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From: Holland, Robyn P [rh0582@att.com]
Sent: Wednesday, August 13, 2008 10:32 AM
To: Filings@psc.state.fl.us
Cc: Jeff Bates; Holland, Robyn P
Subject: 080198-TP Correction Filing

Attachments: 9100C_Sc.pdf



9100C_Sc.pdf
(3 MB)

-----Original Message-----

From: YANT, ROBYN [mailto:robyn.holland@att.com]
Sent: Wednesday, August 13, 2008 10:25 AM
To: YANT, ROBYN
Subject: 9100C Scan

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August 13, 2008

Mrs. Blanca S. Bayo
Director, Division of The Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

RE: Docket 080198-TP Approval of the Interconnection, unbundling, resale and collocation agreement negotiated by BellSouth Telecommunications, Inc. and First Communications, LLC

Dear Ms. Bayo:

On April 2, 2008 BellSouth and First Communications, LLC filed an Interconnection, unbundling, resale and collocation agreement for Florida Public Service Commission approval. The subject of the cover letter of the filing was styled as referenced above.

The filing was inadvertently missing pages 401 - 450. Please include the missing pages in the original filing.

I would appreciate your assistance in correcting the filing and record in question.

If you need further assistance, please contact Robyn Yant at 850-577-5551.

Thank you,

Robyn Yant for
Jerry D. Hendrix
Regulatory Vice President

following facilities which require special security, technical, and construction arrangements outside the scope of this Agreement:

- 3.1.1 AT&T's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from AT&T's central offices;
 - 3.1.2 controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
 - 3.1.3 ducts and conduits located within buildings owned by AT&T; and
 - 3.1.4 ducts, conduits, equipment rooms, and similar spaces located in space leased by AT&T from third-party property owners for purposes other than to house cables and other equipment in active service as part of AT&T's network distribution operations.
- 3.2 No Transfer of Property Rights to CLEC. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other.
- 3.3 No Effect on AT&T's Right to Abandon, Convey or Transfer Structure Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall in any way affect AT&T's right to abandon, convey, or transfer to any other person or entity AT&T's interest in any of AT&T's Structure. AT&T shall give CLEC at least 60 days written notice prior to abandoning, conveying, or transferring any Structure to which CLEC has already attached its facilities, or any Structure on which CLEC has already been assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or right-of-way is to be conveyed or transferred.
- 3.3.1 All conveyances or transfers of pole, duct, conduit or right-of-way shall contain provisions requiring the transferee to recognize any interest of CLEC in the Structure obtained hereunder.

4. EFFECTIVE DATE, TERM, AND ELECTIVE TERMINATION

- 4.1 Effective Date. This Agreement shall be effective as of the ____ day of _____, 2008, or, if this Agreement has been entered into as an

appendix, attachment, or exhibit to an interconnection agreement between the parties, the date of approval by the State Commission of the interconnection agreement, whichever date first occurs.

- 4.2 **Initial Term.** Unless sooner terminated as herein provided, the initial term of this Agreement shall run from the effective date until the end of the calendar year which includes the effective date. In the event this Agreement is entered into as a part of an Interconnection Agreement, this Agreement shall terminate upon the termination of the Interconnection Agreement of which this is apart.
- 4.3 **Automatic Renewal.** Unless sooner terminated as herein provided, this Agreement shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year after the effective date, or in the same fashion as the Interconnection Agreement renews, if a part of the Interconnection Agreement.
- 4.4 **Elective Termination.** [Applicable only in the event that this is not part of an Interconnection Agreement.] Either Party may terminate this Agreement by giving the other party at least six months prior written notice as provided in this section. The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current term of this Agreement or six months after the date the notice is given.
- 4.5 **Elective Termination by AT&T** [Applicable only in the event that this is not part of an Interconnection Agreement.] CLEC shall, within 60 days after the effective date of the elective termination by AT&T, either initiate negotiations for continued access to AT&T's poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Section 28 of this Agreement.
- 4.6 **Effect of Elective Termination.** [Applicable only in the event that this is not part of an Interconnection Agreement.] Elective termination of this Agreement by CLEC, as permitted under Section 4 of this Agreement, shall not affect CLEC's liabilities and obligations incurred under this Agreement prior to the effective date of termination and shall not entitle CLEC to the refund of any advance payment made to AT&T under this Agreement. Elective termination of this Agreement by AT&T shall not affect AT&T's obligations to afford access to AT&T's poles, ducts, conduits, and rights-of-way owned or controlled by AT&T as required by the Pole Attachment Act, the Telecommunications Act of 1996, and other applicable laws, regulations, and commission orders.

5. GENERAL PROVISIONS

- 5.1 **Entire Agreement.** This Agreement, together with the interconnection agreement, if any, of which this Agreement is a part, and the Guidelines for Access to AT&T Structure, attached hereto and incorporated herein by reference, sets forth the entire understanding and agreement of the parties. The Guidelines for Access shall not be changed during the term hereof in a manner which adversely affects Applicant's rights hereunder or otherwise adversely affects Applicant's ability to meet its service obligations. Any disputes arising hereunder shall be handled in accordance with Dispute Resolution in the Interconnection Agreement.
- 5.2 **Prior Agreements Superseded.** This Agreement supersedes all prior agreements and understandings, whether written or oral, between CLEC and AT&T relating to the placement and maintenance of CLEC's facilities on and within AT&T's poles, ducts, and conduits within this State.
- 5.3 **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.
- 5.4 **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.
- 5.5 **Multiple Counterparts.** This Agreement may be executed in multiple counterparts.
- 5.6 **Effect on Licenses or Occupancy Permits Issued Under Prior Agreements.** All currently effective pole attachment and conduit occupancy permits granted to CLEC shall, on the effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.
- 5.7 **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 but not limited to 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 government 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.

- 5.8 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.
- 5.9 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.
- 5.10 Changes in the Law. The parties agree to negotiate in good faith changes to this Agreement to conform to changes applicable law pertaining to access to poles, ducts, conduits and rights-of-way, including the Pole Attachment Act.
- 5.11 The parties shall at all times observe and comply with, and the provisions of this Agreement are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties.

6. DISCLAIMER OF WARRANTIES

AT&T MAKES NO REPRESENTATIONS AND DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, THAT AT&T'S POLES, DUCTS, CONDUITS AND RIGHTS OF WAY ARE SUITABLE FOR THE CLEC'S INTENDED USES OR ARE FREE FROM DEFECTS. THE CLEC SHALL IN EVERY INSTANCE BE RESPONSIBLE TO DETERMINE THE ADEQUACY

OF AT&T'S POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY FOR THE
CLEC'S INTENDED USE.

7. DISPUTE RESOLUTION

In the event that this agreement is a part of an Interconnect Agreement between the parties, the dispute resolution provisions of the Interconnection Agreement shall apply to disputes under this Agreement.

8. INDEMNIFICATION

8.1 Definitions. The term "Claims" as used in Section 8 shall mean any suit, claim, demand, loss, damage, liability, fee, fine, penalty, or expense, of every kind and character.

8.2 Indemnities Excluded. Except as otherwise specifically provided in this article, neither party (as an "indemnifying party") shall be required to indemnify or defend the other party (as an "indemnified party") against, or hold the indemnified party harmless from, any Claims arising out of:

8.2.1 any breach by the indemnified party of any provision of this Agreement or any breach by the indemnified party of the parties' interconnection agreement, if any;

8.2.2 the violation of any law by any employee of the indemnified party or other person acting on the indemnified party's behalf;

8.2.3 willful or intentional misconduct or gross negligence committed by any employee of the indemnified party or by any other person acting on the indemnified party's behalf; or

8.2.4 any negligent act or acts committed by any employee of the indemnified party or other person acting on the indemnified party's behalf, if such negligent act or acts are the sole producing cause of the injury, loss, or damage giving rise to the Claim for which indemnity is requested.

8.3 Workplace Injuries. Except as expressly provided in this Agreement to the contrary, each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any injury, loss, or damage suffered by any person, which arises out of or in connection with the personal injury or death of any employee of the indemnifying party (or other person acting on the indemnifying party's behalf) if such injury or death results, in whole or in

part, from any occurrence or condition on, within, or in the vicinity of AT&T's Structure.

