

ARTICLE XVI
ACCESS TO POLES, DUCTS, CONDUITS AND
RIGHTS-OF-WAY -- SECTIONS 251(b)(4) AND 224

16.0 Access to Poles, Ducts, Conduits and Rights-of-Way.

16.1 Structure Availability.

16.1.1 SBC-AMERITECH shall make available, to the extent it may lawfully do so, access to poles, ducts, conduits and Rights-of-way (individually and collectively, “**Structure**”) owned or controlled by SBC-AMERITECH, to which SBC-AMERITECH has access and rights for the placement of CLEC’s telecommunications equipment and related facilities (“**Attachments**”).

"Poles" refers only to utility poles (and associated anchors) which are owned or controlled by SBC-AMERITECH, and it does not include cables and other telecommunications equipment attached to a pole.

"Conduit" refers to tubes or structures which are owned or controlled by SBC-AMERITECH, which contain one or more ducts and/or innerducts used to enclose cables, wires, and associated transmission equipment. The term “conduit” refers only to conduit structures (including ducts, manholes, and handholes) and space within those structures, and it does not include: (a) cables and other telecommunications equipment located within conduit structures; or (b) entrance facilities and conduit and riser space, controlled environmental vaults, telephone equipment closets, remote terminals, cross-connect cabinets, panels or boxes, equipment cabinets, pedestals, terminals, or any other infrastructure used by SBC-AMERITECH which branch off from or are connected to conduit structures.

"Right-of-Way" refers to the right to use the land or other property of another Party to place poles, conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. A right-of-way may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes or other locations.

The availability of SBC-AMERITECH Structure for CLEC's Attachments is subject to and dependent upon all rights, privileges, franchises or authorities granted by governmental entities with jurisdiction, existing and future agreements with other persons not inconsistent with **Section 16.18**, all interests in property granted by persons or entities public or private, and Applicable Law, and all terms, conditions and limitations of any or all of the foregoing, by which SBC-AMERITECH owns or controls Structure or interests therein. SBC-AMERITECH shall not prevent or delay any third party assignment of right-of-way to CLEC. Upon request, SBC-AMERITECH shall provide to CLEC, for review, any franchise, license,

or other agreement SBC-AMERITECH has entered into with a municipality, utility, or other owner or interest holder of a right-of-way.

16.1.2 SBC-AMERITECH will not make Structure available: (1) where, after taking all reasonable steps to accommodate such request, there is Insufficient Capacity to accommodate the requested Attachment, and (2) an Attachment cannot be accommodated based upon nondiscriminatorily applied considerations of safety, reliability or engineering principles. For purposes of this **Article XVI, "Insufficient Capacity"** means the lack of existing available space on or in Structure and the inability to create the necessary space by taking all reasonable steps to do so. Before denying a request for access based upon Insufficient Capacity, SBC-AMERITECH will, in good faith, explore potential accommodations with CLEC. If SBC-AMERITECH denies a request by CLEC for access to its Structure for Insufficient Capacity, safety, reliability or engineering reasons, SBC-AMERITECH will provide CLEC a detailed, written reason for such denial as soon as practicable but, in any event, within forty-five (45) days of the date of such request.

16.1.2.1 In the case of pole attachments, SBC-AMERITECH shall, consistent with prudent engineering and design standards and practices and subject to all applicable laws, ordinances, rules and regulations, take reasonable steps to make space available for CLEC's use without replacement of the pole whenever possible.

16.2 Franchises, Permits and Consents. CLEC shall be solely responsible to secure any necessary franchises, permits or consents from federal, state, county or municipal authorities and from the owners of private property, to construct and operate its Attachments at the location of the SBC-AMERITECH Structure it uses. CLEC shall indemnify SBC-AMERITECH against loss directly resulting from any actual lack of CLEC's lawful authority to occupy such Rights-of-way and construct its Attachments therein.

