

APPENDIX FOR ACCESS

TO SBC COMMUNICATION INC.'S STRUCTURE

(POLES, CONDUITS, AND RIGHTS-OF-WAYS)

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13-STATE STRUCTURE ACCESS AGREEMENT TO POLES, CONDUITS, AND RIGHTS-OF-WAY

This Agreement dated _____, 2005, is made by and between the "Parties," identified as SBC Communications Inc. (covering Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin), hereinafter referred to as defined below, and Pac-West Telecomm Inc (CLEC), a California corporation, hereinafter referred to as "Attaching Party".

This Agreement shall apply to the state(s) of: WI.

1. INTRODUCTION

- 1.1 This Appendix sets forth the terms and conditions for Rights-of-Way (ROW), Conduits and Poles provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and CLEC.
- 1.2 **SBC Communications Inc. (SBC)** means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.
- 1.3 **SBC-2STATE** - As used herein, **SBC-2STATE** means **SBC CALIFORNIA** and **SBC NEVADA**, the applicable SBC-owned ILEC(s) doing business in California and Nevada.
- 1.4 **SBC-13STATE** - As used herein, **SBC-13STATE** means **SBC SOUTHWEST REGION 5-STATE**, **SBC MIDWEST REGION 5-STATE**, **SBC-2STATE** and **SBC CONNECTICUT** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.5 **SBC CALIFORNIA** - As used herein, **SBC CALIFORNIA** means Pacific Bell Telephone Company d/b/a SBC California, the applicable SBC-owned ILEC doing business in California.
- 1.6 **SBC MIDWEST REGION 5-STATE** - As used herein, **SBC MIDWEST REGION 5-STATE** means Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.
- 1.7 **SBC NEVADA** - As used herein, **SBC NEVADA** means Nevada Bell Telephone Company d/b/a SBC Nevada, the applicable SBC-owned ILEC doing business in Nevada.
- 1.8 **SBC-12STATE** - As used herein, **SBC-12STATE** means **SBC SOUTHWEST REGION 5-STATE**, **SBC MIDWEST REGION 5-STATE**, **SBC CONNECTICUT**, and **SBC NEVADA** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.9 **SBC CONNECTICUT** - As used herein, **SBC CONNECTICUT** means The Southern New England Telephone Company d/b/a SBC Connecticut, the applicable above listed ILEC doing business in Connecticut.

- 1.10 SBC SOUTHWEST REGION 5-STATE - As used herein, SBC SOUTHWEST REGION 5-STATE means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

2. DEFINITIONS

- 2.1 Definitions in general. As used in this Agreement, the terms defined in this article shall have the meanings set forth below in Sections 2.1 to 2.17 except as the context otherwise requires.
- 2.2 Authorized Contractor. As used in this Agreement the term "Authorized Contractor" is used when referring to any contractor which is included on a list of contractors mutually approved by Attaching Party and SBC-13STATE and who subject to Attaching Party's direction and control, and subject to the requirements and policies in each state, perform facilities modification or make-ready work which would ordinarily be performed by SBC-13STATE or persons acting on SBC-13STATE's behalf as more specifically detailed in Section 21.2.
- 2.3 Conduit. The term "conduit" refers to tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. As used in this Agreement, the term "conduit" refers only to conduit structures (including ducts, manholes and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other SBC-13STATE structures (such as huts and cabinets) which branch off from or are connected to SBC-13STATE's conduit.
- 2.4 Conduit system. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Agreement, the term "conduit system" does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other SBC-13STATE structures (such as huts and cabinets) which branch off from or are connected to SBC-13STATE's conduit.
- 2.5 Duct. The term "duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Agreement, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels, but does not include cables and other telecommunications equipment located within such ducts.
- 2.6 Handhole. The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Agreement, the term "handhole" refers only to handholes which are part of SBC-13STATE's conduit system and does not refer to handholes which provide access to buried cables not housed within SBC-13STATE ducts or conduits. As used in this Agreement, the term "handhole" refers only to handhole structures owned or controlled by SBC-13STATE and does not include cables and other telecommunications equipment located within handhole structures.
- 2.7 Occupancy Permit. The term "occupancy permit" refers to a written instrument confirming that SBC-13STATE has granted the structure access request of Attaching Party or a third party for access to pole, duct, conduit, or rights-of-way space.
- 2.8 Maintenance Duct. The term "maintenance duct" generally refers to a full-sized duct (typically three inches in diameter or larger) for use, on a short-term basis, for maintenance, repair, or emergency restoration activities. The term "maintenance duct" does not include ducts and conduits extending from an SBC-13STATE manhole to customer premises. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.
- 2.9 Make-ready work. The term "make-ready work" refers to all work performed or to be performed to prepare SBC-13STATE's poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Attaching Party's facilities.