- 8.4 Other Claims Brought Against Either Party by Employees and Other Persons Acting on the Other Party's Behalf. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims (other than workplace injury claims subject to Section 8.3 above) made, brought, or sought against the indemnified party by any employee, contractor, or subcontractor of the indemnifying party or by any other person acting on the indemnifying party's behalf.
- 8.5 THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 8.3-8.4 SHALL ARISE EVEN IF THE INJURY, SICKNESS, DISEASE, OR DEATH WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.
- 8.6 Claims Brought Against Either Party by Vendors, Suppliers and Customers of the Other Party. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims (other than workplace injury claims subject to Section 8.3, or other claims subject to Section 8.4) made, brought, or sought against the indemnified party by any vendor, supplier, or customer of the indemnifying party.
- 8.7 Injuries to Third Parties and Third party Property Owners Resulting from the Parties' Conduct. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with the personal injury or death of any third party or physical damage to real or personal property owned by a third party, arising, in whole or in part, out of or in connection with the conduct of employees of the indemnifying party or other persons acting on the indemnifying party's behalf.
- 8.8 Indemnification for Environmental Claims.
- 8.8.1 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the violation or breach, by any employee of the indemnifying party or other person acting on the indemnifying party's behalf, of

APPENDIX SA - POLES, CONDUITS AND ROW
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BELLSOUTH TELECOMMUNICATIONS, INC.
D/B/A AT&T FLORIDA/FIRST
COMMUNICATIONS, LLC

- 8.8.1.1 any federal, state, or local environmental statute, rule, regulation, ordinance, or other law or
- 8.8.1.2 any provision or requirement of this Agreement dealing with hazardous substances or protection of the environment.
- 8.8.2 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of the indemnifying party, or by any person acting on the indemnifying party's behalf, while present on, within, or in the vicinity of any AT&T pole, duct, conduit, or right-of-way.
- 8.8.3 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the removal or disposal of any hazardous substances by the indemnifying party or by any person acting on the indemnifying party's behalf, or arising out of or in connection with the subsequent storage, processing or other handling of such hazardous substances by any person or entity after they have been removed by the indemnifying party or persons acting on the indemnifying party's behalf from the site of any AT&T pole, duct, conduit, or right-of-way.
- 8.8.4 Except as otherwise specifically provided in this section, neither party shall be required to indemnify or defend the other party against, or hold the other party harmless from any Claims for which the other party may be liable under any federal, state, or local environmental statute, rule, regulation, ordinance, or other law.
- 8.9 Miscellaneous Claims CLEC shall indemnify, on request defend, and hold AT&T harmless from any and all Claims, of every kind and character, made, brought, or sought against AT&T by any person or entity, arising out of or in connection with the subject matter of this Agreement and based on either:

- 8.9.1 claims for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on AT&T due to the placement or presence of CLEC's facilities on or within AT&T's poles, ducts, conduits, or rights-of-way; or
- 8.9.2 claims based on the violation by CLEC of any third party's intellectual property rights, including but not limited to claims for copyright infringement, patent infringement, or unauthorized use or transmission of television or radio broadcast programs or other program material.
- 8.10 CLEC's General Indemnity Obligations to AT&T. This section applies only in those situations not expressly covered by Sections 8.3-8.10 and does not apply to any Claims resulting from CLEC's enforcement of its rights against AT&T pursuant to this Agreement or other provisions in the parties' interconnection agreement, if any. Except as otherwise expressly provided in this Agreement to the contrary, and subject to the exclusions set forth in Section 8.2, CLEC shall indemnify, on request defend, and hold AT&T harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with CLEC's access to or use of AT&T's poles, ducts, conduits, or rights-of-way, CLEC's performance of any acts authorized under this Agreement, or the presence or activities of CLEC's employees or other personnel acting on CLEC's behalf on, within, or in the vicinity of AT&T's poles, ducts, conduits, or rights-of-way.
- 8.11 AT&T's General Indemnity Obligations to CLEC. This section applies only in those situations not expressly covered by Sections 8.3-8.9 and does not apply to any Claims resulting from AT&T's enforcement of its rights against CLEC pursuant to this Agreement or other provisions in the parties' interconnection agreement, if any. Except as otherwise expressly provided in this Agreement to the contrary, AT&T shall indemnify, on request defend, and hold CLEC harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with AT&T's access to or use of AT&T's poles, ducts, conduits, or rights-of-way, AT&T's performance of any acts authorized under this Agreement, or the presence or activities of AT&T's employees or other personnel acting on AT&T's behalf on, within, or in the vicinity of AT&T's poles, ducts, conduits, or rights-of-way.

9. LIABILITIES AND LIMITATIONS OF LIABILITY

- 9.1 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION LIMITS EACH PARTY'S LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH NEGLIGENT (INCLUDING GROSSLY NEGLIGENT) ACTS OR OMISSIONS OF SUCH PARTY BUT DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR INTENTIONAL MISCONDUCT.
- 9.2 AT&T Not Liable to CLEC for Acts of Third Parties or Acts of God. By affording CLEC access to AT&T Structure AT&T does not warrant, guarantee, or insure the uninterrupted use of such facilities by CLEC. Except as specifically provided in Section 8.10 of this Agreement, CLEC assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to CLEC's facilities attached to AT&T's poles or placed in AT&T's Structure and AT&T shall not be liable to CLEC for any damages to CLEC's facilities other than as provided in Section 8.10. In no event shall AT&T be liable to CLEC under this Agreement for any death of person or injury, loss, or damage resulting from the acts or omissions of (1) any Other User or any person acting on behalf of an Other User, (2) any governmental body or governmental employee, (3) any third-party property owner or persons acting on behalf of such property owner, or (4) any permit, invitee, trespasser, or other person present at the site or in the vicinity of any AT&T pole, duct, conduit, or right-of-way in any capacity other than as an AT&T employee or person acting on AT&T's behalf. In no event shall AT&T be liable to CLEC under this Agreement for injuries, losses, or damages resulting from acts of God (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on AT&T's behalf, cable cuts by persons other than AT&T's employees or persons acting on AT&T's behalf, or other causes beyond AT&T's control which occur at sites subject to this Agreement.
- 9.3 Damage to Facilities. Each party shall exercise due care to avoid damaging the facilities of the other or of Other Users and hereby assumes

all responsibility for any and all loss from damage caused by the party and persons acting on the party's behalf. A party shall make an immediate report to the other of the occurrence of any damage and hereby agrees to reimburse the other party, and/or Other Users for any property damaged caused by the party or persons acting on the party's behalf.

- 9.4 No Limitations of Liability in Contravention of Federal or State Law. Nothing contained in this article shall be construed as exempting either party from any liability, or limiting such party's liability, in contravention of federal law or in contravention of the laws of this State.

10. INSURANCE

- 10.1 At all times in which CLEC has attachments to AT&T poles, or is occupying AT&T conduit or right-of-way, CLEC shall keep and maintain in force, at its own expense, the minimum insurance coverage and limits set for below. Such insurance and coverage shall not only cover CLEC, but it must cover all contractors, subcontractors and/or any other person acting on CLEC's behalf, that are providing services under this Agreement.
- 10.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee.
- 10.1.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations.
- 10.1.3 Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired and non-owned vehicles.
- 10.2 CLEC agrees to name AT&T as an Additional Insured on the Commercial General Liability policy and Commercial Automobile Liability Policy.

- 10.3 AT&T agrees to accept CLEC's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
- 10.3.1 Workers' Compensation and Employers Liability: CLEC submit to AT&T its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and
 - 10.3.2 Automobile liability: CLEC shall submit to AT&T a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
 - 10.3.3 General liability: CLEC must provide evidence acceptable to AT&T that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 10.4 All insurance required in accordance with this section must be in effect before AT&T will issue pole attachment or conduit occupancy permits under this Agreement.
- 10.5 CLEC agrees to provide AT&T with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

11. ASSIGNMENT OF RIGHTS

- 11.1 Assignment Permitted. Neither party may assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other, which consent cannot be unreasonably withheld, except as provided in this section.
- 11.1.1 Either Party may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without the other party's consent, to any entity controlling, controlled by, or under common control with or which acquires or succeeds to ownership of substantially all of that assignor's assets. The Assignors must conform to conditions set forth in the General Terms and Conditions in this Interconnection Agreement.

- 11.1.2. Overlashing of CLEC's facilities on AT&T poles by a third party will be allowed under the following conditions:
- 11.1.2.1 Prior to Overlashing, CLEC shall, on the form prescribed, provide AT&T with notice of the proposed overlashing specifying the name and address of the Overlashing entity, the locations and pole numbers of the poles on the route to be overlashed, the character of the overlashed attachments and such other information as AT&T may reasonably require.
 - 11.1.2.2 The Overlashed facility shall comply with all of the standards provided in Section 16 below.
 - 11.1.2.3 The Overlashed facility shall be treated as the facility of CLEC with respect to the provisions of this Appendix and this Agreement.
 - 11.1.2.4 There are no charges for overlashing.
- 11.1.2 CLEC may, ancillary to a bona fide loan transaction between CLEC and any lender, and without AT&T's consent, grant security interests or make collateral assignments in substantially all of CLEC's assets, including CLEC's rights under this Agreement, subject to the express terms of this Agreement. In the event CLEC's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire CLEC's assets through public or private sale or through an Agreement with CLEC, CLEC's lender or the third party acquiring CLEC's rights under this Agreement shall assume all outstanding obligations of CLEC under the Agreement and provide proof satisfactory to AT&T that such lender or third party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by CLEC's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, CLEC's lender or such third party shall succeed to all rights and remedies of CLEC under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if CLEC is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of CLEC under the Agreement, including

liability to AT&T for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third party succeeds to the rights of CLEC under the Agreement, as applicable.