16.3 Access and Modifications. Where necessary to accommodate a request for access of CLEC, and provided SBC-AMERITECH has not denied access as described in **Section 16.1.2**, or because SBC-AMERITECH may not lawfully make the Structure available, SBC-AMERITECH will, as set forth below, modify its Structure in order to accommodate the Attachments of CLEC. SBC-AMERITECH may permit CLEC to conduct Field Survey Work and Make Ready Work itself or through its own contractors in circumstances where SBC-AMERITECH is unable to complete such work in a reasonable time frame. For purposes of this Agreement, a "modification" shall mean any action that either adds future capacity to, or increases the existing capacity of, a given facility. By way of example, adding a bracket to a pole that is immediately utilized does not qualify as a "modification", while adding taller poles, adding new ducts between existing manholes and rebuilding manholes, and adding innerduct to an existing duct to accommodate additional cables would qualify as a "modification".

16.3.1 Before commencing the work necessary to provide such additional capacity, SBC-AMERITECH will notify all other parties having Attachments on or in the Structure of the proposed modification to the Structure. The modification to accommodate

CLEC, may at SBC-AMERITECH's option, include modifications required to accommodate other attaching parties, including SBC-AMERITECH, that desire to modify their Attachments at the expense of such other attaching parties.

16.3.2 If CLEC requests access to an SBC-AMERITECH Right-of-way where SBC-AMERITECH has no existing Structure, SBC-AMERITECH shall not be required to construct new poles, conduits or ducts, or to bury cable for CLEC but will be required to make the Right-of-way available to CLEC to construct its own poles, conduits or ducts or to bury its own cable; provided, however, if SBC-AMERITECH desires to extend its own Attachments, SBC-AMERITECH will construct Structure to accommodate CLEC's Attachments.

16.3.3 The costs of modifying a Structure to accommodate CLEC's request, the requests of another attaching party or the needs of SBC-AMERITECH shall be borne by CLEC, the other requesting party or SBC-AMERITECH, respectively, except that if other parties obtain access to the Structure as a result of the modification, such parties shall share in the cost of modification proportionately with the party initiating the modification. An attaching party, including SBC-AMERITECH, with a pre-existing Attachment to the Structure to be modified to accommodate CLEC shall be deemed to directly benefit from the modification if, after receiving notification of the modification, it adds to or modifies its Attachment. If a party, including SBC-AMERITECH, uses the modification to bring its Structure or Attachments into compliance with applicable safety or other requirements, it shall be considered as sharing in the modification and shall share the costs of the modification attributable to its upgrade. Notwithstanding the foregoing, an attaching party or SBC-AMERITECH with a pre-existing Attachment to the Structure shall not be required to bear any of the costs of rearranging or replacing its Attachment if such rearrangement or replacement is necessitated solely as a result of an additional Attachment or the modification of an existing Attachment sought by another attaching party. If an attaching party, including SBC-AMERITECH, makes an Attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered the added attachment possible.

16.3.4 All modifications to SBC-AMERITECH's Structure will be owned by SBC-AMERITECH. CLEC and other parties, including SBC-AMERITECH, who contributed to the cost of a modification, may recover their proportionate share of the depreciated value of such modifications from parties subsequently seeking Attachment to the modified structure.

16.3.5 When a party, including SBC-AMERITECH, subsequently seeks Attachment to modified Structure, SBC-AMERITECH will notify in writing CLEC and any other parties who initially contributed to the cost of modification.

16.4 Installation and Maintenance Responsibility. CLEC shall, at its own expense, install and maintain its Attachments in a safe condition and in thorough repair so as not to conflict with the use of the Structure by SBC-AMERITECH or by other attaching

parties. Work performed by CLEC on, in or about SBC-AMERITECH's Structures shall be performed by properly trained, competent workmen skilled in the trade. SBC-AMERITECH will specify the location on the Structure where CLEC's Attachment shall be placed, which location shall be in accordance with the National Electrical Safety Code Standards and designated in a nondiscriminatory manner. CLEC shall construct each Attachment in conformance with the permit issued by SBC-AMERITECH for such Attachment. Other than routine maintenance and service wire Attachments, CLEC shall not modify, supplement or rearrange any Attachment without first obtaining a permit therefore. CLEC shall provide SBC-AMERITECH with notice before entering any Structure for construction or maintenance purposes.

16.5 Installation and Maintenance Standards. CLEC's Attachments shall be installed and maintained in accordance with the rules, requirements and specifications of the National Electrical Code, National Electrical Safety Code, Bellcore Construction Practices, the Commission, the Occupational Safety & Health Act and the valid and lawful rules, requirements and specifications of any other governing authority having jurisdiction over the subject matter.