- 2.10 Manhole. The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in ducts or conduits which are parts of SBC-13STATE's conduit system. As used in this Agreement, the term "manhole" does not include cables and other telecommunications equipment located within manhole structures.
- 2.11 Other User. The term "Other User" refers to entities, other than the Attaching Party, with facilities on an SBC-13STATE pole, duct, conduit or rights-of-way to which the Attaching Party has obtained access. Other Users may include SBC-13STATE, other attaching parties, municipalities or other governmental entities, and electric utilities (which may own interests in SBC-13STATE's poles, ducts, conduits or rights-of-ways).
- 2.12 Overlashing. The term "Overlashing" refers to the practice of placing an additional cable by lashing such cable with spinning wire over an existing cable and strand.
- 2.13 Periodic Inspections. The term "periodic inspections" refers to inspections that are planned and scheduled by SBC-13STATE, for the purpose of inspecting the facilities of CLEC's attached to SBC-13STATE structure, (poles, conduits, and rights-of-way).
- 2.14 Pole. The term "pole" refers to poles (and associated anchors) which are owned or controlled by SBC-13STATE and does not include cables and other telecommunications equipment attached to pole structures.
- 2.15 Rights-of-way. The term "rights-of-way" refers to SBC-13STATE owned or controlled legal rights to pass over or through property of another party and used by SBC-13STATE for its telecommunications distribution system. For purposes of this Agreement, "rights-of-way" includes property owned by SBC-13STATE and used by SBC-13STATE for its telecommunications distribution facilities. Rights-of-way does not include:
- 2.15.1 cables and other telecommunications equipment buried or located on such rights-of-way,
 - 2.15.2 public rights-of-way (which are owned by and subject to the control of governmental entities), or
 - 2.15.3 any space which is owned and controlled by a third-party property owner and occupied by SBC-13STATE with permission from such owner rather than as a matter of legal right.
- 2.16 Spot Inspections. The term "spot inspections" refers to spontaneous inspections done by SBC-13STATE, which may be initiated, at SBC-13STATE's discretion for the purpose of ensuring safety and compliance with SBC-13STATE standards.
- 2.17 Structure. The term "Structure" refers collectively to poles, ducts, conduits and rights-of-way.

3. SCOPE OF AGREEMENT

- 3.1 This Agreement establishes the rates, terms, conditions, and procedures by which SBC-13STATE shall provide non-discriminatory access to SBC-13STATE's Structure. Separate tariffs, appendix, or agreements shall govern Attaching Party's access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Agreement:
- 3.1.1 SBC-13STATE's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from SBC-13STATE'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 SBC-13STATE; and

- 3.1.4 ducts, conduits, equipment rooms, and similar spaces located in space leased by SBC-13STATE from third-party property owners for purposes other than to house cables and other equipment in active service as part of SBC-13STATE's network distribution operations.
- 3.2 No Transfer of Property Rights to Attaching Party. 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 SBC-13STATE'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 SBC-13STATE's right to abandon, convey, or transfer to any other person or entity SBC-13STATE's interest in any of SBC-13STATE's Structure. SBC-13STATE shall give Attaching Party at least 60 days written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or rights-of-way is to be conveyed or transferred.