- 11.1.3 No assignment or transfer to either Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until either Party, 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 11.3.
- 11.2 Incorporations, Mergers, Acquisitions, and Other Changes in CLEC's Legal Identity. When the legal identity or status of CLEC changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article.
- 11.3 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. Either Party 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 other party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of the proposed assignor arising out of or in connection with this Agreement.
- 11.4 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting CLEC the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or occupancy permits subject to this Agreement to any third party. Except as otherwise expressly permitted in this Agreement, CLEC shall not allow third party to attach or place facilities to or in pole or conduit space occupied by or assigned to CLEC or to utilize such space.
12. **TERMINATION OF AGREEMENT OR OCCUPANCY PERMITS;
REMEDIES FOR BREACHES**
- 12.1 Termination Due to Non-Use of Facilities or Loss of Required Authority. This Agreement and all occupancy permits subject to this Agreement shall terminate if CLEC ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if CLEC is cable television

system having access to AT&T's poles, ducts, conduits or rights-of-way solely to provide cable television service), or ceases to have authority to provide or ceases to provide telecommunications services in this State (if CLEC is a telecommunications carrier which does not also have authority to provide cable television service in this State).

- 12.2 Individual occupancy permits subject to this Agreement shall terminate if (a) CLEC fails to utilize the pole attachment or conduit or right of way space subject to such occupancy permit for a period of one (1) year or (b) CLEC's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated, or local governmental authority or third-party property owner having authority to revoke, deny, or terminate such use or access.
- 12.3 Limitation, Termination, or Refusal of Access for Certain Material Breaches. CLEC's access to AT&T's Structure shall not materially interfere with or impair service over any facilities of AT&T or any Other User, cause material damage to AT&T's plant or the plant of any Other User, impair the privacy of communications carried over the facilities of AT&T or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of AT&T's poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, AT&T may limit, terminate or refuse access if CLEC violates this provision.
- 12.3 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either party, the aggrieved party shall give written notice of such claimed breach.
- 12.4 The complaining party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such written notice is given, and
- 12.4.1 the breaching party fails to cure the breach within 30 days of such notice, if the breach is one which can be cured within 30 days, or
- 12.4.2 the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure.
- 12.5 Remedies for Breach. Subject to the provisions of this article, either party may terminate this Agreement in the event of a material breach by the other party or exercise any other legal or equitable right which such party may have to enforce the provisions of this Agreement. In any action

based on an alleged breach of this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred by such party, including but not limited to reasonable attorneys' fees.

13. FAILURE TO ENFORCE

No Waiver. The failure by either party to take action to enforce compliance with any of the terms or conditions of this Agreement, to give notice of any breach, or to terminate this Agreement or any occupancy permit or authorization subject to this Agreement shall not constitute a waiver or relinquishment of any term or condition of this Agreement, a waiver or relinquishment of the right to give notice of breach, or waiver or relinquishment of any right to terminate this Agreement.

14. CONFIDENTIALITY OF INFORMATION

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

14.2 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by CLEC to AT&T in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons other than those who have a need to know such information for the limited purposes set forth in Sections 14.3-14.6.

14.3 Permitted Uses of CLEC's Confidential Information. Notwithstanding the provisions of Sections 14.1 and 14.2 above, AT&T and persons acting on AT&T's behalf may utilize CLEC's confidential or proprietary information only for lawful purposes as follows:

- 14.3.1 posting information, as necessary, to AT&T's outside plant records;
 - 14.3.2 placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing AT&T's Structure and any AT&T facilities located on, within, or in the vicinity of such Structure;
 - 14.3.3 performing AT&T's obligations under this Agreement and similar agreements with third parties;
 - 14.3.4 determining which of AT&T's Structure are (or may in the future be) available for AT&T's own use, and making planning, engineering, construction, and budgeting decisions relating to AT&T's Structure;
 - 14.3.5 preparing cost studies;
 - 14.3.6 responding to regulatory requests for information;
 - 14.3.7 maintaining AT&T's financial accounting records; and
 - 14.3.8 complying with other legal requirements relating to Structure.
- 14.4 **Defense of Claims.** In the event of a dispute between AT&T and any person or entity, including CLEC, concerning AT&T's performance of this Agreement, satisfaction of obligations under similar agreements with third parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, AT&T may utilize confidential or proprietary information submitted by CLEC in connection with this Agreement as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that AT&T shall not disclose CLEC's proprietary or confidential information without first:
- 14.4.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of CLEC's information; or
 - 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or

14.4.3 providing CLEC notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

14.5 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding AT&T from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that AT&T shall not disclose CLEC's proprietary or confidential information without first:

14.5.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of CLEC's information; or

14.5.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or

14.5.3 providing CLEC notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

15. ACCESS TO RIGHTS-OF-WAY

15.1 To the extent AT&T has the authority to do so, AT&T grants CLEC a right to use any right-of-way for AT&T poles, ducts, or conduits to which CLEC may attach its facilities for the purposes of constructing, operating and maintaining such CLEC's facilities on AT&T's poles, ducts or conduits. CLEC shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, right of way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the AT&T pole, duct or conduit to which CLEC seeks to attach its facilities. CLEC shall furnish proof of any such easement, right of way, license, permit, permission, certification, or franchise within thirty (30) days of request by AT&T. AT&T does not warrant the validity or apportionability of any rights it may hold to place facilities on private property.

15.2 Private Rights-of-Way Not Owned or Controlled by Either Party. Neither party shall restrict or interfere with the other party's access to or right to occupy property owned by third-parties which is not subject to the other party's control, including property as to which either party has access

subject to non-exclusive rights-of-way. Each party shall make its own, independent legal assessment of its right to enter upon or use the property of third-party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.

- 15.3 Access to Rights-of-Way Generally. At locations where AT&T has access to third-party property pursuant to non-exclusive rights-of-way, AT&T shall not interfere with CLEC's negotiations with third-party property owners for similar access or with CLEC's access to such property pursuant to easements or other rights-of-ways obtained by CLEC from the property owner. At locations where AT&T has obtained exclusive rights-of-way from third-party property owners or otherwise controls the right-of-way, AT&T shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to CLEC on a nondiscriminatory basis, provided that the underlying agreement with the property owner permits AT&T to provide such access, and provided further that AT&T's charges for such access shall include CLEC's pro rata portion of the charges, if any, paid by AT&T to obtain the right-of-way, plus any other documented legal, administrative, and engineering costs incurred by AT&T in obtaining the right-of-way and processing CLEC's request for access.

16. SPECIFICATIONS

- 16.1 Compliance with Requirements, Specifications, and Standards. CLEC's facilities attached to AT&T's poles or occupying space in AT&T's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Agreement and the Administrative Guide.
- 16.2 Published Standards. CLEC's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:
- 16.2.1 the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Telcordia Technologies("Telcordia"), and sometimes referred to as the "Blue Book";
- 16.2.2 the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE");

- 16.2.3 the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA");
- 16.2.4 INTENTIONALLY LEFT BLANK
- 16.2.5 the AT&T Structures Access Application Guidelines.
- 16.3 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of AT&T's manholes and access to AT&T's conduit system.
- 16.3.1 CLEC will notify AT&T not less than 5 business days in advance before entering AT&T's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the parties. The notice shall state the general nature of the work to be performed.
- 16.3.2 An authorized employee or representative of AT&T will be present any time when CLEC or personnel acting on CLEC's behalf enter or perform work within AT&T's conduit system. Provided that the notice set forth in Section 16.3.1 has been given, and provided that the notice period has expired, and further provided that all other conditions set forth in Section 16.3.1 have been satisfied, CLEC or its representative may enter or perform work within AT&T's conduit system to conduct the work identified in the notice, regardless of the presence of an AT&T employee or representative.
- 16.3.3 Each party must obtain any necessary authorization from appropriate authorities to open manholes.

17. ACCESS TO RECORDS

- 17.1 In order to obtain information regarding Facilities, Licensee shall make a written request to AT&T, identifying with reasonable specificity the geographic area for which Facilities are required, the types and quantities of the required Facilities and the required in-service date. In response to such request, AT&T shall provide Licensee with information regarding the types, quantity and location (which may be provided by provision of route maps) and availability of AT&T Poles, Conduit and right-of-way located within the geographic area specified by Licensee. Provision of information under the terms of this section shall include the right of Licensee employees or agents to obtain copies of engineering records or

drawings which pertain to those Facilities within the geographic area identified in Licensee's request. Such copies of records shall be provided to Licensee via courier at the expense of Licensee or otherwise available at the records location center set forth in Exhibit II. However, all requests for copies of records shall be submitted to the Competitive Structures Provisioning Center in Birmingham, Alabama. The costs of producing and mailing copies of records, which are to be paid by Licensee, are on an individual case basis. The components which make up the total costs are actual:

- 1) BellSouth employee costs based on the time spent researching, reviewing and copying records
- 2) Copying costs
- 3) Shipping costs

- 17.2 Maps, records or information are and remain the proprietary property of AT&T, are provided to CLEC solely for the pursue of enabling CLEC to obtain access to AT&T's Structure, and may not be resold, reproduced or disseminated by CLEC.
- 17.3 AT&T will provide its most current maps and/or records regarding:
- 17.3.1 the location of Structure and street names for manholes and poles as shown on AT&T's maps;
 - 17.3.2 the footage between manholes or lateral ducts lengths, as shown on AT&T's maps;
 - 17.3.3 INTENTIONALLY LEFT BLANK
 - 17.3.4 the total capacity of the Structure.
 - 17.3.5 INTENTIONALLY LEFT BLANK
- 17.4 AT&T will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by AT&T.
- 17.5 AT&T will expunge any confidential or proprietary information from its maps and records prior to providing access to the same to CLEC.

