

- (d) On the effective date of this Agreement, and until further notice to Applicant, SWBT's duly authorized agent shall be the Utility Liaison Supervisor ("ULS") designated in APPENDIX VIII.

29.03 Changes in Notice Requirements. Either party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other party. Such notice shall state, at a minimum, the name, title, firm, and full address of the new addressee.

ARTICLE 30: DISPUTE RESOLUTION

30.01 Purpose. The provisions of this article are intended to minimize litigation between the parties with respect to disputes arising in connection with this Agreement and shall be construed accordingly. Any dispute between the parties arising under this Agreement may be submitted by either party for resolution under this article.

30.02 Exclusive Remedy for Monetary Claims under \$25,000. Except for actions seeking injunctive relief related to the purposes of this Agreement or suits to compel compliance with the dispute resolution processes set forth in this article, the parties agree to use the dispute resolution processes set forth in this Agreement as their sole remedy with respect to any monetary claim of \$25,000 or less which arises out of or in connection with this Agreement.

30.03 Prerequisite to Litigation. The provisions of this article shall also apply to all disputes, without regard to the amount in controversy, in which Applicant contests charges billed by SWBT to Applicant under the terms of this Agreement. No suit, except for actions seeking injunctive relief related to the purposes of this Agreement 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 negotiations as provided in Section 30.04, and, if the parties agree, in mediation under Section 30.05.

30.04 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 Agreement 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.

30.05 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, non-binding 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.

30.06 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 30.04 of this Agreement, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association if the dispute involves any monetary claim of \$25,000 or less which arises out of or in connection with this Agreement. 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 Agreement to do so.

- (a) Either party may demand such arbitration in accordance with the procedures set out in the Commercial Arbitration Rules.
- (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 commence within 60 days of the demand for arbitration and shall be held, in the absence of agreement by the parties to a different venue, in Dallas, Texas.
 - (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.

30.07 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 costs incurred by the responding party in producing documents.
- (b) The parties shall equally split the fees of the arbitration and the arbitrator.

30.08 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 State Commission with respect to any dispute subject to its jurisdiction, except that the parties may not seek relief from the FCC or the State Commission with respect to any dispute that has already been resolved by mediation under Section 30.05 or by binding arbitration under Section 30.06.

ARTICLE 31: ACCESS TO APPLICANT'S POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

31.01 No Reciprocal Access to Applicant's Facilities. This Agreement does not include provisions for reciprocal access by SWBT to Applicant's poles, ducts, conduits, and rights-of-way.

ARTICLE 32: GENERAL PROVISIONS

32.01 Entire Agreement. This Agreement, together with the interconnection agreement, if any, to which this Agreement is an appendix, attachment, or exhibit, sets forth the entire understanding and agreement of the parties.

32.02 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Applicant and SWBT relating to the placement and maintenance of Applicant's facilities on and within SWBT's poles, ducts, and conduits within this State.

32.03 Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

32.04 Survival of Obligations. Any liabilities or obligations of either party for acts or omissions prior to the termination of this Agreement, any obligations of either party under provisions of this Agreement relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, will survive the termination of this Agreement.

32.05 Multiple Counterparts. This Agreement may be executed in multiple counterparts.

32.06 Effect on Licenses Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy licenses granted to Applicant shall, on the

effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.

32.07 Force Majeure. Except as otherwise specifically provided in this Agreement, neither party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the party claiming excusable delay or other failure to perform; provided, however, that Force Majeure will not include acts of any governmental authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs, the party whose performance fails or is delayed because of such Force Majeure condition will give prompt notice to the other party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

32.08 Severability. If any article, section, subsection, or other provision or portion of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement as to either party, the invalidity of such provision shall not render this entire Agreement unenforceable and this Agreement shall be administered as if it did not contain the invalid provision.

32.09 Choice of Law. Except to the extent that federal law controls any aspect of this Agreement, the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties will be governed by the laws of this State, applied without regard to the provisions of this State's laws relating to conflicts-of-laws.

32.10 Changes in the Law. Because the primary purpose of this Agreement is to provide access to poles, ducts, conduits, and rights-of-way in accordance with the Pole Attachment Act, as amended by the Telecommunications Act of 1996 and subsequent amendments, the parties contemplate that changes in this Agreement may from time to time be necessary or desirable to conform to changes in the Pole Attachment Act as that Act is amended, interpreted, and applied. This Agreement is based in large part on regulatory decisions by the FCC, which has jurisdiction over the rates, terms, and conditions of access to poles, ducts, conduits, and rights-of-way (except to the extent that such jurisdiction has been pre-empted by individual states) and decisions by the State Commission. More specifically, this Agreement is based in large part on the FCC's First Interconnection Order in CC Docket No. 96-98, on FCC rules announced with the First Interconnection Order, and on Arbitration Orders by the State Commission.

[] Applicant desires to have access to SWBT's poles, ducts, conduits, and rights-of-way on terms that are not less favorable than those obtained by firms participating in interconnection arbitration

proceedings before the State Commission. Applicant also desires to have access to SWBT's poles, ducts, conduits, and rights-of-way to the full extent permitted under the FCC's First Interconnection Order in CC Docket No. 96-98. SWBT is entering into this Agreement for the purpose of providing nondiscriminatory access in compliance with the Pole Attachment Act and regulatory decisions thereunder, including decisions by the State Commission in interconnection arbitration proceedings in which Applicant is not a party. Each party is entering into this Agreement based on current interpretations of the law by the FCC and State Commission. In the event of any changes in the Pole Attachment Act, changes in applicable FCC or State Commission rulings, or judicial determinations that such rulings are erroneous or invalid, each party shall, at the request of the other, engage in good faith negotiations to supplement, amend or replace any provisions of this Agreement affected by such changes or determinations and to conform this Agreement to changes in the underlying laws on which the Agreement is based.

- [] This Agreement has been entered into as a result of private negotiation between the parties and arbitration by the State Commission, acting pursuant to the Telecommunications Act of 1996. If the actions of any legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws, rules, regulations, or commission orders that were the basis for a provision of this Agreement (including but not limited to any provision of this Agreement required by any arbitration award approved by the State Commission), the affected provision shall be invalidated, modified, or stayed as required by action of the legislative body, court, or regulatory agency. In the event of such a change in the law, each party shall expend diligent efforts to arrive at an agreement respecting the modifications to the Agreement required by the law or requested in good faith by the other party. If negotiations fail, disputes between the parties concerning interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in the interconnection agreement or this Agreement; provided, however, that this section shall not be construed as precluding either party from seeking appropriate relief from the FCC in connection with the parties' rights and obligations under the Pole Attachment Act. In the event of any material change in the law, each party agrees to enter into good faith negotiations to conform this Agreement to the changes in the law.