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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 SBC-13STATE Structure, attached hereto and incorporated herein by reference, sets forth the entire understanding and agreement of the parties.
- 5.2 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Attaching Party and SBC-13STATE relating to the placement and maintenance of Attaching Party's facilities on and within SBC-13STATE'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 Effect on Licenses or Occupancy Permits Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy permits granted to Attaching Party shall, on the effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.
- 5.6 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

SBC-13STATE MAKES NO REPRESENTATIONS AND DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, THAT SBC-13STATE'S POLES, DUCTS, CONDUITS AND WARRANTIES ARE SUITABLE FOR THE ATTACHING PARTY'S INTENDED USES OR ARE FREE FROM DEFECTS. THE ATTACHING PARTY SHALL IN EVERY INSTANCE BE RESPONSIBLE TO DETERMINE THE ADEQUACY OF SBC-13STATE'S POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY FOR THE ATTACHING PARTY'S INTENDED USE.

7. DISPUTE RESOLUTION

- 7.1 The parties agree that the dispute resolution provisions of the General Terms and Conditions of the Interconnection Agreement shall apply to disputes under this agreement.

8. INDEMNIFICATION

- 8.1 The parties agree that the indemnity provisions of the General Terms and Conditions of the Interconnection Agreement shall apply in addition to the additional indemnity language below: in Section 8.2-8.5.

8.2 Indemnification for Environmental Claims.

- 8.2.1 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
- 8.2.1.1 any federal, state, or local environmental statute, rule, regulation, ordinance, or other law or
- 8.2.1.2 any provision or requirement of this Agreement dealing with hazardous substances or protection of the environment.
- 8.2.2 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 SBC-13STATE pole, duct, conduit, or rights-of-way.
- 8.2.3 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 SBC-13STATE pole, duct, conduit, or rights-of-way.
- 8.2.4 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.
- 8.3 Miscellaneous Claims. Attaching Party shall indemnify, on request defend, and hold SBC-13STATE harmless from any and all Claims, of every kind and character, made, brought, or sought against SBC-13STATE by any person or entity, arising out of or in connection with the subject matter of this Agreement and based on either:
- 8.3.1 claims for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on SBC-13STATE due to the placement or presence of Attaching Party's facilities on or within SBC-13STATE's poles, ducts, conduits, or rights-of-way; or
- 8.3.2 claims based on the violation by Attaching Party 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.

- 8.4 Attaching Party's General Indemnity Obligations to SBC-13STATE. 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 Attaching Party's enforcement of its rights against SBC-13STATE 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, Attaching Party shall indemnify, on request defend, and hold SBC-13STATE 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 Attaching Party's access to or use of SBC-13STATE's poles, ducts, conduits, or rights-of-way, Attaching Party's performance of any acts authorized under this Agreement, or the presence or activities of Attaching Party's employees or other personnel acting on Attaching Party's behalf on, within, or in the vicinity of SBC-13STATE's poles, ducts, conduits, or rights-of-way.
- 8.5 SBC-13STATE's General Indemnity Obligations to Attaching Party. 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 SBC-13STATE's enforcement of its rights against Attaching Party 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, SBC-13STATE shall indemnify, on request defend, and hold Attaching 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 SBC-13STATE's access to or use of SBC-13STATE's poles, ducts, conduits, or rights-of-way, SBC-13STATE's performance of any acts authorized under this Agreement, or the presence or activities of SBC-13STATE's employees or other personnel acting on SBC-13STATE's behalf on, within, or in the vicinity of SBC-13STATE's poles, ducts, conduits, or rights-of-way.

9. LIABILITIES AND LIMITATIONS OF LIABILITY

- 9.1 The parties agree that the Liabilities and limitations provisions of the General Terms and Conditions of the Interconnection Agreement shall apply under this agreement.

10. INSURANCE

- 10.1 The parties agree that the insurance provisions of the General Terms and Conditions of the Interconnection Agreement shall apply under this agreement.

11. ASSIGNMENT OF RIGHTS

- 11.1 Assignment Permitted. Neither party may assign, or otherwise transfer its rights or obligations, under this Agreement except as provided in this section.
- 11.1.1 SBC-13STATE may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with SBC-13STATE or which acquires or succeeds to ownership of substantially all of SBC-13STATE's assets.
- 11.1.2 Overlapping of Attaching Party's facilities on SBC-13STATE poles by a third party will be allowed under the following conditions:
- 11.1.2.1 The Overlapping entity must enter into an agreement with SBC-13STATE for access to SBC-13STATE Structures and abide by the terms and conditions of such an Occupancy Permit.
- 11.1.2.2 The Overlapping entity must obtain written approval from the Attaching Party and provide a copy to SBC-13STATE prior to submitting a request for access to structure.
- 11.1.2.3 The Overlapping party must submit a written request for access to structure, and indicate on the request that the request is for Overlapping of an existing attachment of the Attaching Party in order to ensure that pole loadings are not exceeded.