18. APPLICATIONS AND PRE-OCCUPANCY PERMIT SURVEYS

- 18.1 Occupancy Permits Required. CLEC shall apply in writing for and shall be granted an occupancy permit before attaching facilities to specified AT&T poles or placing facilities within specified AT&T ducts, conduits, or rights-of-way.
- 18.2 Structure Access Request Form. To apply for an occupancy permit under this Agreement, CLEC shall submit to AT&T the appropriate AT&T request forms which shall require only information that is reasonably necessary to grant the permit. CLEC shall promptly withdraw or amend its request if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific AT&T Structure.
- 18.3 Make-Ready Survey. A Make-Ready survey shall promptly be completed by AT&T or CLEC before an occupancy permit is issued. The primary purposes of the make ready survey will be to enable AT&T to
- 18.3.1 confirm or determine the modifications, capacity expansion, and make-ready work, if any, necessary to accommodate CLEC's attachment of facilities to AT&T structures;
- 18.3.2 plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare AT&T's poles, ducts, conduits, rights-of-way, and associated facilities for CLEC's proposed attachments or occupancy; and
- 18.3.3 estimate the costs associated with such facilities modification, capacity expansion, or make-ready work.

19. POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

- 19.1 Selection of Space. AT&T will select or approve CLEC's selection of the space CLEC will occupy on AT&T's poles or in AT&T's conduit systems. Maintenance ducts shall not be considered available for CLEC's use except as specifically provided elsewhere in this Agreement. Where required by law or franchise agreement, ducts and attachment space on poles reserved for municipal use shall not be considered available for CLEC's use. All other ducts, inner ducts, space on poles or space in rights-of-ways which are not assigned or occupied shall be deemed available for use by AT&T, CLEC, and other parties entitled to access under applicable law.
- 19.2 Pole, Duct, and Conduit Space Assignments.

19.2.1 After CLEC's application for a pole attachment or conduit occupancy permit has been approved by AT&T, the pole, duct, and conduit space selected and/or approved by AT&T in such application will be assigned to CLEC for a pre-occupancy period not to exceed twelve (12) months.

19.2.2 INTENTIONALLY LEFT BLANK

19.2.3 AT&T may assign space to itself by making appropriate entries in the same records used to log assignments to CLEC and third parties. If AT&T assigns pole, duct, or conduit space to itself, such assignment will automatically lapse 12 months after the date the assignment has been entered into the appropriate AT&T record if AT&T has not occupied such assigned space within such 12 month period.

19.2.4 INTENTIONALLY LEFT BLANK

19.2.5 Notices and applications including assignment requests will be date-and time-stamped on receipt.

20. ISSUANCE OF OCCUPANCY PERMITS (INCLUDING MAKE-READY WORK)

20.1 Response Within 45 Days. Within 45 days of CLEC's submission of a request for access to AT&T Structure, AT&T shall provide a written response to the application. The response shall state whether the request is being granted or denied, and if the request is denied, provide the reasons why the request is being denied. If denial of access is proposed, AT&T will meet with CLEC and explore in good faith reasonable alternatives to accommodate the proposed attachment. CLEC must request such meeting within ten (10) business days of receipt of a notice of denial. AT&T will schedule the meeting within ten (10) business days of receipt of CLEC's written request for a meeting.

20.2 If access is granted the response will further advise CLEC in writing of:

20.2.1 what modifications, capacity expansions, or make-ready work, if any, will be required and are necessary to prepare AT&T's Structure, and

20.2.2 an estimate of charges for such modifications, capacity expansions, or make-ready work.

- 20.3 Make-ready Work. If it is determined that make ready work will be necessary to accommodate CLEC's facilities, CLEC shall have 45 days (the "acceptance period") to either
- 20.3.1 submit payment for the estimate authorizing AT&T or its contractor to complete the make-ready work; or
 - 20.3.2 advise AT&T of its willingness to perform the proposed make-ready work itself if permissible in the application area.
- 20.4 Make-ready work performed by CLEC, or by an authorized contractor selected by CLEC, shall be performed in accordance with AT&T's specifications and in accordance with the same standards and practices which would be followed if such work were being performed by AT&T or AT&T's contractors. Neither CLEC nor authorized contractors selected by CLEC shall conduct such work in any manner which materially degrades the integrity of AT&T's Structures or interferes with any existing use of AT&T's facilities or the facilities of any Other User.
- 20.5 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. CLEC shall make arrangements with the Other Users with facilities attached to AT&T's poles or occupying space in AT&T's conduit system regarding reimbursement for any expenses incurred by the Other Users in transferring or rearranging the Other Users' facilities to accommodate the attachment or placement of CLEC's facilities to or in AT&T's poles, ducts, conduits and rights of ways.
- 20.6 Reimbursement for the Creation or Use of Additional Capacity. If any additional capacity is created as a result of make-ready work performed to accommodate CLEC's facilities, CLEC shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to AT&T for the use of such additional capacity. If AT&T utilizes additional space or capacity created at CLEC's expense, AT&T will reimburse CLEC on a pro-rata basis for AT&T's share, if any, of CLEC's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. AT&T will notify CLEC if any entity, including AT&T, attaches facilities to additional capacity on AT&T's Structure created at CLEC's expense. AT&T shall not be required to collect or remit any such amounts to CLEC, to resolve or adjudicate disputes over reimbursement between CLEC and Other Users.

- 20.7 If CLEC utilizes space or capacity on any AT&T Structure created at AT&T's expense after February of 1996, CLEC will reimburse AT&T on a pro-rata basis for CLEC's share, if any, of AT&T's capacity creation costs.
- 20.8 Occupancy Permit and Attachment. After all required make-ready work is completed, AT&T will promptly issue an occupancy permit confirming that CLEC may attach specified facilities to AT&T's Structure.
- 20.9 CLEC must occupy the assigned space within a period not to exceed twelve (12) months from the issuance of the occupancy permit. If CLEC does not occupy the assigned space within the twelve (12) month period, the Occupancy Permit will lapse and the space will be considered available for use by AT&T or Other User.
- 20.10 CLEC's obligation to pay semiannual pole attachment or conduit occupancy fees will commence on the date the Occupancy Permit is provided by AT&T to CLEC.

21. CONSTRUCTION OF CLEC'S FACILITIES

- 21.1 Responsibility for Attaching and Placing Facilities. CLEC shall be responsible for the actual attachment of its facilities to AT&T's poles and the placement of such facilities in AT&T's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities.
- 21.2 Construction Schedule. After the issuance of an occupancy permit, CLEC shall provide AT&T with a construction schedule and thereafter keep AT&T reasonably informed of anticipated changes in the construction schedule.

22. USE AND ROUTINE MAINTENANCE OF CLEC'S FACILITIES

- 22.1 Routine Maintenance of CLEC's Facilities. Each occupancy permit subject to this Agreement authorizes CLEC to engage in routine maintenance of facilities located on or within AT&T's poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of CLEC's facilities in any manner which results in CLEC's facilities differing substantially in size, weight, or physical characteristics from the facilities described in CLEC's occupancy permit.
- 22.2 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory

basis, for short-term (not to exceed 30 days) non-emergency maintenance or repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by AT&T. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify AT&T of such use and must either vacate the maintenance duct within 30 days or, with AT&T's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies which may occur while the maintenance duct is occupied.

23. MODIFICATION OF CLEC'S FACILITIES

- 23.1 Notification of Planned Modifications. CLEC shall notify AT&T in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities already attached to an AT&T Structure. The notice shall contain sufficient information to enable AT&T to determine whether the proposed addition, relocation, replacement, or modification is within the scope of CLEC's present occupancy permit or requires a new or amended occupancy permit.
- 23.2 Replacement of Facilities and Overlapping Additional Cables. CLEC may replace existing facilities with new facilities occupying the same AT&T Structure, and may overlap additional cables to its own existing facilities; provided, however, that such activities shall not be considered to be routine maintenance and shall be subject to the requirements of this Section 23.

24. REQUIRED REARRANGEMENTS OF CLEC'S FACILITIES

- 24.1 Required Rearrangement of CLEC's Facilities. CLEC agrees that CLEC will cooperate with AT&T and other users in making rearrangements to AT&T Structure as may be necessary, and that costs incurred by CLEC in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the parties in accordance with then applicable law.

24.2 Whenever feasible, AT&T shall give CLEC not less than 60 days prior written notice of the need for CLEC to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. CLEC shall complete such rearrangements within the time prescribed in the notice. If CLEC does not rearrange facilities within noted time, AT&T will rearrange the facilities. CLEC shall be responsible for reasonable and documented charges related to the rearrangement.

25. EMERGENCY REPAIRS AND POLE REPLACEMENTS

25.1 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such party to make such repairs.