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

SOUTHWESTERN BELL TELEPHONE COMPANY

By: _____
Signature of SWBT's Authorized Officer/Employee

John C. Trott
Name of SWBT's Authorized Officer/Employee (Printed or Typed)

Director - Distribution Services Support
Position/Title of SWBT's Authorized Officer/Employee

Date

Bellaire, Texas
City and State of Execution by SWBT

Applicant's Name (Printed or Typed)

By: _____
Signature of Applicant's Authorized Officer/Employee

Name of Authorized Officer/Employee (Printed or Typed)

Position/Title of Authorized Officer/Employee

Date

City and State of Execution by Applicant

APPENDIX I
SCHEDULE OF RATES, FEES AND CHARGES (TEXAS) – PAGE 1 OF 5

This Appendix is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached and sets forth the rates, fees and charges to be paid by Applicant to SWBT pursuant to the Master Agreement and licenses subject to the Master Agreement. The rates, fees, and charges set forth in this Appendix shall be subject to all applicable laws, rules, regulations, and commission orders as provided in Section 19.01 of the Master Agreement and shall be subject to revision as provided in Section 19.12 of the Master Agreement.

A) Pole Attachment Fees

1) General

- a) For billing purposes, pole attachments shall be considered i) to have commenced on the first to occur of the following dates: the date of assignment (or provisional assignment) of pole attachment space, the date a license for such pole attachment is issued, or the date of actual attachment and ii) to have ended on the last to occur of the following dates: the date Applicant's assignment lapses or is relinquished, the date notice is given (under Section 18.06 of the Master Agreement) that Applicant has removed the attached facilities from SWBT's pole, or the date of termination of Applicant's license.
- b) Fees shall be payable semiannually in advance on the first days of January and July and shall be prorated on a daily basis as provided in Section 19.04. Fees for pole attachments shall be based on the number of pole attachments as of the date of billing. If Applicant occupies more than one usable space on a pole, separate attachment fees shall apply to each space occupied. For billing purposes, a single pole attachment includes the point of attachment and all facilities located in the usable space on the pole in the space assigned to Applicant (typically six inches above and six inches below the point of attachment), together with routine ancillary apparatus such as anchors, anchor/guy strands, drive rings, J-hooks, dead-end clamps, and other apparatus which does not interfere with the ability of SWBT to occupy or assign usable space on the pole other than the usable space licensed to Applicant. Fees for pole space assignments and unauthorized pole attachments shall be billed in the same manner as if a license had been issued.

2) Fees (1998 Rates)

<u>Semiannual Pole Attachment Fees</u>	<u>Annual</u>	<u>Semiannual</u>
Per pole attachment (cable service only)	<u>\$ 2.85</u>	<u>\$ 1.425</u>
Per pole attachment (telecommunications carriers)	<u>\$ 2.85</u>	<u>\$ 1.425</u>
Per pole attachment (other)	<u>\$ N/A</u>	<u>\$ N/A</u>

**APPENDIX I
SCHEDULE OF FEES AND CHARGES (TEXAS) – PAGE 2 OF 5**

B) Conduit Occupancy Fees

1) General

- a) For billing purposes, conduit occupancy shall be considered to have i) begun on the first to occur of the following dates: the date of assignment (or provisional assignment) of conduit occupancy space, the date a license for such conduit occupancy is issued, or the date of actual occupancy; and ii) ended on the last to occur of the following dates: the date Applicant's assignment lapses or is relinquished, the date notice is given (under Section 18.06 of the Master Agreement) that Applicant has removed the attached facilities from SWBT's conduit, or the date of termination of Applicant's license. Occupancy ends only when facilities have been removed from SWBT's conduit system and required post-removal procedures (e.g., plugging ducts) have been completed. Fees for conduit space assignments and unauthorized conduit occupancy shall be billed in the same manner as if a license had been issued.
- b) Fees shall be payable semiannually in advance on the first days of January and July.

(2) Fees (1998 Rates)

<u>Semiannual Per Foot Conduit Occupancy Fees</u>	<u>Annual</u>	<u>Semiannual</u>
Full duct/duct foot (cable service only)	<u>\$ 0.62/ft</u>	<u>\$ 0.31/ft</u>
Full duct/duct foot (telecommunications carriers)	<u>\$ 0.62/ft</u>	<u>\$ 0.31/ft</u>
Full duct/duct foot (other)	<u>\$ N/A</u>	<u>\$ N/A</u>
Half duct/duct foot (cable service only)*	<u>\$ 0.31/ft</u>	<u>\$ 0.155/ft</u>
Half duct/duct foot (telecommunications carriers)*	<u>\$ 0.31/ft</u>	<u>\$ 0.155/ft</u>
Half duct/duct foot (other)*	<u>\$ N/A</u>	<u>\$ N/A</u>

*Each inner duct is billed at the half duct rate.

- a) Facility footage shall be measured i) from the center of one manhole to the center of an adjacent manhole if the facility runs between two manholes, ii) from the center of a manhole to the end of a duct not terminated in a manhole, or iii) from the center of a manhole to the property line if the duct is connected at the property line to a duct owned and controlled by a third-party property owner.
- b) Semiannual full duct conduit occupancy fees will apply to the first facility placed in a previously unoccupied duct except as provided in c)-d) below.

APPENDIX I
SCHEDULE OF FEES AND CHARGES (TEXAS) – PAGE 3 OF 5

- c) If two or more facilities occupy a duct that has not been subdivided by inner duct, a semiannual half duct conduit occupancy fee will be charged for each facility placed in the duct.
 - d) A semiannual half duct occupancy fee will apply to the first facility placed by Applicant in a previously unoccupied duct that has not been subdivided by inner duct if and only if the presence of Applicant's facility does not render the other half of the duct unusable by others.
 - e) When Applicant's facilities are installed within inner duct, a single semiannual one-half duct conduit occupancy fee will apply to each inner duct occupied.
- 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.
- 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, Applicant 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 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.
- E) **Facilities Modification, Capacity Expansion, and Make-ready Work.** 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, Applicant 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 Applicant's completed application, or within such other period as may be mutually agreed upon in writing by the parties, SWBT will furnish Applicant 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, Applicant 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 % job completion and the remainder at 100 percent completion. SWBT may, at its election, require Applicant to

APPENDIX I
SCHEDULE OF FEES AND CHARGES (TEXAS) – PAGE 4 OF 5

pay SWBT's out-of-pocket costs for materials as those costs are incurred and may require Applicant 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 Applicant for make-ready charges shall be due and payable 30 days after the date of the bill or invoice.

- F) Construction Inspectors. When installation, maintenance, or similar routine work is performed within or in the vicinity of SWBT's conduit system by Applicant's personnel, certified, based on industry standards, the parties shall share the costs of a single SWBT employee reviewing the work, whether in an emergency or non-emergency situation. Applicant shall be responsible for providing SWBT with documentation sufficient to show that its personnel have been certified based on industry standards and shall identify the certifying agency and applicable industry standards. When the work is being performed by a contractor agreed upon by Applicant and SWBT, SWBT shall be responsible for the costs of construction inspectors sent to inspect the contractor's work. Subject to all applicable commission orders, where work is being performed on Applicant's behalf in SWBT's manholes or other portions of SWBT's conduit system by persons other than contractors approved by SWBT or certified personnel acting on Applicant's behalf, or where the work is work other than installation, maintenance, or similar routine work, Applicant shall pay SWBT's full costs attributable to having a construction inspector present. SWBT shall not charge Applicant for more than one such construction inspector per site at any given time. If the construction inspector is a SWBT contractor, Applicant shall reimburse SWBT for the applicable percentage of 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 and applying the applicable cost-sharing percentage.
- G) Other Work Performed Pursuant to the Master Agreement. 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 in work operations at Applicant's request, Applicant 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 Applicant'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.