- 11.1.2.4 The Overlapping entity is responsible for paying the fees for Overlapping in APPENDIX I and/or APPENDIX PRICING which are separate and in addition to the fees paid by the Attaching Party (e.g. the application fees and all make ready fees, etc.).
- 11.1.3 Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without SBC-13STATE's consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Agreement, subject to the express terms of this Agreement. In the event Attaching Party'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 Attaching Party's assets through public or private sale or through an Agreement with Attaching Party, Attaching Party's lender or the third party acquiring Attaching Party's rights under this Agreement shall assume all outstanding obligations of Attaching Party under the agreement and provide proof satisfactory to SBC-13STATE 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 Attaching Party's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party 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 Attaching Party under the Agreement, including liability to SBC-13STATE 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 Attaching Party under the Agreement, as applicable.
- 11.1.4 No assignment or transfer by Attaching Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this article, secured SBC-13STATE's prior written consent to the assignment or transfer, if necessary, and given SBC-13STATE notice of the assignment or transfer pursuant to Section 11.3.
- 11.2 Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party 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 Assignment Shall Not Relieve Attaching Party of Prior Obligations. Except as otherwise expressly agreed by SBC-13STATE in writing, no assignment permitted by SBC-13STATE under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 8 of this Agreement or the interconnection agreement, if any.
- 11.4 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. SBC-13STATE 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 Attaching Party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement.
- 11.5 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting Attaching Party 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, Attaching Party shall not allow third party to attach or place facilities to or in pole or conduit space occupied by or assigned to Attaching Party 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 Attaching Party 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 Attaching Party is cable television system having access to SBC-13STATE's poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in this State (if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in this State), or ceases to make active use of SBC-13STATE's poles, ducts, conduits, and rights-of-way.
- 12.2 Individual occupancy permits subject to this Agreement shall terminate if (a) Attaching Party ceases to utilize the pole attachment or conduit or rights-of-way space subject to such occupancy permit or (b) Attaching Party'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. Attaching Party's access to SBC-13STATE's Structure shall not materially interfere with or impair service over any facilities of SBC-13STATE or any Other User, cause material damage to SBC-13STATE's plant or the plant of any Other User, impair the privacy of communications carried over the facilities of SBC-13STATE or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of SBC-13STATE's poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, SBC-13STATE may limit, terminate or refuse access if Attaching Party violates this provision.
- 12.4 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either party, the aggrieved party may give written notice of such claimed breach.
- 12.5 The complaining party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given, and
- 12.5.1 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
- 12.5.2 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.
- 12.6 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

- 13.1 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 Attaching Party to SBC-13STATE. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Attaching Party to SBC-13STATE in connection with this Agreement (including but not limited to information submitted