25.1.1 Nothing contained in this Agreement shall be construed as requiring either party to perform any repair or service restoration work of any kind with respect to the other party's facilities or the facilities of joint users.

25.1.2 Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that an entity using the maintenance duct for emergency repair activities will notify AT&T within 12 hours of the current business day (or first business day following a non-business day) that such entity is entering the AT&T conduit system and using the maintenance duct for emergency restoral purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance ducts will be used to restore the highest priority services, as defined in Section 2.7, first. Existing spare ducts may be used for restoration purposes providing the spare ducts are restored after restoration work is complete. Any spare ducts not returned will be included be assigned to the user of the duct and an occupancy permit issued.

25.1.3 CLEC shall either vacate the maintenance duct within 30 days or, with AT&T's consent, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner-duct, a suitable replacement inner-duct) is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the

maintenance ducts. Entities not vacating the maintenance duct must provide an immediate maintenance duct at the entity's cost.

- 25.2 Designation of Emergency Repair Coordinators and Other Information. For each AT&T construction district, CLEC shall provide AT&T with the emergency contact number of CLEC's designated point of contact for coordinating the handling of emergency repairs of CLEC's facilities and shall thereafter notify AT&T of changes to such information.
- 25.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, AT&T, CLEC, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties present in accordance with the following principles.
- 25.3.1 Emergency service restoration work requirements shall take precedence over other work operations.
- 25.3.2 Except as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, national security and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.
- 25.3.3 AT&T shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by AT&T on a nondiscriminatory basis in accordance with the principles set forth in this section.
- 25.4 Emergency Pole Replacements.

25.4.1 When emergency pole replacements are required, AT&T shall promptly contact CLEC to notify CLEC of the emergency and to determine whether CLEC will respond to the emergency in a timely manner.

25.4.2 If notified by AT&T that an emergency exists which will require the replacement of a pole, CLEC shall transfer its facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to an AT&T replacement pole, the transfer shall be in accordance with AT&T's placement instructions.

25.4.3 If CLEC is unable to respond to the emergency situation immediately, CLEC shall so advise AT&T and thereby authorize AT&T (or any Other User sharing the pole with AT&T) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on CLEC's behalf.

25.5 Expenses Associated with Emergency Repairs. Each party shall bear all reasonable expenses arising out of or in connection with emergency repairs of its own facilities and transfers or rearrangements of such facilities associated with emergency pole replacements made in accordance with the provisions of this article.

25.5.1 Each party shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such party's facilities.

25.5.2 CLEC shall reimburse AT&T for the actual and reasonable costs incurred by AT&T for work performed by AT&T on CLEC's behalf in accordance with the provisions of this article.

26. INSPECTION BY AT&T OF CLEC'S FACILITIES

26.1 Post-Construction Inspections. AT&T will, at CLEC's actual and reasonable expense, conduct a post-construction inspection of CLEC's attachment of facilities to AT&T's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. AT&T will provide CLEC advance written notice of proposed date and time of the post-construction inspection. CLEC may accompany AT&T on the post-construction inspection.

- 26.2 **Right to Make Periodic or Spot Inspections.** AT&T shall have the right, but not the obligation, to make periodic or spot inspections of all facilities attached to AT&T's Structure at its sole expense except as provided in 26.2. These inspections will not be made more often than once every 2 years unless in AT&T's judgement such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Agreement.
- 26.3 If CLEC's facilities are in compliance with this Agreement, there will be no charges incurred by CLEC for the periodic or spot inspection. If CLEC's facilities are not in compliance with this Agreement, AT&T may charge CLEC for the inspection. The costs of Periodic Inspections will be paid by those Attaching Parties with 2% or greater of their attachments in violation. The amount paid by CLEC shall be the percentage that their violations bear to the total violations of all Attaching Parties found during the inspection.
- 26.4 If the inspection reflects that CLEC's facilities are not in compliance with the terms of this Agreement, CLEC shall bring its facilities into compliance within 30 days after being notified of such noncompliance. If any make ready or modification work to AT&T's Structures is required to bring CLEC's facilities into compliance, CLEC shall provide notice to AT&T and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment.

27. TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

- 27.1 **Facilities to Be Marked.** CLEC shall tag or otherwise mark all of CLEC's facilities placed on or in AT&T's Structure in a manner sufficient to identify the facilities as those belonging to CLEC.
- 27.2 **Removal of Untagged Facilities.** AT&T may, without notice to any person or entity, remove from AT&T's poles or any part of AT&T's conduit system CLEC's facilities, if AT&T determines that such facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on AT&T's poles or in AT&T's conduit system.
- 27.3 **Notice to CLEC.** If any of CLEC's facilities for which no occupancy permit is presently in effect are found attached to AT&T's poles or anchors or within any part of AT&T's conduit system, AT&T, without prejudice to other rights or remedies available to AT&T under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to CLEC

advising CLEC that no occupancy permit is presently in effect with respect to the facilities and that CLEC must, within 30 days, respond to the notice as provided in Section 27.6 of this Agreement.

- 27.4 CLEC's Response. Within 60 days after receiving a notice under Section 27.5 of this Agreement, CLEC shall acknowledge receipt of the notice and submit to AT&T, in writing, an application for a new or amended occupancy permit with respect to such facilities.
- 27.5 Approval of Request and Retroactive Charges. If AT&T approves CLEC's application for a new or amended occupancy permit, CLEC shall be liable to AT&T for all fees and charges associated with the unauthorized attachments as specified in Section 27.10 of this Agreement. The issuance of a new or amended occupancy permit as provided by this article shall not operate retroactively or constitute a waiver by AT&T of any of its rights or privileges under this Agreement or otherwise.
- 27.6 Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from AT&T's poles, conduit system or rights of way or until a new or amended occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if CLEC and its predecessors had continuously complied with all applicable AT&T licensing requirements. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. In addition, CLEC shall be liable for an unauthorized attachment fee in the amount set forth in the applicable regulation or order of the specific state commission, or in the event that the state commission does not set such rates, the default rate set forth by the FCC in effect on the date CLEC is notified by AT&T of the unauthorized attachment or occupancy. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, CLEC shall rearrange or remove its unauthorized facilities at AT&T's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to AT&T or another Other User, and shall pay AT&T for all costs incurred by AT&T in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of CLEC's unauthorized facilities.
- 27.7 Removal of Unauthorized Attachments. If CLEC does not obtain a new or amended occupancy permit with respect to unauthorized facilities within the specified period of time, AT&T shall by written notice advise CLEC to remove its unauthorized facilities not less than 60 days from the date of notice and CLEC shall remove the facilities within the time specified in the notice. If the facilities have not been removed within the time

specified in the notice, AT&T may, at AT&T's option, remove CLEC's facilities at CLEC's expense.

- 27.8 No Ratification of Unpermitted Attachments or Unauthorized Use of AT&T's Facilities. No act or failure to act by AT&T with regard to any unauthorized attachment or occupancy or unauthorized use of AT&T's Structure shall be deemed to constitute a ratification by AT&T of the unauthorized attachment or occupancy or use, nor shall the payment by CLEC of fees and charges for unauthorized pole attachments or conduit occupancy exonerate CLEC from liability for any trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities.

28. REMOVAL OF CLEC'S FACILITIES

- 28.1 When Applicant no longer intends to occupy space on an AT&T pole or in an AT&T duct or conduit, Applicant will provide written notification to AT&T that it wishes to terminate the occupancy permit with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Applicant's facilities, the occupancy permit shall terminate and the space shall be available for reassignment.
- 28.1.1 CLEC shall be responsible for and shall bear all actual and reasonable expenses arising out of or in connection with the removal of its facilities from AT&T's Structure.
- 28.1.2 Except as otherwise agreed upon in writing by the parties, Applicant must, after removing its facilities, plug all previously occupied ducts at the entrances to AT&T's manholes.
- 28.1.3 Applicant shall be solely responsible for the removal of its own facilities from AT&T's Structure.
- 28.2 At AT&T's request, CLEC shall remove from AT&T's Structure any of CLEC's facilities which are no longer in active use. Upon request, CLEC will provide proof satisfactory to AT&T that CLEC's facility is in active service. CLEC shall not abandon any of its facilities by leaving such facilities on or in AT&T's Structure.
- 28.3 Removal Following Termination of Occupancy permit. CLEC shall remove its facilities from AT&T's poles, ducts, conduits, or rights-of-way within 60 days after termination of the occupancy permit.

- 28.4 Removal Following Replacement of Facilities. CLEC shall remove facilities no longer in service from AT&T's Structures within 60 days after the date CLEC replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit.
- 28.5 Removal to Avoid Forfeiture. If the presence of CLEC's facilities on or in AT&T's Structure would cause a forfeiture of the rights of AT&T to occupy the property where such Structure is located, AT&T will promptly notify CLEC in writing and CLEC shall not, without due cause and justification, refuse to remove its facilities within such time as may be required to prevent such forfeiture. AT&T will give CLEC not less than 60 days from the date of notice to remove CLEC's facilities unless prior removal is required to prevent the forfeiture of AT&T's rights. At CLEC's request, the parties will engage in good faith negotiations with each other, with Other Users, and with third-party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of CLEC's facilities.
- 28.6 Removal of Facilities by AT&T; Notice of Intent to Remove. If CLEC fails to remove its facilities from AT&T's Structure in accordance with the provisions of Sections 28.1-28.6 of this Agreement, AT&T may remove such facilities and store them at CLEC's actual and reasonable expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to CLEC for any injury, loss, or damage resulting from such actions. AT&T shall give CLEC not less than 60 days prior written notice of its intent to remove CLEC's facilities pursuant to this section.
- 28.7 Removal of Facilities by AT&T. If AT&T removes any of CLEC's facilities pursuant to this article, CLEC shall reimburse AT&T for AT&T's actual and reasonable costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.