APPENDIX I
SCHEDULE OF FEES AND CHARGES (TEXAS) – PAGE 5 OF 5

- H) Contract Administration Fee and Administrative Record-keeping Fees. Subject to applicable commission orders, and pending the establishment of permanent cost-based rates, a one-time contract administration fee of \$125.00 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 records and billing changes resulting from the sale, consolidation, or other transfer of Applicant's business or facilities, name changes, and the like. SWBT shall provide Applicant, on Applicant's request, a statement of the basis for the fees.
- I) Other Administrative and Ancillary Fees. No other administrative or ancillary fees are charged by SWBT on a fixed fee basis.
- 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.
- K) Payment Date. For fees and charges other than charges for facilities modification, capacity expansion, and make-ready work, each bill or invoice submitted by SWBT to Applicant 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. For facilities modification, capacity expansion, and make-ready work, the payment due date shall be not less than 30 days after the date of the bill or invoice. Interest on past due charges shall accrue as provided in Section 19.11(a) of the Master Agreement.

**APPENDIX II
IDENTIFICATION OF APPLICANT (TEXAS)**

This Appendix is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached.

Applicant's legal name is: _____

Applicant's principal place of business is located in the State of _____

Applicant does business under the following assumed names: _____

Applicant is:

a corporation organized under the laws of the State of _____,
charter no. _____;

a partnership organized under the laws of the State of _____; or

another entity, as follows: _____

Applicant represents that Applicant is:

(1) a cable system (as defined in 47 U.S.C. §§ 153(37) and 522(7)) seeking a pole attachment or conduit occupancy license solely to provide cable service (as defined in 47 U.S.C. § 522(6));

(2) a telecommunications carrier, as defined in 47 U.S.C. § 153(49), as modified by 47 U.S.C. § 224; or

(3) a person or entity which is neither (1) nor (2) above, as follows:

**APPENDIX III
ADMINISTRATIVE FORMS AND NOTICES (TEXAS)**

This Appendix is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached and contains administrative forms referred to in the Master Agreement or used in connection with the provision of access to SWBT's poles, ducts, conduits, and rights-of-way. The forms are forms presently in use and have not been fully conformed to the Master Agreement. The forms may be further revised by SWBT to conform to the Master Agreement and revised from time to time to reflect changes in the applicable law, changes in the Master Agreement, and changes in the procedures through which access to poles, ducts, conduits, and rights-of-way is afforded by SWBT to AT&T and others.

- SW-9433: Pole Attachments
- SW-9434: Access Application and Make-Ready Authorization
- SW-9435: Conduit Occupancy
- SW-9436A: Notification of Surrender or Modification of Pole Attachment License by Licensee
- SW-9436B: Notification of Surrender or Modification of Conduit Occupancy License by Applicant
- SW-9436C: Notification of Unauthorized Attachments by Applicant

FIRM'S NAME: _____
AGREEMENT No.: _____
APPLICATION No.: _____

Provisional, Records Based Assignment
 Pre-Occupancy Survey

TYPE: _____
(CATV, Telecom, Other)

Wire Center _____

Item #	Record #	Pole #	Ownership SWBT or Power	Street Address	Proposed Attachment Height	Guy Rq'd Y or N	Make Ready Work Y or N	Make Ready Description	Pole Mntd Apparatus Height
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
TOTAL									

Number of Cables _____
Weight/per ft. and Size/O.D. _____
Number and Types of Strands _____

Other Notes: _____

Date: _____

Time: _____

SIGNED: _____
Applicant's Representative

SW9433
POLE ATTACHMENTS
FORM INSTRUCTIONS

Form SW9433 may be used for the following two purposes, Provisional, Records Based Assignment or as the Pre-Occupancy Survey. The applicant may complete the SW9433 and submit this to SWBT while reviewing the records and make a Provisional, Records Based Assignment. The applicant will also use this form when making the Pre-Occupancy Survey as a reference sheet of information required for acquiring pole attachment space.

REQUIRED INFORMATION FOR PROVISIONAL, RECORDS BASED ASSIGNMENT

FIRM'S NAME: Name of firm requesting pole attachment space.

AGREEMENT No.: Number obtained from the Master Agreement Number

APPLICATION No.: Will be provided by applicant in sequential ascending order.

Provisional, Records Based Assignment: Applicable when an applicant elects to make a Provisional, Records Based Assignment. The form will be signed and dated at the bottom by both the applicant and the SWBT representative. A copy will be provided to the applicant and the original will be maintained by SWBT.

Type: The applicant states that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

Record #: The SWBT paper record or the SWBT mechanized record number.

Pole #: Applicant will supply the pole number either from the SWBT Records or from a field visit.

Ownership: Applicant will determine and post the ownership of the pole by marking S for SWBT or P for Power Company based on SWBT's records.

Street Address: Applicant will provide street address or geographical reference point of the pole.

Proposed Attachment Height: Applicant will provide the proposed attachment height in feet and inches on the pole.

Guy Rq'd: Not required for Provisional, Records Based assignment.

Make Ready Work: Not required for Provisional, Records Based assignment

Make Ready Description: Not required for Provisional, Records Based assignment.

Pole Mntd Apparatus Height: Not required for Provisional, Records Based assignment

Weight/per ft. and Size/O.D.: Applicant will provide.

Number and Types of Strands: Applicant will provide the number and types of strands.

Other Notes: Any other notes relevant to the request including any infrequent construction techniques.

Date: The date the Provisional, Records Based Assignment was made.

Time: The time the Provisional, Records Based Assignment was made.

Signed (Applicant's Representative): Applicant's Representative signs that Provisional, Records Based Assignment was made.

Signed (SWBT Representative): SWBT's Representative signs that Provisional, Records Based Assignment was made.

REQUIRED INFORMATION FOR PRE-OCCUPANCY SURVEY

FIRM'S NAME: Name of firm requesting pole attachment space.

AGREEMENT No.: Number obtained from the Master Agreement Number

APPLICATION No.: Will be provided by applicant in sequential ascending order.

Pre-Occupancy Survey: This would be checked when this form is being used as a Pre-Occupancy Survey. The form would be completed in its entirety and signed by the applicant and submitted to SWBT for review in obtaining pole attachment space.

Type: The applicant states that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

Record #: The SWBT paper record or mechanized record number.

Pole #: Applicant will supply the pole number either from the SWBT Records or from a field visit.

Ownership: Applicant will determine and post the ownership of the pole by marking S for SWBT or P for Power Company.

Street Address: Applicant will provide street address or geographical reference point of the pole.