- in connection with Attaching Party's applications for occupancy permit shall be deemed to be "confidential" or "proprietary" information of Attaching Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for or review of records or its inquiry about SBC-13STATE facilities. This article does not limit the use by SBC-13STATE of aggregate information relating to the occupancy and use of SBC-13STATE's Structure by firms other than SBC-13STATE (that is, information submitted by Attaching Party and aggregated by SBC-13STATE in a manner that does not directly or indirectly identify Attaching Party).
- 14.2 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Attaching Party to SBC-13STATE 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 Attaching Party's Confidential Information. Notwithstanding the provisions of Sections 14.1 and 14.2 above, SBC-13STATE and persons acting on SBC-13STATE's behalf may utilize Attaching Party's confidential or proprietary information for the following purposes:
- 14.3.1 posting information, as necessary, to SBC-13STATE's outside plant records;
- 14.3.2 placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SBC-13STATE's Structure and any SBC-13STATE facilities located on, within, or in the vicinity of such Structure;
- 14.3.3 performing SBC-13STATE's obligations under this Agreement and similar agreements with third parties;
- 14.3.4 determining which of SBC-13STATE's Structure are (or may in the future be) available for SBC-13STATE's own use, and making planning, engineering, construction, and budgeting decisions relating to SBC-13STATE's Structure;
- 14.3.5 preparing cost studies;
- 14.3.6 responding to regulatory requests for information;
- 14.3.7 maintaining SBC-13STATE'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 SBC-13STATE and any person or entity, including Attaching Party, concerning SBC-13STATE'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, SBC-13STATE may utilize confidential or proprietary information submitted by Attaching Party 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 SBC-13STATE shall not disclose Attaching Party's proprietary or confidential information without first, at SBC-13STATE's option:
- 14.4.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
- 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 Attaching Party 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 SBC-13STATE 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 SBC-13STATE shall not disclose Attaching Party's proprietary or confidential information without first, at SBC-13STATE's option:
- 14.5.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
 - 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
 - 14.5.3 providing Attaching Party 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 SBC-13STATE has the authority to do so, SBC-13STATE grants Attaching Party a right to use any rights-of-way for SBC-13STATE poles, ducts, or conduits to which Attaching Party may attach its facilities for the purposes of constructing, operating and maintaining such Attaching Party's facilities on SBC-13STATE's poles, ducts or conduits. Notwithstanding the foregoing, Attaching Party shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, rights-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 SBC-13STATE pole, duct or conduit to which Attaching Party seeks to attach its facilities. Attaching Party shall furnish proof of any such easement, rights-of-way, license, permit, permission, certification, or franchise within thirty (30) days of request by SBC-13STATE. SBC-13STATE 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 SBC-13STATE has access to third-party property pursuant to non-exclusive rights-of-way, SBC-13STATE shall not interfere with Attaching Party's negotiations with third-party property owners for similar access or with Attaching Party's access to such property pursuant to easements or other rights-of-ways obtained by Attaching Party from the property owner. At locations where SBC-13STATE has obtained exclusive rights-of-way from third-party property owners or otherwise controls the rights-of-way, SBC-13STATE shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Attaching Party on a nondiscriminatory basis, provided that the underlying agreement with the property owner permits SBC-13STATE to provide such access, and provided further that SBC-13STATE's charges for such access shall include Attaching Party's pro rata portion of the charges, if any, paid by SBC-13STATE to obtain the rights-of-way, plus any other documented legal, administrative, and engineering costs incurred by SBC-13STATE in obtaining the rights-of-way and processing Attaching Party's request for access.

16. SPECIFICATIONS

- 16.1 Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities attached to SBC-13STATE's poles or occupying space in SBC-13STATE'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. Attaching Party'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 Bell Communications Research, Inc. ("Bellcore"), 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 California Public Utility Commission's General Orders 95 and 128 for attachments to Pacific Bell Telephone Company poles, ducts, conduits and rights of way; and,
 - 16.2.5 the SBC-13STATE Structure Access Guidelines
- 16.3 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of SBC-13STATE's manholes and access to SBC-13STATE's conduit system.
- 16.3.1 Attaching Party will notify SBC-13STATE not less than 5 business days in advance before entering SBC-13STATE'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 SBC-13STATE may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within SBC-13STATE's conduit system. Attaching party must notify SBC-13STATE when Attaching Party has completed such work in the conduit system. If SBC-13STATE has not had the opportunity to complete the review, SBC-13STATE will attempt to meet with Attaching Party's contractors to finalize the review. If SBC-13STATE is not available when Attaching Party notifies SBC-13STATE of their notice of completion then SBC-13STATE will perform a post-construction inspection as described in section 26.1. Attaching Party shall reimburse SBC-13STATE for costs associated with the presence of SBC-13STATE's authorized 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 SBC-13STATE will, upon request and at the expense of the Attaching Party, provide Attaching Party access to and copies of redacted maps, records and additional information relating to the location, capacity and utilization of SBC-13STATE's Structure. Upon request, SBC-13STATE will meet with the Attaching Party to clarify matters relating to maps, records or additional information. SBC-13STATE does not warrant the accuracy or completeness of information on any maps or records.
- 17.2 Maps, records or information are and remain the proprietary property of SBC-13STATE, are provided to the Attaching Party solely for the pursue of enabling the Attaching Party to obtain access to SBC-13STATE's Structure, and may not be resold, reproduced or disseminated by the Attaching Party.
- 17.3 SBC-13STATE will provide information currently available on the SBC-13STATE's maps and/or records regarding:
- 17.3.1 the location of Structure and street addresses for manholes and poles as shown on SBC-13STATE's maps;
 - 17.3.2 the footage between manholes or lateral ducts lengths, as shown on SBC-13STATE's maps;
 - 17.3.3 the footage between poles, if shown on SBC-13STATE's maps;