29. RATES, FEES, CHARGES, AND BILLING

- 29.1 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees outlined in this Agreement will be set forth in APPENDIX A to this Appendix 24 as part of the Interconnection Agreement. All rates, charges and fees shall be subject to all applicable federal and state laws, rules, regulations, and commission orders.
- 29.2 License charges commence on the first day of the calendar month following the date a License is issued. Such charges cease as of the final day of the

calendar month preceding the month in which the attachment or occupancy is physically removed or the utilization is discontinued. A one-month minimum charge is applicable to all Licenses. Such current-year charges are normally billed on or near July 1 of each year; annual billing is for the period January 1 through December 31 (six (6) months in arrears and six (6) months in advance) and to include true-up for actual billing for previous year's advance billing for period July 1 through December 31.

- 29.3 Changes to Rates, Charges and Fees. AT&T shall have the right to change the rates, charges and fees outlined in this Agreement as provided by applicable federal and state laws, rules, regulations and orders. On or about November 1 of each year, BellSouth will notify Licensee by certified mail, return receipt requested, of the rental rate and Pole transfer rate to be applied in the subsequent calendar year. The letter of notification shall be incorporated in, and governed by, the terms and conditions of this Agreement. Attachment and occupancy rates shall be applied to the number of Pole(s) and Duct feet of Conduit for which Licenses have been issued before December 1 of each calendar year. Charges for attachment(s) and occupancy which commenced during the preceding twelve (12) month period will be prorated accordingly. If the changes outlined in the notice are not acceptable to CLEC, CLEC may either (1) seek re-negotiation of this Agreement, (2) terminate this Agreement, or (3) seek relief through the dispute resolution process in the General Terms and Conditions of this Agreement.

30. PERFORMANCE AND PAYMENT BONDS

- 30.1 Bond May Be Required. AT&T may require CLEC, authorized contractors, and other persons acting on CLEC's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of CLEC's obligations arising out of or in connection with this Agreement.
- 30.1.1 If a bond or similar form of assurance is required of CLEC, an authorized contractor, or other person acting on CLEC's behalf, CLEC shall promptly submit to AT&T adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing AT&T 60 days written notice.
- 30.2 Payment and Performance Bonds in Favor of Contractors and Subcontractors. CLEC shall be responsible for paying all employees, contractors, subcontractors, mechanics, materialmen and other persons or

entities performing work or providing materials in connection with CLEC's performance under this Agreement. In the event any lien, claim or demand is made on AT&T by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, AT&T may require, in addition to any security provided under Section 30.1 of this Agreement, that CLEC execute payment or performance bonds, or provide such other security, as AT&T may deem reasonable or necessary to protect AT&T from any such lien, claim or demand.

31. NOTICES

31.1 Notices to CLEC. All written notices required to be given to a party shall be delivered or mailed to the party's duly authorized agent or attorney, as designated in this section.

31.1.1 Such notice may be delivered to the party's duly authorized agent or attorney in person or by agent or courier receipted delivery.

31.1.2 Such notice may be mailed to the party's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.

31.1.3 Notices to a party shall be sent to the authorized agent or attorney designated below:

If to CLEC:

Name: Mary Cegelski

Title: Manager Regulatory Affairs: Carrier Relations

Firm: First Communications, LLC

Address: 3340 West Market Street

City/State/Zip: Akron, Ohio 44333

and

Name: Steven A. Augustino/ Katherine Barker Marshall

Title: Attorney

Firm: Kelley Drye & Warren LLP

Address: 3050 K Street, N.W., Suite 400

City/State/Zip: Washington, D.C. 20007

If to AT&T:

Name: Contract Administration

Title: AT&T Local Contract Manager

Firm: AT&T

Address: 600 North 19th Street, 10th floor

City/State/Zip: Birmingham, AL 35203

and

Name: Legal

Title: Business Markets Attorney

Firm: AT&T

Address: Suite 4300, 675 West Peachtree Street

City/State/Zip: Atlanta, GA 30375

- 31.2 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.

32. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

- 32.1 Every interconnection, service and network element provided hereunder, shall be subject to the applicable rates, terms and conditions contained in this Agreement. The parties recognize that provisions in the General Terms and Conditions apply to services, interconnections and network

APPENDIX SA - POLES, CONDUITS AND ROW
PAGE 42 OF 43
BELLSOUTH TELECOMMUNICATIONS, INC.
D/B/A AT&T FLORIDA/FIRST
COMMUNICATIONS, LLC

elements provided under individual appendices or attachments to this Agreement. The parties further agree that this acknowledgment that the General Terms and Conditions apply to individual appendices is not intended to and does not limit, condition or void a third party's rights under 47 U.S.C. Section 252(i) and is consistent with Applicable Law.

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

BellSouth Telecommunications, Inc. d/b/a AT&T Florida

By: _____
Signature of AT&T's Authorized Officer/Employee

Name of AT&T's Authorized Officer/Employee (Printed or Typed)

Position/Title of AT&T's Authorized Officer/Employee

Date

City and State of Execution by AT&T

First Communications, LLC

Signature of CLEC'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 CLEC

APPENDIX A

2007 FCC Formula Supported Fees
for attachments and/or occupancy effective 1/1/2006
(Re-calculated annually)

Licensee shall pay to Licensor the following fees:

State	Poles (ea. /yr.)		Anchors (ea. /yr.)	Conduit (\$/ft. /yr.)	
	Non-Urban	Urban			
Florida	\$8.19	\$5.43			\$0.33
			Miami River crossing		\$17.13

Urban and non-urban are defined by the Bureau of Census as follows: Urban is a city plus the closely-settled urban fringe that together has a minimum population of 50,000. Non-urban is less than 50,000.

Conduit rates will apply to each passageway (innerduct).

- i) For the purpose of determining the Duct feet chargeable, the Duct considered occupied shall be measured from the center to center of adjacent Manhole(s), or from the center of a Manhole to the end of a Duct not terminated in a Manhole.
- ii) The above rates are not applicable for crossings of any navigable waterway. Rates for navigable waterway crossings will be calculated on an individual case basis.
- iii) The rates set forth above for attachments will apply to wireless attachments only if there are no apparatus cabinets and antennae attached to the pole. On poles where apparatus cabinets and antennae are attached, a flat annual rate of per pole will apply. The rate is \$20.68 (FL). This flat rate will be reviewed annually by AT&T and AT&T and Licensee will amend this Agreement to reflect the new rate proposed by AT&T.

Pole Attachment Transfer Rate

Per Pole (throughout AT&T Southeast region) \$41.00

APPENDIX UNE

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APPENDIX UNE
(UNBUNDLED NETWORK ELEMENTS)

1. INTRODUCTION

- 1.1 This Appendix, Unbundled Network Elements (UNE), sets forth the terms and conditions pursuant to which the applicable AT&T, Inc. owned Incumbent Local Exchange Carrier (ILEC) agrees to furnish CLEC with access to UNEs. CLEC may obtain access to SBC-13STATE and AT&T UNEs individually and combinations that already are physically combined in AT&T and SBC-13STATE's network, pursuant to 47 C.F.R. § 51.315(b). CLEC shall not combine UNEs in a manner that will impair the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with SBC-13STATE's and AT&T's network. For information regarding deposit, billing, payment, non-payment, disconnect, and dispute resolution, see the General Terms and Conditions of this Agreement.
- 1.2 AT&T, Inc. means the holding company which owns the following ILECs: BellSouth Telecommunications, Inc. d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and/or AT&T Tennessee, Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, Nevada Bell Telephone Company d/b/a AT&T Nevada, The Ohio Bell Telephone Company d/b/a AT&T Ohio, Pacific Bell Telephone Company d/b/a AT&T California, The Southern New England Telephone Company d/b/a AT&T Connecticut, Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and/or AT&T Texas, and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin.
- 1.3 As used herein, SBC-13STATE means the applicable above listed ILECs doing business Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.4 The prices at which SBC-13STATE and AT&T agree to provide CLEC with Unbundled Network Elements (UNE) are contained in the applicable Appendix Pricing (SBC-13STATE) or UNE Rates Exhibits A and B (AT&T) and/or the applicable Commissioned ordered tariff where stated.
- 1.5 Neither SBC-13STATE nor AT&T have an obligation to provide access to any network element, or to provide terms and conditions associated with any network element, other than expressly set forth in this Agreement.