Proposed Attachment Height: Applicant will provide the proposed attachment height in feet and inches on the pole.

Guy Rq'd: Applicant will state if a guy is required. (Yes or No)

Make Ready Work: Applicant will state if make ready work is required. (Yes or No)

Make Ready Description: Applicant will give description of make ready work required.

Pole Mntd Apparatus Height: Applicant will state any proposed apparatus that would be placed on the pole. (Terminal, etc.)

Number of Cables: Applicant will state the number of cables that will be placed on the pole.

Weight/per ft. and Size/O.D.: Applicant will provide.

Number and Types of Strands: Applicant will provide the number and types of strands.

Other Notes: Any other notes relevant to the request including any infrequent construction techniques.

Date: The date the Pre-Occupancy Survey was submitted to SWBT.

Time: The time the Pre-Occupancy Survey was submitted to SWBT.

Signed (Applicant's Representative): Applicant's Representative signs when Pre-Occupancy Survey was submitted to SWBT.

Signed (SWBT Representative): SWBT's Representative signs when Pre-Occupancy Survey was submitted to SWBT.

Southwestern Bell Telephone

Access Application and Make-Ready Authorization

(Request for Access to Poles, Ducts, Conduit)

Retention Period: Active, plus 5 years

Name of Applicant _____

Agreement No. _____

Application No. _____

Provisional Assignment

As specified in the attached documents, and in accordance with the terms and conditions of the Master Agreement between SWBT and Applicant; application is hereby made for a provisional assignment of space in anticipation of a nonexclusive license of communication facilities to access the quantity of SWBT facilities indicated below:

_____ SWBT poles _____ Feet SWBT Whole Duct _____ Feet SWBT Innerduct

Applicant desires immediate assignment of space and acknowledges that the effective date is _____. Applicant agrees to provide an application for assignment/access/occupancy of the assigned space within 30 days from the date of the assignment, or forfeit the assignment.

Provisional Assignment Expiration Date: _____

Assignment/Access/Occupancy

As specified in the attached documents, and in accordance with the terms and conditions of the Master Agreement between SWBT and Applicant; application is hereby made for occupancy of space through a nonexclusive license of communication facilities to access the quantity of SWBT facilities indicated below:

_____ SWBT poles _____ Feet SWBT Whole Duct _____ Feet SWBT Innerduct

Applicant authorizes SWBT to perform the required pre-licensing survey including any field inspections required to evaluate capacity, safety, reliability, and engineering standards; and to determine the cost, if any, of required modifications or make-ready work.

Effective Date _____ Assignment Expiration Date: _____

Applicant's Estimated Construction Start Date: _____

Applicant's Estimated Construction Completion Date: _____

Authorized by Applicant: _____ Signature _____ Title _____

Date: _____

Make-ready Work

Estimated Costs	Hours	Rate	TOTAL
Constr. Labor	_____ X	\$ _____	\$ _____
Material	XXX X	\$ XXX	\$ _____
Engr. Design	_____ X	\$ _____	\$ _____
TOTAL			\$ _____

Estimated SWBT Completion Date _____

- No Make-Ready Work Required. No Make-Ready Work Required under 8.03(a).
- Make-Ready Work will be completed by applicant's authorized contractor.
- I authorize SWBT to complete the required make-ready work. Costs will be based upon actual costs incurred by SWBT.

Applicant's Signature _____ Title _____ Date _____

LICENSE NO. _____ Authorized by SWBT: _____ Signature _____ Title _____

DATE: _____

Official File Copy, If Checked in Red

SW-9434
ACCESS APPLICATION and MAKE-READY AUTHORIZATION
FORM INSTRUCTIONS
5/8/97

Form SW-9434 is used to request access to poles, ducts, and conduit; to transmit notice of Provisional Assignments; and to provide other information required in the access process.

REQUIRED INFORMATION

NAME OF APPLICANT. Name of firm requesting space on poles or in conduit.

AGREEMENT NO. Number obtained from the Master Agreement Number.

APPLICATION NO. Will be provided by applicant in sequential ascending order.

Provisional Assignment Box Data

"attached documents" Copies of the *Assignment Of Space Logs* showing the applicant's entries for the requested space or completed Forms SW-9433 or SW-9435 if appropriate. Assignment is not official until the required data is entered in the *Assignment Of Space Log*.

_____ **SWBT poles** The number of poles for which space is requested.

_____ **Feet SWBT Whole Duct** The accumulated Center-to-Center measurements for the Whole Duct to be occupied. To be used **only for cables too large in diameter** (Typically copper conductor cables.) to fit in SWBT standard innerduct

_____ **Feet SWBT Innerduct** The accumulated Center-to-Center measurements for the innerduct to be occupied.

Effective date is date entered in Assignment Of Space Log

Provisional Assignment Expiration Date: 30 calendar days from the date entered in the Assignment of Space Log(I.e., Date Application must be submitted to hold the assignment of space.)

Assignment/Access/Occupancy Box Data

"attached documents" Completed Forms SW-9433 and/or SW-9435.

_____ **SWBT poles** The number of poles to be accessed.

_____ **Feet SWBT Whole Duct** The accumulated Center-to-Center measurements for the Whole Duct to be occupied. To be used **only for cables too large in diameter** (Typically copper conductor cables.) to fit in SWBT standard innerduct

_____ **Feet SWBT Innerduct** The accumulated Center-to-Center measurements for the innerduct to be occupied.

Effective date is date entered in Assignment Of Space Log

Assignment Expiration Date: 12 Months from the date entered in Assignment Of Space Log(Date facilities must be placed to avoid forfeiture of assigned space.)

SW-9434
ACCESS APPLICATION and MAKE-READY AUTHORIZATION
FORM INSTRUCTIONS
5/8/97

Applicant's Estimated Construction Start Date: Current "best estimate" of the date project construction will begin. "ASAP" is not an acceptable date.

Applicant's Estimated Construction Completion Date: Current "best estimate" of the date placements and splicing will be completed. "ASAP" is not an acceptable date.

Authorized by Applicant: Signature and Title of the Applicant's representative authorizing the request for access and payment (if any) of related SWBT engineering charges in connection with such access.

Date: Date of authorization by Applicant's representative.

MAKE-READY WORK Box Data

Estimated costs: SWBT will calculate data for Construction Labor, Material, and Engineering Design hours and summarize the **TOTAL** estimated SWBT Make-Ready Costs .

Estimated SWBT Completion Date SWBT Engineering will provide the estimated completion date of SWBT Make-Ready Work based upon current scheduling loads.

No Make-Ready Work Required. Applicant should check this box if it has determined that fully code/specifications-compliant access can be granted without any work or modifications by SWBT or other parties. If inner duct must be placed, box should not be checked.

No Make-Ready work Required under 8.03(a). Applicant should check this box only if this Application is being submitted under the provisions described in 8.03(a) Immediate Occupancy.

Make-Ready Work will be completed by Applicant's authorized contractor. If Applicant plans to utilize a mutually approved *authorized contractor* to perform all the Make-Ready work, this box only should be checked.

