transfer, if necessary, and given the other party notice of the assignment or transfer pursuant to Section 22.02.</u></p> <p><u>(e) Except as otherwise expressly provided in this article, neither this Appendix, nor any licenses or authorizations subject to this Appendix, shall inure to the benefit of AT&T's successors or assigns without SWBT's prior written consent, or SWBT's successors or assigns without AT&T's prior written consent.</u></p> <p>22.03 Satisfaction of Existing</p>		

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CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT - ARKANSAS
POLES, CONDUITS, AND RIGHTS-OF-WAY

Issue	Attachment and Sections	Reason why AT&T language should be included or excluded	AT&T Language	Reason why SWBT language should be included or excluded	SWBT Language
			<p>Obligations and Assumption of Contingent Liabilities. SWBT or AT&T may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of the assignor under this Appendix and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of the assignor arising out of or in connection with this Appendix.</p> <p>22.04 Additional Post-assignment Requirements. Any assignee or successor of SWBT or AT&T shall, within 60 days following the assignment:</p>		
30.b. [The issue is stated in reference to Section 22.01(a) above.]	Attachment 13, Appendix Poles, Conduits, and Rights-of-Way, Sec. 22.01(d).	[The reasons for AT&T's position are set forth in reference to Section 22.01(a) above.]	<p>22.01(d) No assignment or transfer by either party of rights under this Appendix, licenses subject to this Appendix, or authorizations granted under this Appendix shall be effective until the assignor and its successors and assigns have complied with the provisions of this article, secured the other party's prior written consent to the assignment or transfer, if necessary, and given the other party notice of the assignment or transfer pursuant to Section 22.02.</p>		
30.c. [The issue is stated in reference to Section 22.01(a) above.]	Attachment 13, Appendix Poles, Conduits, and Rights-of-Way, Sec. 22.01(e)	[The reasons for AT&T's position are set forth in reference to Section 22.01(a) above.]	<p>22.01(e) Except as otherwise expressly provided in this article, neither this Appendix, nor any licenses or authorizations subject to this Appendix, shall inure to the benefit of AT&T's successors or assigns without SWBT's prior written consent, or SWBT's successors or assigns without AT&T's prior</p>		

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CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT - ARKANSAS
POLES, CONDUITS, AND RIGHTS-OF-WAY

Issue	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
			<u>written consent.</u>		
30.d. [The issue is stated in reference to Section 22.01(a) above.]	Attachment 13, Appendix Poles, Conduits, and Rights-of-Way, Sec. 22.04	[The reasons for AT&T's position are set forth in reference to Section 22.01(a) above.]	<p>22.04 Additional Post-assignment Requirements. Any assignee or successor of SWBT or AT&T shall, within 60 days following the assignment:</p> <p>(a) sign this Appendix as an assignee or successor expressly agreeing to be bound by all provisions of this Appendix and licenses subject to this Appendix; and</p> <p>(b) provide proof, satisfactory to the other party, of such assignee's assumption of the assignor's obligations under this Appendix.</p>		

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PART C
CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T - SWBT INTERCONNECTION AGREEMENT -
ARKANSAS

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CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T-SWBT INTERCONNECTION AGREEMENT - ARKANSAS
TERMS & CONDITIONS AND VARIOUS RELATED PROVISIONS