- 1.6 **SBC-12STATE** - As used herein, **SBC-12STATE** means the applicable above listed ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.7 **SBC-10STATE** - As used herein, **SBC-10STATE** means the applicable SBC owned ILEC(s) doing business in Arkansas, Illinois, Indiana, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.8 **SBC-8STATE** - As used herein, **SBC-8STATE** means an applicable above listed ILEC(s) doing business in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma, and Texas.
- 1.9 **SBC-7STATE** - As used herein, **SBC-7STATE** means the applicable above listed ILEC(s) doing business in Arkansas, California, Kansas, Missouri, Nevada, Oklahoma, and Texas.
- 1.10 **SBC-SWBT** - As used herein, **SBC-SWBT** means the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.
- 1.11 **SBC-AMERITECH** - As used herein, **SBC-AMERITECH** means the applicable above listed ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.
- 1.12 **SBC-MOKA** - As used herein, **SBC-MOKA** means the applicable above listed ILEC doing business in Arkansas, Kansas, Missouri, and Oklahoma.
- 1.13 **PACIFIC** - As used herein, **PACIFIC** means the applicable above listed ILEC doing business in California.
- 1.14 **NEVADA** - As used herein, **NEVADA** means the applicable above listed ILEC doing business in Nevada.
- 1.15 **SNET** - As used herein, **SNET** means the applicable above listed ILEC doing business in Connecticut.
- 1.16 **AT&T FLORIDA (AT&T)** - As used herein, **AT&T Florida (AT&T)** means the applicable above listed ILEC doing business in Florida.

2. TERMS AND CONDITIONS

- 2.1 **SBC-13STATE** or **AT&T**, as applicable, and CLEC may agree to connect CLEC's facilities with **SBC-13STATE**'s or **AT&T**'s network at any technically feasible point for access to UNEs for the provision by CLEC of a Telecommunications Service. ((Act, Section 251 (c)(2)(B); 47 CFR Section 51.305(a)(2)(vi)).

- 2.2 **SBC-13STATE** and **AT&T** will provide CLEC nondiscriminatory access to UNEs (Act, Section 251(c)(3), Act, and Section 271(c)(2)(B)(ii); 47 CFR Section 51.307(a)).
- 2.2.1 At any technically feasible point (Act, Section 251(c)(3); 47 CFR Section 51.307(a));
- 2.2.2 At the rates, terms, and conditions which are just, reasonable, and nondiscriminatory (Act, Section 251(c)(3); 47 CFR Section 51.307(a));
- 2.2.3 In a manner that allows CLEC to provide a Telecommunications Service that may be offered by means of that UNE (Act, Section 251(c)(3); 47 CFR Section 51.307 (c));
- 2.2.4 In a manner that allows access to the facility or functionality of a requested network element to be provided separately from access to other elements, and for a separate charge (47 CFR Section 51.307(d));
- 2.2.5 With technical information regarding **SBC-13STATE**'s and **AT&T**'s network facilities to enable CLEC to achieve access to UNEs (47 CFR Section 51.307(e));
- 2.2.6 Without limitations, restrictions, or requirements on requests that would impair CLEC's ability to provide a Telecommunications Service in a manner it intends (47 CFR Section 51.309(a));
- 2.2.7 Intentionally Left Blank.
- 2.2.8 Where applicable, terms and conditions of access to UNEs shall be no less favorable than terms and conditions under which **SBC-13STATE** and **AT&T** provide such elements to themselves (47 CFR Section 51.313(b)).
- 2.2.9 Only to the extent it has been determined that these elements are required by the "necessary" and "impair" standards of the Act, Section 251 (d)(2) and/or in accordance with state law within the state this Interconnection Agreement is approved.
- 2.3 As provided for herein, **SBC-13STATE** and **AT&T** will permit CLEC exclusive use of an unbundled network facility for the term of this Agreement, and when CLEC is purchasing access to a feature, function, or capability of a facility, **SBC-13STATE** and **AT&T** will provide use of that feature, function, or capability for the term of this agreement. (47 CFR § 51.309(c)).

- 2.4 SBC-13STATE and AT&T will maintain, repair, or replace UNEs (47 CFR § 51.309(c)) as provided for in this Agreement.
- 2.5 Where technically feasible, the quality of the UNE and access to such UNE shall be at least equal to what SBC-13STATE and AT&T provide themselves or any subsidiary, affiliate, or other party (47 CFR § 51.311(a), (b)).
- 2.6 Each Party shall be solely responsible for the services it provides to its End Users and to other Telecommunications Carriers.
- 2.7 UNEs provided to CLEC under the provisions of this Appendix shall remain the property of AT&T or SBC-13STATE, as applicable.
- 2.8 Neither SBC-13STATE nor AT&T will connect to or combine UNEs with any non-251 (c)(3) or other SBC-13STATE and AT&T service offerings.
- 2.9 Provisioning/Maintenance of Unbundled Network Elements
- 2.9.1 Access to UNEs is provided under this Agreement over such routes, technologies, and facilities as SBC-13STATE or AT&T may elect in its own discretion, provided that such routes, technologies, and facilities are non-discriminatory with respect to the way SBC-13STATE or AT&T provides service to its own end users, affiliates or other carriers. SBC-13STATE and AT&T will provide access to UNEs where technically feasible. SBC-IL shall not require CLEC to submit a BFR to gain access to UNEs available under the interim tariff filed by Ameritech Illinois in Docket No. 01-0614, which shall be superseded by the finally approved tariff ordered by the Commission in that docket. Neither Party waives any right to seek a stay or rehearing of the order approving the final tariffs, to appeal said order or to otherwise challenge the order through any lawful means. AM-WI shall not require CLEC to submit a BFR to gain access to UNEs it was ordered to make available by the Wisconsin Public Service Commission in "Final Decision Phase 1", Investigation into Ameritech Wisconsin Operational Support Systems issued in Docket No. 6720-TI-160 issued September 25, 2001. Neither Party waives any right to seek a stay or rehearing of the order, to appeal the order or to otherwise challenge the order through any lawful means.

- *2.9.1.1 Where facilities require modifications they will be handled under the facilities modification process in Accessible Letter CLEC-AM00-153. Any charge for facilities modification must be in accordance with applicable law and prior decisions of the appropriate state regulatory commission. Nothing contained in this Appendix is intended to contradict or supersede commitments made by or obligations imposed on AM-WI in issues A/F of the Interlocutory Order issued by the PSCW on December 15, 2000 in Docket 6720-TI-160; AM-IL in Illinois Commerce Commission Docket No. 99-0593; or AM-MI in Case No. U-11735. Where facilities and equipment are not available, SBC-13STATE shall not be required to provide UNEs to the extent its action are consistent with the rulings of the state commissions in the relevant proceedings.
- 2.9.2 Subject to the terms herein, SBC-13STATE and AT&T are responsible only for the installation, operation and maintenance of the Unbundled Network Elements it provides. Neither SBC-13STATE nor AT&T are otherwise responsible for the Telecommunications Services provided by CLEC through the use of those UNEs.
- 2.9.3 Where UNEs provided to CLEC are dedicated to a single End User, if such UNEs are for any reason disconnected they shall be made available to SBC-13STATE or AT&T, as applicable, for future provisioning needs, unless such UNE is disconnected in error. The CLEC agrees to relinquish control of any such UNE concurrent with the disconnection of a CLEC's End User's service.
- 2.9.4 CLEC shall make available at mutually agreeable times the UNEs provided pursuant to this Appendix in order to permit SBC-13STATE and AT&T to test and make adjustments appropriate for maintaining the UNEs in satisfactory operating condition. No credit will be allowed for any interruptions involved during such testing and adjustments.
- 2.9.5 CLEC's use of any SBC-13STATE or AT&T UNE, or of its own equipment or facilities in conjunction with any SBC-13STATE or AT&T network element, will not materially interfere with or impair service over any

* Section 2.9.1.1 is available only in the states of Illinois, Wisconsin, and Michigan. The Parties agree that this language is a non-voluntary offering by AM-IL, AM-WI and AM-MI and consistent with the following orders: Order of the Illinois Commerce Commission in Docket No. 99-0593; Interlocutory Order of Wisconsin Public Service Commission in Docket No. 6720-TI-160, Order of the Michigan Public Service Commission in Case No. U-11735. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS, Paragraph 2.10.

facilities of AT&T or SBC-13STATE, its affiliated companies or its connecting and concurring carriers involved in its services, cause damage to their plant, impair the privacy of any communications carried over their facilities or create hazards to the employees of any of them or the public. Upon reasonable written notice and opportunity to cure, SBC-13STATE and AT&T may discontinue or refuse service if CLEC violates this provision, provided that such termination of service will be limited to CLEC's use of the UNE(s) causing the violation.

2.9.6 When an SBC-13STATE or AT&T provided tariffed or resold service is replaced by CLEC's facility based service using any SBC-13STATE or AT&T provided UNE(s), CLEC shall issue appropriate service requests, to both disconnect the existing service and connect new service to CLEC's End User. These requests will be processed by AT&T or SBC-13STATE, as applicable, and CLEC will be charged the applicable UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual UNE and cross connect ordered. Similarly, when an End User is served by one CLEC using SBC-13STATE or AT&T provided UNEs is converted to a different CLEC's service which also uses any SBC-13STATE or AT&T provided UNE, the requesting CLEC shall issue appropriate service requests to both disconnect the existing service and connect new service to the requesting CLEC's End User. These requests will be processed by SBC-13STATE or AT&T, as applicable, and the CLEC will be charged the applicable service order charge(s), in addition to the recurring and nonrecurring charges for each individual UNE and cross connect ordered.