I authorize SWBT to complete the required make-ready work.... If Applicant wants SWBT to perform all the Make-Ready Work, this box only should be checked.

If some Make-Ready work must be done by SWBT and some will be done by the Applicant's *authorized contractor*, the last two boxes should be checked. A detailed description of the work to be done by SWBT must be included.

Applicant's Signature, Title and Date:

If the *No Make-Ready Work Required* box is checked by Applicant, Applicant's Signature confirms the accuracy of the current Applicant construction schedule.

If the *No Make-Ready Work Required under 8.03(a)* box is checked, Applicant confirms *Immediate Occupancy* procedures have been followed.

If *Make-Ready Work will be completed by Applicant's Authorized contractor* is checked, Applicant's signature concurs with any changes in proposed Make-Ready work identified by SWBT and confirms the accuracy of the current schedule.

If SWBT will perform any Make-Ready Work, Applicant's signature authorizes payment to SWBT of actual cost to perform the required make-ready work.

LICENSE NO. _____ Authorized by SWBT: The SWBT State ULS will authorize, date, and issue the License No. on the SW-9434 which becomes the Applicant's License For Access.

Conduit Occupancy

FIRM'S NAME: _____
 AGREEMENT No.: _____
 APPLICATION No.: _____

Provisional, Records Based Assignment
 Pre-Occupancy Survey
 Wire Center _____

TYPE: _____
 (CATV, Telecom, Other)

Item #	Oper. #	Record #	Manhole #	Street Address	Distance To Next Manhole (Ctr to Ctr)	Proposed Duct or Innerduct	Make Ready Work Y or N	Make Ready Description
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
TOTAL								

Number of Cables _____
 Size of Cable(O.D. Inches) _____

Splice Information Manhole # _____, Details _____
 Splice Information Manhole # _____, Details _____
 Slack Loop Info. Manhole # _____, Details _____
 Slack Loop Info. Manhole # _____, Details _____

Date: _____
 Time: _____

SIGNED: _____
 Applicant's Representative

SIGNED: _____

SW9435
CONDUIT OCCUPANCY
FORM INSTRUCTIONS

Form SW9435 may be used for the following two purposes, Provisional, Records Based Assignment or as the Pre-Occupancy Survey. The applicant may complete the SW9435 and submit this to SWBT while reviewing the records and make a Provisional, Records Based Assignment. The applicant will also use this form when making the Pre-Occupancy Survey as a reference sheet of information required for acquiring duct and/or inner duct space.

REQUIRED INFORMATION FOR PROVISIONAL, RECORDS BASED ASSIGNMENT

FIRM'S NAME: Name of firm requesting conduit space.

AGREEMENT No.: Number obtained from the Master Agreement Number

APPLICATION No.: Will be provided by applicant in sequential ascending order.

[] Provisional, Records Based Assignment: Applicable when an applicant would make a Provisional, Records Based Assignment. -The form will be signed and dated at the bottom by both the applicant and the SWBT representative. A copy will be provided to the applicant and the original will be maintained by SWBT.

Type: Applicant indicates that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

Record #: This would refer to either the SWBT paper record or the SWBT mechanized record number.

Manhole #: Applicant will supply each manhole number.

Street Address: Applicant will provide street address of the manhole, if applicable.

Distance to Manhole: Applicant will state the distance from manhole to manhole in feet.

Proposed Duct or Inner duct: Applicant will state the number of ducts and/or inner ducts.

Make Ready Work: Not required for Provisional, Records Based assignment.

Make Ready Description: Not required for Provisional, Records Based assignment.

Number of Cables: Applicant will enter the number of cables.

Size of Cable (O.D. Inches): Applicant will enter size of cable.

Splice Information Manhole #: Not required for Provisional, Records Based assignment.
Details: Not required for Provisional, Records Based assignment.

Slack Loop Info. Manhole #: Not required for Provisional, Records Based assignment.

Details: Not required for Provisional, Records Based assignment.

Date: The date the Provisional, Records Based Assignment was made.

Time: The time the Provisional, Records Based Assignment was made.

Signed (Applicant's Representative): Applicant's Representative signs that the Provisional, Records Based Assignment was made.

Signed (SWBT Representative): SWBT's Representative signs that the Provisional, Records Based Assignment was made.

REQUIRED INFORMATION FOR PRE-OCCUPANCY SURVEY (CONDUIT SPACE)

FIRM'S NAME: Name of firm requesting conduit space.

AGREEMENT No.: Number obtained from the Master Agreement Number

APPLICATION No.: Will be provided by applicant in sequential ascending order.

Pre-Occupancy Survey: Applicable when this form is being used as a Pre-Occupancy Survey. The form would be completed in its entirety by the applicant and submitted to SWBT for review in obtaining conduit space.

Type: Applicant indicates that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

Oper. #: Applicant will provide the operation number when required. The same operation number may very well be referenced on an attached map.

Record #: This would refer to either the SWBT paper record or the SWBT mechanized record number.

Manhole #: Applicant will supply each manhole number.

Street Address: Applicant will provide street address of the manhole, if applicable.

Distance to Manhole: Applicant will state the distance from manhole to manhole in feet.

Proposed Duct or Inner duct: Applicant will state the number of ducts and/or inner ducts.

Make Ready Work: Applicant will state if make ready work is required. (Yes or No)

Make Ready Description: Applicant will give description of make ready work required.

Number of Cables: Applicant will indicate the number of cables.

Size of Cable (O.D. Inches): Applicant will indicate size of cable.

Splice Information Manhole #: Applicant will enter any relevant splice information.

Details: Applicant will provide any relevant details regarding splice information.

Slack Loop Info. Manhole #: Applicant will provide.

Details: Applicant will provide any relevant Slack Loop Information.

Date: The date the Pre-Occupancy Survey was submitted to SWBT.

Time: The time the Pre-Occupancy Survey was submitted to SWBT.

Signed (Applicant's Representative): Applicant's Representative signs when Pre-Occupancy Survey was submitted to SWBT.

Signed (SWBT Representative): SWBT's Representative signs when Pre-Occupancy Survey was submitted to SWBT.



NOTIFICATION OF SURRENDER OR MODIFICATION OF POLE ATTACHMENT LICENSE BY LICENSEE

Page ___ of ___

Agreement Number _____

(Licensee) _____

(Address) _____

Southwestern Bell Telephone Company;

In accordance with the terms and conditions of the License Agreement between us, dated _____, 19___, notice is hereby given that the licenses covering attachments to the following poles and/or anchors and/or utilization of anchor/guy strand is surrendered (or modified as indicated in Licensee's prior notification to Licensor, dated _____, 19___) effective _____.

Table with 5 columns: POLE NO., ANCHOR A/GS (ASSOC. POLE NO.), LIC. NO. & DATE, SURRENDER OR MODIFICATION, DATE F. RMVD. MODIFI. Rows 1-15.

Form box containing fields for Date Notification Received, Date Modification Accepted, By, Discontinued: Poles, Anchors, Anchor/Guy Strands.