16.6 Access Requests. Any request by CLEC for access to SBC-AMERITECH's Structure shall be in writing and submitted to SBC-AMERITECH's Structure Access Coordinator. SBC-AMERITECH may prescribe a reasonable process for orderly administration of such requests. CLEC's Attachment to SBC-AMERITECH's Structure shall be pursuant to a permit issued by SBC-AMERITECH for each request for access. The Structure Access Coordinator shall be responsible for processing requests for access to SBC-AMERITECH's Structure, administration of the process of delivery of access to SBC-AMERITECH's Structure and for all other matters relating to access to SBC-AMERITECH's Structure. CLEC shall provide SBC-AMERITECH with notice before entering any SBC-AMERITECH Structure, pursuant to the provisions of the **Appendix to Article XVI**.

16.7 Unused Space. Except maintenance ducts as provided in **Section 16.8** and ducts required to be reserved for use by municipalities, all useable but unused space on Structure owned or controlled by SBC-AMERITECH shall be available for the Attachments of CLEC, SBC-AMERITECH or other providers of Telecommunications Services or cable television systems. CLEC may not reserve space on SBC-AMERITECH Structure for its future needs. SBC-AMERITECH shall not reserve space on SBC-AMERITECH Structure for the future need of SBC-AMERITECH nor permit any other person to reserve such space. Notwithstanding the foregoing, CLEC may provide SBC-AMERITECH with a two (2)-year rolling forecast of its growth requirements for Structure that will be reviewed jointly on an annual basis.

16.8 Maintenance Ducts. One duct and one inner-duct in each conduit section shall be kept vacant as maintenance ducts. If not currently available and additional ducts are added, maintenance ducts will be established as part of the modification. Maintenance

ducts shall be made available to CLEC for maintenance purposes if it has a corresponding Attachment.

16.9 Applicability. The provisions of this Agreement shall apply to all SBC-AMERITECH Structure now occupied by CLEC except for structures covered in the provisions of CLEC - SBC-AMERITECH Easement or Condominium Agreements listed in Schedule 16.10.

16.10 Other Arrangements. CLEC's use of SBC-AMERITECH Structure is subject to any valid, lawful and nondiscriminatory arrangements SBC-AMERITECH may now or hereafter have with others pertaining to the Structure.

16.11 Cost of Certain Modifications. If SBC-AMERITECH is required by a governmental entity, court or Commission to move, replace or change the location, alignment or grade of its conduits or poles, each Party shall bear its own expenses of relocating its own equipment and facilities. However, if such alteration is required solely due to SBC-AMERITECH's negligence in originally installing the structure, SBC-AMERITECH shall be responsible for CLEC's expenses. If a move of CLEC's Attachment is required by SBC-AMERITECH or another attaching party, SBC-AMERITECH shall notify CLEC of the requested move, and CLEC shall either confirm in writing that it will move the Attachment within thirty (30) days of the date of SBC-AMERITECH's notice of the requested move, or notify SBC-AMERITECH that it desires SBC-AMERITECH to arrange for the move, both options to be at the expense of the party requesting such move. The written notice shall include sufficient engineering information to enable CLEC to move the Attachment or respond to the notice. If CLEC fails to notify SBC-AMERITECH within ten (10) days after the date of SBC-AMERITECH's notice of the requested move of its intention to move the Attachment or to allow SBC-AMERITECH to arrange for the move, CLEC will be deemed to have authorized SBC-AMERITECH to move such Attachment at CLEC's expense.

16.12 Maps and Records. SBC-AMERITECH will provide CLEC, at CLEC's request and expense, with access to and copies of maps, records and additional information relating to its Structure; provided that SBC-AMERITECH may redact any proprietary information (of SBC-AMERITECH or third parties) contained or reflected in any such maps, records or additional information before providing such information to CLEC. Upon request, SBC-AMERITECH will meet with CLEC to clarify matters relating to maps, records or additional information. SBC-AMERITECH does not warrant the accuracy or completeness of information on any maps or records.