2.9.7 CLEC shall connect equipment and facilities that are compatible with the SBC-13STATE and AT&T Network Elements and shall use UNEs in accordance with the applicable regulatory standards and requirements referenced in this Agreement.

2.9.8 Unbundled Network Elements may not be connected to or combined with SBC-13STATE or AT&T access services or other SBC-13STATE or AT&T tariffed service offerings with the exception of tariffed Collocation services where available.

2.10 Performance of UNEs

2.10.1 Each UNE will be provided in accordance with applicable SBC-13STATE and AT&T Technical Publications or other written descriptions, if any, as changed from time to time by SBC-13STATE or AT&T at its sole discretion.

- 2.10.2 Nothing in this Appendix will limit either Party's ability to modify its network through the incorporation of new equipment, new software or otherwise. Each Party will provide the other Party written notice of any upgrades in its network which will materially impact the other Party's service consistent with the timelines established by the FCC in the Second Report and Order, CC Docket 96-98.
- 2.10.3 SBC-13STATE and AT&T may elect to conduct Central Office switch conversions for the improvement of its network. SBC-13STATE and AT&T will notify CLEC prior to Central Office switch conversions via accessibility letters and/or CLEC website. During such conversions, CLEC orders for unbundled network elements from that switch shall be suspended for a period of three days prior and one day after the conversion date, consistent with the suspension SBC-13STATE or AT&T, as applicable, places on itself for orders from its customers.
- 2.10.4 CLEC will be solely responsible, at its own expense, for the overall design of its telecommunications services and for any redesigning or rearrangement of its telecommunications services which may be required because of changes in facilities, operations, or procedure of AT&T or SBC-13STATE, in order to maintain minimum network protection criteria, or operating or maintenance characteristics of the facilities.

3. ACCESS TO UNE CONNECTION METHODS

- 3.1 This Section describes the connection methods under which SBC-13STATE and AT&T agree to provide CLEC with access on an unbundled basis to loops, switch ports, and dedicated transport and the conditions under which SBC-13STATE and AT&T make these methods available. These methods provide CLEC access to multiple SBC-13STATE and AT&T UNEs which the CLEC may then combine. The methods listed below provide CLEC with access to UNEs without compromising the security, integrity, and reliability of the public switched network, as well as to minimize potential service disruptions.

- 3.1.1 Subject to availability of space and equipment, CLEC may use the methods listed below to access and combine loops, switch ports, and dedicated transport within a requested SBC-13STATE or AT&T Central Office.

3.1.1.1 (Method 1)

SBC-13STATE will extend SBC-13STATE UNEs requiring cross connection to the CLEC's Physical Collocation Point of Termination (POT) when the CLEC is Physically Collocated, in a

caged, shared cage, or cageless arrangement, within the same Central Office where the UNEs which are to be combined are located.

3.1.1.2 (Method 2)

SBC-13STATE and AT&T will extend SBC-13STATE and AT&T UNEs, as applicable, that require cross connection to the CLEC's UNE frame located in the common room space, other than the Collocation common area, within the same Central Office where the UNEs which are to be combined are located.

3.1.1.3 (Method 3)

SBC-13STATE and AT&T will extend SBC-13STATE and AT&T UNEs to the CLEC's UNE frame that is located outside the SBC-13STATE or AT&T Central Office where the UNEs are to be combined in a closure such as a cabinet provided by SBC-13STATE or AT&T on SBC-13STATE or AT&T property.

3.2 The following terms and conditions apply to all methods when SBC-13STATE or AT&T provide access pursuant to Sections 3.1.1.1 through 3.1.1.3:

3.2.1 CLEC may request access to UNEs involving three (3) or fewer Central Offices per state per week. Within ten (10) business days of receipt of a written request for access to UNEs, SBC-13STATE or AT&T, as applicable, will provide a written reply notifying the requesting CLEC of the method(s) of access available in the requested Central Offices. For requests impacting four (4) or more Central Offices the Parties will agree to an implementation schedule for access to UNEs.

3.2.2 In SBC-13STATE, access to UNEs via Method 1 is only available to Physically Collocated CLECs. Access to UNEs via Method 2 and Method 3 is available to both Collocated and Non-Collocated CLECs. Method 2 and Method 3 are subject to availability of SBC-13STATE and AT&T Central Office space and equipment.

3.2.3 The CLEC may cancel the request at any time, but will pay SBC-13STATE's or AT&T's reasonable and demonstrable costs, as applicable, for modifying SBC-13STATE's/AT&T's Central Office up to the date of cancellation.

3.2.4 Reserved.

- 3.2.5 CLEC shall be responsible for initial testing and trouble isolation of facilities containing CLEC installed cross connects.
- 3.2.6 CLEC shall refer trouble isolated in the SBC-13STATE or AT&T UNE to AT&T or SBC-13STATE, as applicable.
- 3.2.7 Prior to SBC-13STATE or AT&T providing access to UNEs under this Appendix, CLEC and SBC-13STATE or AT&T, as applicable, shall provide each other with a point of contact for overall coordination.
- 3.2.8 CLEC shall provide all tools and materials required for CLEC to place and remove the cross connects necessary to combine and disconnect UNEs.
- 3.2.9 All tools, procedures, and equipment used by CLEC to connect to SBC-13STATE's and AT&T's network shall comply with technical standards set out in AT&T's Local Exchange Carrier Technical Document TP76300, to reduce the risk of damage to the network and customer disruption.
- 3.2.10 CLEC shall be responsible for CLEC's personnel or qualified contractors observing SBC-13STATE's and AT&T's site rules and regulations, including but not limited to safety regulations and security requirements, and for working in harmony with others while present at the site. If SBC-13STATE or AT&T for any reasonable and lawful reason requests CLEC to discontinue furnishing any person provided by CLEC for performing work on SBC-13STATE's or AT&T's premises, CLEC shall immediately comply with such request. Such person shall leave SBC-13STATE's and/or AT&T's premises promptly, and CLEC shall not furnish such person again to perform work on SBC-13STATE's or AT&T's premises without SBC-13STATE's and/or AT&T's consent, as applicable.
- 3.2.11 CLEC shall provide positive written acknowledgment that the requirements stated in Section 3.2.10 have been satisfied for each employee requiring access to SBC-13STATE and/or AT&T premises and/or facilities. SBC-13STATE and AT&T identification cards will be issued, as applicable, for any CLEC employees or qualified contractors who are designated by CLEC as meeting the necessary requirements for access. Entry to SBC-13STATE and AT&T premises will be granted only to CLEC employees with such identification.
- 3.2.12 CLEC shall designate each network element being ordered from AT&T or SBC-13STATE. CLEC shall provide an interface to receive assignment information from SBC-13STATE and AT&T regarding location of the extended UNEs. This interface may be manual or mechanized.

- 3.2.13 SBC-13STATE and AT&T will provide CLEC with contact numbers as necessary to resolve assignment conflicts encountered. All contact with either SBC-13STATE or AT&T shall be referred to such contact numbers.
- 3.2.14 The CLEC shall provide its own administrative Telecommunication Service at each facility and all materials needed by CLEC at the work site. The use of cellular telephones is not permitted in by CLEC employees in SBC-13STATE or AT&T equipment areas where SBC-13STATE or AT&T restricts its own employees from using cellular telephones.
- 3.2.15 Certain construction and preparation activities may be required to modify a building or prepare the premises for access to UNEs.
- 3.2.15.1 Where applicable, costs for modifying a building or preparing the premises for access to SBC-13STATE or AT&T UNEs will be made on an individual case basis (ICB).
- 3.2.15.2 SBC-13STATE and AT&T will provide Access to UNEs (floor space, floor space conditioning, cage common systems materials, and safety and security charges) in increments of one (1) square foot. For this reason, SBC-13STATE and AT&T will ensure that the first CLEC obtaining Access to UNEs in an SBC-13STATE or AT&T premises will not be responsible for the entire cost of site preparation and security.
- 3.2.15.3 SBC-13STATE and AT&T will contract for and perform the construction and preparation activities using same or consistent practices that are used by SBC-13STATE and AT&T for other construction and preparation work performed in the building.

4.* **ADJACENT LOCATION (This Section applies only to PACIFIC)**

- 4.1 This Section describes the Adjacent Location Method for accessing UNEs. This Section also provides the conditions in which PACIFIC offers the Adjacent Location Method.
- 4.2 The Adjacent Location Method allows a CLEC to access loops, switch ports, and dedicated transport for a CLEC location adjacent to a PACIFIC Central Office as identified by PACIFIC. Under this method PACIFIC UNEs will be extended to the adjacent location, via copper cabling provided by the CLEC, which the CLEC can then utilize to provide Telecommunications Service.

* Section 4.0 is available only in the state of California. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS, Paragraph 2.10.1.