Name of Licensee

By _____

Title _____



Southwestern Bell Telephone

NOTIFICATION OF SURRENDER OR MODIFICATION OF CONDUIT OCCUPANCY LICENSE BY APPLICANT

Page ____ of ____

License Agreement # _____

(Applicant)

(Address)

Southwestern Bell Telephone Company:

In accordance with the terms and conditions of the Licensing Agreement between us, dated _____, 19____, notice is hereby given that the licenses covering occupancy of the following conduit are surrendered (or modified) indicated in Applicant's prior notification to SWBT, dated _____, 19____, effective _____.

	CONDUIT LOCATION	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD. OR MODIFIED
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				

SWBT	Date Notification Received _____
	Date Modification Accepted _____
	By _____
	Discontinued: _____
	Total duct footage _____

(Applicant)

By _____
(Name of Authorized Agent)

Title _____
(Title of Authorized Agent)



Southwestern Bell Telephone

NOTIFICATION OF UNAUTHORIZED ATTACHMENTS BY APPLICANT

Applicant Name _____

In accordance with the terms and conditions of the License Agreement between us, dated _____, 19____, notice is hereby given that the license covering attachments to the following is unauthorized (as indicated in Applicant's prior lease agreement to SWBT, dated _____, 19____,) effective _____.

Southwestern Bell Telephone

By: _____

Title: _____

	POLE NO. OR CONDUIT #	LOCATION (ASSOC. POLE NO.) MANHOLES involved	LIC. NO. & DATE	UNAUTHORIZED ATTACHMENT	DATE FAC. RMVD. OR MODIFIED
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					

SKETCH OF UNAUTHORIZED ATTACHMENTS ATTACHED

Date Notification Sent _____

Name of Applicant

By _____

Title _____

**APPENDIX IV
INSURANCE REQUIREMENTS (TEXAS) – PAGE 1 OF 4**

This Appendix IV is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached.

1) Premises. As used in this Appendix, the term “premises” refers to any site located on, within, or in the vicinity of SWBT’s poles, ducts, conduits, or rights-of-way and any location where Applicant or any person acting on Applicant’s behalf may be physically present while traveling to or departing from any such site.

2) Requirements Applicable to Applicant and All Persons and Entities Acting on Applicant’s Behalf. Applicant shall maintain, at all times during the term of the Master Agreement, all insurance and coverages set forth below. Such insurance and coverages shall not only cover Applicant but all contractors, subcontractors, and other persons or entities acting on Applicant’s behalf at the premises described in 1) above. Applicant should require that all contractors, subcontractors, and other persons or entities acting on Applicant’s behalf at premises described in 1) above obtain the same insurance and coverages.

3) Workers’ Compensation Insurance. Applicant shall maintain, at all times during the term of the Master Agreement, Workers’ Compensation Insurance and Employer’s Liability Insurance with minimum limits of \$100,000 for bodily injury–each accident, \$100,000 for bodily injury by disease–each employee, and \$500,000 for bodily injury by disease–policy limits, for all employees performing work or otherwise present on the premises described in 1) above. Such insurance must comply with the Workers’ Compensation laws of this State and shall provide coverage, at a minimum, for all benefits required by such Worker’s Compensation laws. Applicant shall require any contractor, subcontractor, or other person or entity acting on Applicant’s behalf to provide Workers’ Compensation Insurance and Employer’s Liability Insurance for their respective employees unless such employees are covered by the protection afforded by Applicant.

4) General Liability Insurance. To protect SWBT and any joint user from any liability for bodily injury or property damage, Applicant shall maintain, at all times during the term of the Master Agreement, General Liability insurance satisfactory to SWBT. SWBT shall be added as an additional insured in the standard policy or an endorsement thereto. Applicant shall also require any contractor, subcontractor, or other person or entity acting on Applicant’s behalf to provide General Liability coverage with the same limits and with SWBT added as an additional insured unless such contractor, subcontractor, or other person or entity is covered by the General Liability protection afforded by Applicant.

- a) The following coverages must be included in (and may not be excluded from) the policy or policies obtained to satisfy the General Liability insurance requirements of Applicant and any contractor, subcontractor, or other person or entity acting on Applicant’s behalf. The coverages may be provided by the standard policy or

**APPENDIX IV
INSURANCE REQUIREMENTS (TEXAS) – PAGE 2 OF 4**

endorsements thereto. Exclusion endorsements deleting these coverages will not be accepted.

- 1) Personal Injury and Advertising Injury coverage.
 - 2) Premises/Operations coverage, including also coverage for any newly acquired ownership or controlled premises or operations.
 - 3) Independent Contractors coverage to provide protection for Applicant's contractors, subcontractors, and other persons or entities acting on Applicant's behalf.
 - 4) Explosion, Collapse, and Underground Hazard (XCU) coverage.
 - 5) Completed Operations coverage providing for bodily injury and property damage liabilities which may occur once the operations have been completed or abandoned.
 - 6) Contractual Liability coverage to provide financial responsibility for the Applicant to meet its indemnification obligations.
 - 7) Broad Form Property Damage (BFPD) coverage for damage to property in the care or custody of Applicant and damage to work performed by or on behalf of the Applicant.
- b) Minimum policy limits shall be as follows:

General Aggregate Limit: \$1,000,000.

Sublimit for all bodily injury, property damages, or medical expenses incurred in any one occurrence: \$1,000,000.

Sublimit for personal injury and advertising: \$1,000,000.

Products/Operations Aggregate Limit: \$1,000,000.

Each occurrence sublimit for Products/Operations: \$1,000,000.

APPENDIX IV
INSURANCE REQUIREMENTS (TEXAS) – PAGE 3 OF 4

- c) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- d) Policy language or endorsements adding SWBT as an additional insured shall not include exclusions or exceptions which defeat the purpose of protecting SWBT from any liability for bodily injury or property damage arising out of Applicant's operations.
- 5) Automobile Liability insurance. The parties contemplate that Applicant and personnel acting on Applicant's behalf will utilize automobiles, trucks, and other motor vehicles on public and private property, including public rights of way, in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. Accordingly, Applicant shall maintain, at all times during the term of the Master Agreement, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage which may arise out of the operation or use of motor vehicles of any type. Coverage shall extend to "any auto" – that is, coverage shall be extended to all owned, non-owned, and hired vehicles used by Applicant or by any person or entity acting on Applicant's behalf in connection with any work performed, or to be performed, on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.
- 6) Layering of General Liability and Automobile Liability coverages. Applicant's insurance may be written via a primary policy with either an excess or umbrella form over the primary policy. If coverage is written in this manner, the total of the combined policy limits must meet or exceed the minimum limits specified in the Master Agreement.
- 7) Deductibles. No deductibles shall be allowed without the express written consent of SWBT.
- 8) Claims Made Policies. Claims Made Policies will not be accepted.
- 9) Proof of Insurance. Certificates of Insurance stating the types of insurance and policy limits provided the insured, or other proof of insurance satisfactory to SWBT, must be received by SWBT prior to the issuance of any licenses pursuant to the Master Agreement and before Applicant or any person acting on Applicant's behalf performs any work on the premises described in 1) above.
 - a) Certificates of Insurance using the insurance industry standard ACORD form are preferred.
 - b) Certificates provided with respect to General Liability policies and certificates provided with respect to Automobile Liability policies shall indicate SWBT as an Additional Insured.