16.13 CLEC Access. CLEC shall provide SBC-AMERITECH with notice before entering any SBC-AMERITECH Structure.

16.14 Occupancy Permit. CLEC occupancy of Structure shall be pursuant to a permit issued by SBC-AMERITECH for each requested Attachment. Any such permit shall terminate: (a) if CLEC's franchise, consent or other authorization from federal, state, county or municipal entities or private property owners is terminated, (b) if CLEC has not placed and

put into service its Attachments within one hundred and eighty (180) days from the date SBC-AMERITECH has notified CLEC that such Structure is available for CLEC's Attachments, (c) if CLEC ceases to use such Attachment for any period of one hundred eighty (180) consecutive days, (d) if CLEC fails to comply with a material term or condition of this **Article XVI** and does not correct such noncompliance within sixty (60) days after receipt of notice thereof from SBC-AMERITECH or, (e) if SBC-AMERITECH ceases to have the right or authority to maintain its Structure, or any part thereof, to which CLEC has Attachments. If SBC-AMERITECH ceases to have the right or authority to maintain its Structure, or any part thereof, to which CLEC has Attachments, SBC-AMERITECH shall: (i) provide CLEC notice within ten (10) Business Days after SBC-AMERITECH has knowledge of such fact, and (ii) not require CLEC to remove its Attachments from such Structure prior to SBC-AMERITECH's removal of its own attachments. SBC-AMERITECH will provide CLEC with at least sixty (60) days' written notice prior to: (i) terminating a permit or service to an CLEC Attachment or removal thereof for a breach of the provisions of this **Article XVI**, (ii) any increase in the rates for Attachments to SBC-AMERITECH's Structure permitted by the terms of this Agreement, or (iii) any modification to SBC-AMERITECH's Structure to which CLEC has an Attachment, other than a modification associated with routine maintenance or as a result of an emergency. If CLEC surrenders its permit for any reason (including forfeiture under the terms of this Agreement), but fails to remove its Attachments from the Structure within one hundred and eighty (180) days after the event requiring CLEC to so surrender such permit, SBC-AMERITECH shall remove CLEC's Attachments at CLEC's expense. If SBC-AMERITECH discovers that CLEC has placed an Attachment on SBC-AMERITECH's Structure without a valid permit, SBC-AMERITECH shall notify CLEC in writing of the existence of such unauthorized Attachment and CLEC shall pay to SBC-AMERITECH within ten (10) Business Days after receipt of such notice an unauthorized Attachment fee equal to five (5) times the annual attachment fee for an authorized Attachment.

Within the foregoing period, CLEC shall also apply for an Occupancy Permit for the unauthorized Attachment.

In addition, CLEC shall go through the process of any Make Ready Work that may be required for the unauthorized Attachment.

If CLEC fails to pay the unauthorized Attachment fee or apply for the required Occupancy Permit within the foregoing period, SBC-AMERITECH shall have the right to remove such unauthorized Attachment from SBC-AMERITECH's Structure at CLEC's expense.

16.15 Inspections. SBC-AMERITECH may make periodic inspections of any part of the Attachments of CLEC located on SBC-AMERITECH Structures. Inspections shall be made to: (i) ensure that CLEC's Attachments have been constructed in accordance with the applicable permit and do not violate any other attaching party's rights on the Structure, and (ii) ensure that CLEC's Attachments are subject to a valid permit and conform to all applicable standards as set forth in **Section 16.5**. Except in cases involving safety, damage to Attachments or potential violations of the terms of this Agreement, compliance inspections

shall not be made more often than once every five (5) years. Where reasonably practicable to do so, SBC-AMERITECH shall provide prior written notice to CLEC of such inspections. CLEC shall reimburse SBC-AMERITECH for the costs (as defined in Section 252(d) of the Act) of such inspections.

16.16 Damage to Attachments. Both CLEC and SBC-AMERITECH will exercise precautions to avoid damaging the Attachments of the other or to any SBC-AMERITECH Structure to which CLEC obtains access hereunder. Subject to the limitations in **Article XXVI**, the Party damaging the Attachments of the other shall be responsible to the other therefor.