Issue	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
<p>1. Special Request Process</p> <p>AT&T: Whether, if an unbundled Network Element or combination is not available in every area of Arkansas, the same would be supplied to AT&T via the "Special Request" process described in Attachment 6: UNE</p> <p>SWBT: Whether, if an unbundled Network Element or combination is not available in every area of Arkansas, SWBT must build the facilities to provide the element or combination to AT&T.</p>	<p>Terms & Conditions 1.6</p>	<p>SWBT's bolded language should be excluded unless AT&T's bolded and underlined language also is included.</p> <p>Underlying issues concerning the Special Request process were arbitrated and addressed at pages 28 and 29 of the Commission's Order. The issue here concerns the application of language concerning those rulings and associated provisions of Attachment 6: UNE, in the context of SWBT-proposed language concerning the possible lack of facilities in some areas. If SWBT's language is included, AT&T's proposed language should be included as a necessary implication of the Commission's V10-13 rulings. If the Commission does not adopt SWBT's proposed language, AT&T's proposed language becomes unnecessary. If SWBT's language is included, however, AT&T's language is needed.</p> <p>SWBT has proposed language to the effect that the services and UNEs involved in this Agreement may not be available in all parts of the state, due to technical reasons. AT&T's additional language would ensure that, in such circumstances, AT&T would be able to utilize the "Special Request" process, set out in Attachment 6: UNE, which allows AT&T to ask SWBT to provide such UNEs or Combinations. AT&T's additional language is reasonable and necessary; its absence, in the context of SWBT's proposal, suggests that the unavailability of</p>	<p>1.6 Unless otherwise provided in the Agreement, SWBT will perform all of its obligations concerning its offering of Resale services and unbundled Network Elements under this Agreement throughout the entire service area where SWBT is the incumbent local exchange carrier; provided, that SWBT's obligations to provide Ancillary Functions or to meet other requirements of the Act covered by this Agreement are not necessarily limited to such service areas. [SWBT's language removed at SWBT's request] <u>provided, that if an unbundled Network Element or Combination is not available in an area, AT&T's request for same will be subject to the provisions of Sections 2.20 through 2.20.12 of Attachment 6: Unbundled Network Elements.</u></p> <p>(Note: In this instance, AT&T's bolded and underlined language is not reflected in the Agreement itself, because it would qualify SWBT-proposed language which SWBT has withdrawn.)</p>	<p>This is an attempt by AT&T to require SWBT to assume all the risk of investment on AT&T's behalf. SWBT's obligation to provide service and network elements reasonably may be predicated upon the availability of facilities. If SWBT must construct facilities to meet AT&T's needs, then it follows that AT&T could also build its own facilities. Nothing in the Act requires SWBT to construct facilities for an LSP.</p>	<p>1.6 Unless otherwise provided in the Agreement, SWBT will perform all of its obligations concerning its offering of Resale services and unbundled Network Elements under this Agreement throughout the entire service area where SWBT is the incumbent local exchange carrier; provided, that SWBT's obligations to provide Ancillary Functions or to meet other requirements of the Act covered by this Agreement are not necessarily limited to such service areas. Each Network Element, Combination, Ancillary Function or Resale service may not be available in every area of Arkansas as the requisite technology may not be present, (e.g., a certain central office switch may not support call waiting).</p>

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CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T-SWBT INTERCONNECTION AGREEMENT - ARKANSAS
TERMS & CONDITIONS AND VARIOUS RELATED PROVISIONS

Issue:	Attachment and Sections	Reason why language should be included or excluded AT&T Language	Reason why language should be included or excluded AT&T Language	Reason why language should be included or excluded SWBT Language	SWBT Language
		<p>UNEs and combinations in a particular area may relieve SWBT of any obligation to consider supplying the same in that area, which is not the case. AT&T's language is necessary to enable AT&T to provide service to customers in all areas of Arkansas. AT&T's language should be adopted if SWBT's is included.</p>			
<p>2. <u>Intervening Law</u> The language addresses circumstances under which the Agreement may be modified as a result of agency, court or legislative actions.</p>	<p>Terms & Conditions 3.1</p>	<p>AT&T's language should be included and SWBT's should be excluded.</p> <p>This issue involves the matter of modifications to the Agreement, which is a subject of the arbitration by necessary implication, and by the Commission's ruling in the last paragraph under XI1, p.53, of the Order concerning changes to the Agreement.</p> <p>AT&T's language is consistent with the Act but SWBT's proposal is not.</p> <p>SWBT's proposal would allow the entire Agreement to be terminated if the Parties could not successfully negotiate modifications following agency, court or legislative actions, which is both unreasonable and inconsistent with the Act. Such an event, moreover, would severely harm AT&T's customers, not to mention taxing the Commission's resources in terms of responding to the outcry from consumers. SWBT's proposal also likely leads to additional arbitrations and additional Commission time re-deciding issues that are not explicitly ruled on by the courts. SWBT's proposal also would</p>	<p><u>3.1 This Agreement is entered into as a result of both private negotiation between the Parties and arbitration by the State Commission, acting pursuant to FTA96. If the actions of Arkansas or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws or regulations that were the basis for a provision of the contract required by the Arbitration Award approved by the State Commission, the affected provision will be invalidated, modified, or stayed as required by action of the legislative body, court, or regulatory agency. In such event, the Parties will expend diligent efforts to arrive at an agreement respecting the modifications to the Agreement required. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions will be resolved pursuant to the dispute resolution process provided for in this Agreement. The invalidation, stay, or</u></p>	<p>AT&T's language regarding the stay is incorrect. It is based on the assumption that the FCC's pricing rules were the only criteria contemplated by the Commission. In fact, the Commission also relied in great part on Act 77.</p>	<p>In the event a court or regulatory agency of competent jurisdiction should determine that modifications of this Agreement are required to bring the services being provided hereunder into compliance with the Act, the affected Party shall promptly give the other Party written notice of the modifications deemed required. Upon delivery of such notice, the Parties shall expend diligent efforts to arrive at an agreement respecting such modifications required, and if the Parties are unable to arrive at such agreement, either Party may terminate this Agreement, without penalty, effective the day the affected Party is ordered to implement the modifications deemed required, or effective on the day either Party concludes and gives notice to the other Party that the Parties will not be able to arrive at any agreement respecting such modifications, whichever date shall occur earlier.</p> <p>(Such agreement shall be an integrated package that reflects a balancing of interests critical to</p>