**APPENDIX IV
INSURANCE REQUIREMENTS (TEXAS) – PAGE 4 OF 4**

- c) Deductibles, if permitted, shall be listed on the Certificate of Insurance.
- d) The cancellation clause on the certificate of insurance shall be amended to read as follows:

"SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED OR MATERIALLY CHANGED BEFORE THE EXPIRATION DATE, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT."

A certificate which does not include the phrase "or materially changed" does not meet SWBT's requirements. A certificate reciting that the issuing company will "endeavor to" mail 30 days written notice to the certificate holder does not meet SWBT's requirements. The language "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" or similar language must be deleted from the certificate.

- e) The certificate holder shall be:

Southwestern Bell Telephone Company
6500 West Loop South, Zone 5.3
Bellaire, Texas 77401
ATTENTION: Utility Liaison Supervisor

- f) Failure to object to any coverage described in a certificate shall not constitute written permission from SWBT to any variance from or alteration of any requirement set forth in this Appendix and shall not be construed as a waiver by SWBT of any rights under the Master Agreement.

10) Rating of Insurers. SWBT requires that companies affording insurance coverage have a B+VII or better rating, as rated in the current A.M. Best Key Rating Guide for Property and Casualty Insurance Companies.

11) Self-insurance. If authorized in the Master Agreement, self-insurance shall be allowed in lieu of the above requirements upon Applicant's submission of proof that it has met the self-insurance requirements stated in the Master Agreement.

**APPENDIX V
NONDISCLOSURE AGREEMENT (TEXAS) – PAGE 1 OF 4**

Nondisclosure Agreement (SWBT Pole, Duct, Conduit, and Right-of-Way)

This Nondisclosure Agreement, effective as of the ____ day of _____, 19__, has been entered into by and between Southwestern Bell Telephone Company ("SWBT"), a Missouri corporation, and the undersigned person or firm ("Recipient") as a condition of access to certain records and information maintained by SWBT. The parties stipulate and agree as follows:

1) SWBT maintains records and information, including but not limited to outside plant engineering and construction records, which relate to poles, ducts, conduits, and rights-of-way which SWBT owns or controls. SWBT represents that such records and information are not made generally available for inspection or copying by the public and include business, economic, and engineering information (including but not limited to plans, designs, maps, diagrams, cable counts and cable-specific information, circuit records, and other competitively sensitive information) which SWBT intends to keep secret and which has economic value by virtue of not being generally known to or readily ascertainable by the public, including SWBT's competitors.

2) SWBT has agreed to make certain of its records and information relating to poles, ducts, conduits, and rights-of-way available to cable television systems and telecommunications carriers who are presently entitled under federal law to have access to the poles, ducts, conduits, and rights-of-way owned or controlled by SWBT.

3) Recipient represents that Recipient is a cable television system or telecommunications carrier entitled under federal law to access to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT, or, if an individual, that he or she is acting on behalf of _____ which is such a cable television system or telecommunications carrier. Recipient further represents that Recipient is seeking access to SWBT's records and information relating to poles, ducts, conduits, and rights-of-way for the limited purpose of enabling engineering and construction personnel employed by or acting on behalf of such cable television system or telecommunications carrier to make engineering and construction decisions necessary to utilize SWBT's poles, ducts, conduits, and rights-of-way.

4) SWBT agrees that permitted uses of records and information concerning SWBT's poles, ducts, conduits, and rights-of-way are (a) determining which poles, ducts, conduits, and rights-of-way owned or controlled by SWBT are available for use by such cable television systems or telecommunications carriers as permitted by federal law, (b) designing, engineering, constructing, installing, maintaining, and removing equipment which is to be attached to or placed within such poles, ducts, conduits, and rights-of-way, and (c) contesting decisions, if any, by SWBT not to provide access to such poles, ducts, conduits, and rights-of-

APPENDIX V
NONDISCLOSURE AGREEMENT (TEXAS) – PAGE 2 OF 4

way as requested. No other uses of such records or information are authorized or permitted under this Agreement.

5) Recipient agrees that Recipient will not use, or permit any other person or entity to use or have access to SWBT's records and information relating to poles, ducts, conduits, or rights-of-way or information for any purpose other than the limited purposes stated in 4) above and that such records and information shall not be disclosed or shared with any person or persons other than those who have a need to know such information for such limited purposes. Recipient specifically agrees that such records and information shall not be used or accessed by any person involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities. Recipient further agrees that Recipient shall not furnish copies of such records or disclose information contained in such records to any person or entity which has not executed and delivered to SWBT a counterpart of this Agreement prior to receipt of such copies or information.

6) Recipient agrees that Recipient will not without SWBT's express written authorization copy, duplicate, sketch, draw, photograph, download, photocopy, scan, replicate, transmit, deliver, send, mail, communicate, or convey any of SWBT's records relating to poles, ducts, conduits, or rights-of-way. Recipient further agrees that Recipient will not conceal, alter, or destroy any SWBT records furnished to Recipient pursuant to this Agreement.

7) Notwithstanding the provisions of 6) above, and except as provided in 8) below, Recipient may copy, take notes from, make, and use (for the limited purposes specified herein) drawings with reference to the following records provided by SWBT to Recipient for inspection: pole and conduit route maps, cable plat maps, and plant location records reflecting approximate locations of SWBT's existing poles, ducts, conduits, and rights-of-way. All such copies, notes, and drawings (whether in hardcopy or electronic form) shall be marked with the legend: **"PROPRIETARY INFORMATION: NOT FOR USE BY OR DISCLOSURE TO ANY PERSON WHO HAS NOT EXECUTED A NONDISCLOSURE AGREEMENT (SWBT POLE, DUCT, CONDUIT, AND RIGHT-OF-WAY)."**

8) No references to cable counts, cable designations or cable-specific information, circuit information, or customer-specific information of any kind may be included in any copies, notes, or drawings made pursuant to 7) above; provided, however, that Recipient may make estimates regarding the physical characteristics (such as size and weight) of the cables being surveyed when necessary to make engineering determinations regarding the capacity, safety, reliability, or suitability of SWBT's poles, ducts, conduits, or rights-of-way for Recipient/Applicant's intended uses.

9) All records and information relating to poles, ducts, conduits, and rights-of-way provided to Recipient/Applicant by SWBT (whether in writing, orally, or in electronic or other

APPENDIX V
NONDISCLOSURE AGREEMENT (TEXAS) – PAGE 3 OF 4

formats) shall be deemed to be proprietary information subject to this Agreement without regard to whether such information, at the time of disclosure, has been marked with restrictive notations such as "Proprietary," "Restricted Proprietary," "Confidential," "Not to Be Copied or Reproduced," or the like.