16.17 Charges and Billing. SBC-AMERITECH's charges for Structure provided hereunder shall be determined in compliance with the regulations to be established by the FCC pursuant to Section 224 of the Act. Prior to the establishment of such rates, SBC-AMERITECH's charges for Structure will be those of the lowest existing contract available to an attaching party in the State of Wisconsin, including any Affiliate of SBC-AMERITECH. The charges as of the Effective Date are set forth in the **Pricing Schedule** and SBC-AMERITECH reserves the right to periodically adjust such charges consistent with the foregoing. Where there are no current charges for SBC-AMERITECH's Structure that can be used in the interim, the charges set in compliance with FCC regulations, as described above, will be applied. Full Payment in advance shall be required for map preparation, make-ready surveys and Make-Ready Work. Billing by SBC-AMERITECH for charges pursuant to this Article shall include detail sufficient to allow a determination of accuracy, including but not limited to identification of the structure or work associated with each charge. SBC-AMERITECH reserves the right to adjust the charges for Structure provided hereunder consistent with the foregoing. Notwithstanding the foregoing, SBC-AMERITECH reserves the right to price on a case-by-case basis any Extraordinary Attachment to Structure. An "Extraordinary Attachment" is an attachment to a pole that occupies more than one (1) foot of space on the pole in addition to the primary cable or anything other than a standard, sealed splice enclosure in a manhole.

16.18 Nondiscrimination. Access to SBC-AMERITECH-owned or -controlled Structure shall be provided to CLEC on a basis that is nondiscriminatory to that which SBC-AMERITECH provides to itself, its Affiliates, Customers, or any other person.

16.19 Interconnection.

16.19.1 Upon request by CLEC, SBC-AMERITECH will permit the interconnection of ducts or conduits owned by CLEC in SBC-AMERITECH manholes.

16.19.2 Except where required herein, requests by CLEC for interconnection of CLEC's Attachments in or on SBC-AMERITECH Structure with the Attachments of other attaching parties in or on SBC-AMERITECH Structure will be considered on a case-by-case basis and permitted or denied based on the applicable standards set forth in this **Article XVI** for and reasons of Insufficient Capacity, safety, reliability and engineering. SBC-

AMERITECH will provide a written response to CLEC's request within forty-five (45) days of SBC-AMERITECH's receipt of such request.

16.19.3 CLEC shall be responsible for the costs of any Make-Ready Work required to accommodate any interconnection pursuant to **Section 16.19**.

16.20 Cost Imputation. SBC-AMERITECH will impute costs consistent with the rules under Section 224(g) of the Act.

16.21 Structure Access Coordinator. Requests for access to SBC-AMERITECH Structure shall be made through SBC-AMERITECH's Structure Access Coordinator, who shall be CLEC's single point of contact for all matters relating to CLEC's access to SBC-AMERITECH's Structure. The Structure Access Coordinator shall be responsible for processing requests for access to SBC-AMERITECH's Structure, administration of the process of delivery of access to SBC-AMERITECH's Structure and for all other matters relating to access to SBC-AMERITECH's Structure pursuant to guidelines as provided in the **Appendix to Article XVI**. In the event of a conflict between the provisions of **Article XVI** and those of the **Appendix to Article XVI**, the provisions of **Article XVI** shall prevail.

16.22 State Regulation. The terms and conditions in this **Article XVI** shall be modified through negotiation between the Parties to comply with the regulations of the state in which SBC-AMERITECH owns or controls Structure to which CLEC seeks access if such state meets the requirements of Section 224(c) of the Act for regulating rates, terms and conditions for pole attachments and so certifies to the FCC under Section 224(c) of the Act and the applicable FCC rules pertaining hereto. The terms and conditions of this **Article XVI** shall also be modified by negotiation between the Parties to comply with any applicable requirements regarding the application of state law set forth in applicable Commission rules, regulations and orders. Until the terms and conditions of this **Article XVI** are renegotiated, the rules, regulations and orders of such state so certifying shall supersede any provision herein inconsistent therewith.

16.23 Abandonments, Sales or Dispositions. SBC-AMERITECH shall notify CLEC of the proposed abandonment, sale, or other intended disposition of any Structure. In the event of a sale or other disposition of the conduit system or pole, SBC-AMERITECH shall condition the sale or other disposition subject to the rights granted to CLEC.

16.24 Standards of Performance. SBC-AMERITECH shall provide Structure to CLEC in accordance with **Article XXXII** herein, as applicable.