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CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T-SWBT INTERCONNECTION AGREEMENT - ARKANSAS
TERMS & CONDITIONS AND VARIOUS RELATED PROVISIONS

Issue:	Attachment and Sections	AT&T Reason why language should be included or excluded:	AT&T Language	SWBT Reason why language should be included or excluded:	SWBT Language
		<p>inappropriately forbid either party from exercising constitutional or statutory rights it might otherwise have, in addition to those set out in the Agreement, to seek changes in the Agreement. In contrast, AT&T's proposal would not terminate the Agreement but would invoke dispute resolution processes to be used if an impasse is reached. AT&T's proposed language also deals expressly with the effect of the Eighth Circuit Stay, and correctly states that the Arkansas Commission's decision is not based upon the FCC's pricing provisions stayed by the Eighth Circuit. AT&T notes that Section 3.2 of Terms and Conditions, an agreed-to paragraph, also generally covers issues raised by SWBT's proposed language.</p>	<p><u>modification of the pricing provisions of the FCC's First Report and Order in CC Docket No. 96-98 (August 8, 1996) and the FCC's Order on Reconsideration (September 27, 1996) will not be considered an invalidation, stay, or modification requiring changes to provisions of the Agreement required by the Arbitration Award, in that the FCC's pricing provisions are not the basis for the costing and pricing provisions of the Arbitration Award.</u></p>		<p>the Parties.) It will be submitted to the Arkansas Public Service Commission (APSC) as a negotiated agreement under Sec. 252(a)(1), and the Parties will specifically request that the APSC refrain from taking any action to change, suspend or otherwise delay implementation of such agreement. So long as such agreement remains in effect, the Parties will not advocate before any legislative, regulatory, or other public forum that any terms of such specific agreement be modified or eliminated, except pursuant to procedures specifically sanctioned by the terms of such agreement, including those established in Section 51.0 below. Notwithstanding this mutual commitment, however, the Parties enter into such agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related to the types of arrangements prescribed by such agreement.</p>
<p>3. <u>Limitation of Liabilities</u> b. Whether, for third party end user claims, the liability of either party would not be limited according to the degree of negligence of that party.</p>	<p>Terms & Conditions 7.1.2</p>	<p>(b) The issue of Limitation of Liabilities, was arbitrated, as shown by the Commission's ruling at p.53, and that ruling does not stand for the proposition advanced by SWBT, which is that AT&T must assume the risk of SWBT's negligence.</p> <p>SWBT's proposed language should be excluded. The effect of this</p>	<p>AT&T objects to SWBT's proposed language. See Terms & Conditions Section 7.1.1, discussed above. See, also, agreed-on Terms and Conditions Sections 7.3.1 and 7.3.4.</p>	<p>Although not specifically arbitrated, the paragraph containing this issue was included in Part B. SWBT refers the reader to Paragraph 7.1.1 in Terms and Conditions</p>	<p>See Paragraph 7.1.1 in Terms and Conditions.</p>

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AT&T-SWBT INTERCONNECTION AGREEMENT - ARKANSAS
TERMS & CONDITIONS AND VARIOUS RELATED PROVISIONS

Issue:	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
		<p>language, together with other disputed SWBT language discussed in Issue No. 4 below, would be to require AT&T to indemnify SWBT against SWBT's own negligence if a suit is brought by an AT&T end user customer. Specifically, this SWBT language and the SWBT language discussed in Issue No. 4 would not allow AT&T to offset such claims by the amount of SWBT's own negligence. AT&T believes that Arkansas public policy would not allow exoneration of liability for willful or intentional misconduct. See <u>First Bank of Ark. v. Keeling</u>, 850 S.W.2d 310 (Ark. 1993); §195(1), Restatement of the Law of Contracts, 2d Ed; <u>Hultsman v. Carroll</u>, 6 S.W.2d 551 (Ark. 1928); See, also <u>Farmers Bank v. Perry</u>, 787 S.W.2d 645 (1990). In addition, requiring AT&T to bear all risks of loss which are associated with SWBT's negligence is unreasonable and discriminatory. SWBT, not AT&T, is in a position to manage the risks associated with SWBT's negligence, yet this language would place that risk on AT&T. Other provisions of the Agreement adequately and fairly address these circumstances. Agreed-on Section 7.3.1 of the General Terms and Conditions provides, essentially, that each party will indemnify the other for claims made against the other party that are the result of the indemnifying parties' acts or omissions. This is a fair, commercially reasonable type of indemnification provision, found in many contracts. In addition, under</p>			

Key: **Bold & underline represents language proposed by AT&T and opposed by SWBT.**
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