10) This Agreement applies only to records and information provided to Recipient by SWBT and does not apply to records and information obtained by Recipient from other lawful sources.

11) This Agreement does not prohibit the disclosure of records or information in response to subpoenas and/or orders of a governmental agency or court of competent jurisdiction. In the event Recipient receives an agency or court subpoena requiring such disclosure, Recipient shall immediately, and in no event later than five calendar days after receipt, notify SWBT in writing.

12) The Parties agree that, in the event of a breach or threatened breach of this Agreement, SWBT may seek any and all relief available in law or in equity as a remedy for such breach, including but not limited to monetary damages, specific performance, and injunctive relief. The Parties acknowledge that SWBT's records and information relating to poles, ducts, conduits, and rights-of-way include valuable and unique information and that disclosure of such information (including circuit information) will result in irreparable injury to SWBT. In the event of any breach of this Agreement for which legal or equitable relief is sought, SWBT shall be entitled to recover from Recipient all reasonable attorney's fees and other reasonable costs (including but not limited to fees of expert witnesses) incurred by SWBT in connection with the prosecution of its claims against Recipient.

13) This Agreement shall be effective on the effective date shown above and shall remain in full force and effect until terminated by either party as provided herein. Either party may, at any time, with or without cause, terminate this Agreement by giving the other party 60 days' advance written notice of its decision to terminate. The parties further agree that termination of this Agreement shall have no effect on the duty of any person or entity, including Recipient, to abide by all terms of this Agreement with respect to records and information received by Recipient while this Agreement is in effect.

14) This Agreement shall benefit and be binding on the parties below and their respective heirs, successors, and assigns.

15) This Agreement will be governed by the laws of the State of Texas.

16) This Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and none of the terms of this Agreement may be amended or modified except by written instrument signed by both parties.

**APPENDIX V
NONDISCLOSURE AGREEMENT (TEXAS) – PAGE 4 OF 4**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or caused this Agreement to be executed by their duly authorized representatives, in duplicate, as of the dates set forth below.

_____	Southwestern Bell Telephone Company
Recipient (Print or Type Name)	
By _____	By _____
Signature of Recipient or Representative	Signature
_____	John C. Trott
Name (Printed or Typed)	Name (Printed or Typed)
_____	6500 West Loop South, Zone 5.3
Address	Address
_____	Bellaire, Texas 77401
City, State, and Zip Code	City, State, and Zip Code
_____	713-567-7130
Phone	Phone

Date	Date

**APPENDIX VI
NOTICES TO APPLICANT (TEXAS)**

This Appendix is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached.

Notices in general. Except as otherwise stated in this Appendix, all notices to Applicant shall be given to Applicant's duly authorized agent or attorney as specified in Section 29.01 of the Master Agreement.

Changes in notice requirements. Changes in the notice requirements set forth in this Appendix may be made by Applicant from time to time in accordance with the provisions of Section 29.03 of the Master Agreement.

Special notice provisions. The following special notice provisions, if any, shall apply:

APPENDIX VII
NOTICES TO SWBT (TEXAS) – PAGE 1 OF 3

This Appendix is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached.

Utility Liaison Supervisor (ULS). Except as otherwise stated in this Appendix, all notices to SWBT shall be given to the Utility Liaison Supervisor (ULS) designated in APPENDIX VIII of the Master Agreement. The Utility Liaison Supervisor is generally responsible for coordinating applications for access to SWBT's poles, ducts, conduits, and rights-of-way and serving as Applicant's initial point of contact for matters arising out of or in connection with the administration of the Master Agreement. Notices to the ULS shall be given in writing in the manner prescribed in Section 29.02. Notices to be sent to the ULS include, but are not limited to, notices under the following provisions of the Master Agreement.

- 7.01 Notification of Designation of Primary Point of Contact
- 7.03(a) Notification of intent to review records
- 8.XX All Notifications in Article 8
- 9.XX All Notifications in Article 9
- 10.04(e) Notification Regarding Make-Ready Work
- 12.03(d) Notification of placing J-hook on non-licensed pole
- 12.04 Notification of occupation of maintenance duct for short-term use
- 12.06 Notification of Applicant's maintenance contact
- 13.01 Notification of planned modifications
- 14.02(c) Notification of Applicant's desire to add to or modify its existing attachment
- 15.02(b) Notification of occupation of maintenance duct for short-term emergency use
- 15.03 Notification of emergency repair coordinators
- 16.01 Notification that facilities have been brought into compliance
- 17.02(c) Disclaimer of ownership or responsibility for untagged facilities
- 17.06 Notification of Applicant's response to ownership of facilities in question

**APPENDIX VII
NOTICES TO SWBT (TEXAS) – PAGE 2 OF 3**

- 18.01(a) Notice of intent to remove facilities
- 18.01(e) Notice of intent to terminate license
- 18.06 Notification of completion of removal of facilities
- 20.01(c) Notification of change of bond
- 21.17 Notification of claims
- 23.XX All notifications of insurance coverage in Article 23
- 24.03 Notification of assignment
- 25.01 Notification of termination
- 25.03 Notification of cure of breach
- 27.04 Notice of elective termination
- 29.03 Notification of change in notice requirements

Other notices. The following notices may be given orally or in writing (including fax) and shall be given to SWBT's Local Operations Center (LOC) at 1-800-220-4818 instead of the ULS.

- 6.05(a) Notifications relating to electrical interference
- 6.09(d) Notifications of unsafe conditions
- 6.11(a) Notification of manhole entry
- 6.13(c) Notification of environmental contaminants
- 10.02(b) Notification of materials required for self-provisioning of inner duct
- 15.04 Notification of conditions requiring emergency repair
- 15.06(a) Notification of performing corrective work on emergency repair.
(advanced notice)

APPENDIX VII
NOTICES TO SWBT (TEXAS) – PAGE 3 OF 3

- 15.06(b) Notification of performing corrective work on emergency repair.
(no advanced notice)

Additional information and questions concerning notice requirements. The ULS, as Applicant's initial point of contact, will provide additional information to Applicant concerning notification procedures for notices to be given to LSPC. Questions to SWBT concerning notice requirements should be directed to the ULS. The ULS is not authorized to provide Applicant legal advice with respect to notice requirements. Questions by Applicant's personnel and other persons acting on Applicant's behalf concerning Applicant's legal obligations should be directed to Applicant's legal counsel or such other personnel as Applicant may direct.

Changes in notice requirements. Changes in the notice requirements set forth in this Appendix may be made by SWBT from time to time in accordance with the provisions of Section 29.03 of the Master Agreement.

Agreement No. _____

**APPENDIX VIII
IDENTIFICATION OF UTILITY LIAISON SUPERVISOR (TEXAS)**

This Appendix is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached.

The Utility Liaison Supervisor for Texas is named below. Notices to the Utility Liaison Supervisor should be addressed as follow:

Name: W. L. Ford

Title: Manager-Operations

Firm: Southwestern Bell Telephone Company

Address: 6500 West Loop South, Zone 5.3

City/State/Zip: Bellaire, Texas 77401