- 17.3.4 the total capacity of the Structure
- 17.3.5 the existing utilization of the Structure.
- 17.4 SBC-13STATE will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by SBC-13STATE.
- 17.5 SBC-13STATE will expunge any confidential or proprietary information from its maps and records prior to providing access to the Attaching Party.
- 17.6 SBC-13STATE will:
- 17.6.1 Within five (5) business days after attaching party submits Billing Authorization to SBC-13STATE, SBC-13STATE will notify attaching party of the place and time that attaching party may view the Structure Records.
- 17.6.2 The viewing room must be reserved for a minimum of two (2) hours. Attaching Party may request additional time prior to the viewing date. SBC-13STATE may not be able to provide attaching party with unscheduled additional time for viewing SBC-13STATE Structure Records on the viewing date, but if unable will immediately make alternative arrangements that are mutually acceptable for the viewing of records as soon thereafter as possible
- 17.6.3 SBC-13STATE may make available at the Attaching Party's expense, an SBC-13STATE representative with sufficient knowledge about SBC-13STATE Structure Records to clarify matters relating to such Structure Records and to assist Attaching Party during their viewing.
- 17.7 Charges associated with map preparation, viewing and assistance will be on a Time and Material basis as set forth in the following Applicable Tariffs:
- 17.7.1 SBC MIDWEST REGION 5-STATE - FCC No. 2 Access Services Tariff, Section 13.1.1
- 17.7.2 SBC SOUTHWEST REGION 5-STATE - FCC No. 73, Access Services Tariff, Section 13.4.2(B)
- 17.7.3 SBC-2STATE - FCC No. 1 Access Services Tariff, Section 13.1.1
- 17.7.4 SBC CONNECTICUT - FCC No. 2 Access Services Tariff, Section 13.1.1

18. APPLICATIONS AND PRE-OCCUPANCY PERMIT SURVEYS

- 18.1 Occupancy Permits Required. Attaching Party shall apply in writing for and receive an occupancy permit before attaching facilities to specified SBC-13STATE poles or placing facilities within specified SBC-13STATE ducts, conduits, or rights-of-way.
- 18.2 Structure Access Request Form. To apply for an occupancy permit under this Agreement, Attaching Party shall submit to SBC-13STATE the appropriate SBC-13STATE request forms. Attaching Party 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 SBC-13STATE Structure. In addition, Attaching Party shall also:
- 18.2.1 submit payment for the estimate authorizing SBC-13STATE or its contractor to complete the make-ready survey; or
- 18.2.2 advise SBC-13STATE of its willingness to perform the proposed make-ready work itself or an Authorized Contractor if permissible in the application area
- 18.2.3 confirm that Attaching Party has calculated storm loadings, guying, or pole class to ensure pole loadings are not exceeded and indicate if additional holding or loading capacity is required.
- 18.2.4 provide sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to SBC-13STATE's poles or placed in SBC-13STATE's conduit system.

- 18.3 Make-Ready Survey. A Make-Ready survey must be completed by SBC-13STATE or, subject to the requirements and policies in each state, the Attaching Party before an occupancy permit is issued. The primary purposes of the make ready survey will be to enable SBC-13STATE to:
- 18.3.1 confirm or determine the modifications, capacity expansion, and make-ready work, if any, necessary to accommodate Attaching Party's attachment of facilities to SBC-13STATE structures;
 - 18.3.2 plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare SBC-13STATE's poles, ducts, conduits, rights-of-way, and associated facilities for Attaching Party's proposed attachments or occupancy;
 - 18.3.3 estimate the costs associated with such facilities modification, capacity expansion, or make-ready work; and
 - 18.3.4 identify the owner of the pole.

19. POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

- 19.1 Selection of Space. SBC-13STATE will select or approve the Attaching Party's selection of the space Applicant will occupy on SBC-13STATE's poles or in SBC-13STATE's conduit systems. Maintenance ducts shall not be considered available for Attaching Party'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 the Attaching Party'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 SBC-13STATE, Attaching Party, and other parties entitled to access under applicable law.
- 19.2 Pole, Duct, and Conduit Space Assignments.
- 19.2.1 After Attaching Party's application for a pole attachment or conduit occupancy permit has been approved by SBC-12STATE, the pole, duct, and conduit space selected and/or approved by SBC-12STATE in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed twelve (12) months.
 - 19.2.2 SBC CALIFORNIA: The pole, duct, and conduit space selected and/or approved by SBC-CALIFORNIA in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed nine (9) months in SBC CALIFORNIA only as detailed by the California Public Utility Commission.
 - 19.2.3 SBC-13STATE may assign space to itself by making appropriate entries in the same records used to log assignments to Attaching Party and third parties. If SBC-13STATE 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 SBC-13STATE record if SBC-13STATE has not occupied such assigned space within such 12 month period.
 - 19.2.4 SBC CONNECTICUT will make available on request municipal gain space in accordance with Connecticut State Statute 16-233.
 - 19.2.5 SBC CALIFORNIA: Space assignment is 9 months in California.
 - 19.2.6 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 Attaching Party's submission of a request for access to SBC-13STATE Structure, SBC-13STATE shall provide a written response to the application, except SBC CONNECTICUT, which response time will be on a first come, first serve basis. 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, SBC-13STATE will meet with the Attaching Party and explore in good faith reasonable alternatives to accommodate the proposed attachment. The Attaching Party must request such meeting within ten (10) business days of receipt of a notice of denial. SBC-13STATE will schedule the meeting within ten (10) business days of receipt of the Attaching Party's written request for a meeting.
- 20.2 If access is granted the response will further advise Attaching Party in writing of:
- 20.2.1 what modifications, capacity expansions, or make-ready work, if any, will be required to prepare SBC-13STATE'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 Attaching Party's facilities, Attaching Party shall have 45 days (the "acceptance period") to either:
- 20.3.1 submit payment for the estimate authorizing SBC-13STATE or its contractor to complete the make-ready work; or
- 20.3.2 advise SBC-13STATE of its willingness to perform the proposed make-ready work itself if permissible in the application area.
- 20.3.2.1 Make-ready work performed by Attaching Party, or by an Authorized Contractor selected by Attaching Party, shall be performed in accordance with SBC-13STATE's specifications and in accordance with the same standards and practices which would be followed if such work were being performed by SBC-13STATE or SBC-13STATE's contractors. Neither Attaching Party nor Authorized Contractors selected by Attaching Party shall conduct such work in any manner which degrades the integrity of SBC-13STATE's Structures or interferes with any existing use of SBC-13STATE's facilities or the facilities of any Other User.
- 20.4 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. Attaching Party shall make arrangements with the Other Users with facilities attached to SBC-13STATE's poles or occupying space in SBC-13STATE'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 Attaching Party's facilities to or in SBC-13STATE's poles, ducts, conduits and rights of ways.
- 20.5 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 Attaching Party's facilities, Attaching Party 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 SBC-13STATE for the use of such additional capacity. If SBC-13STATE utilizes additional space or capacity created at Attaching Party's expense, SBC-13STATE will reimburse Attaching Party on a pro-rata basis for SBC-13STATE's share, if any, of Attaching Party's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. SBC-13STATE will notify the Attaching Party if SBC-13STATE attaches facilities to additional capacity on SBC-13STATE's Structure created at the Attaching Party's expense. SBC-13STATE shall not be required to collect or remit any such amounts to Attaching Party, to resolve or adjudicate disputes over reimbursement between Attaching Party and Other Users.
- 20.6 If Attaching Party utilizes space or capacity on any SBC-13STATE Structure created at SBC-13STATE's expense after February of 1996, the Attaching Party will reimburse Attaching Party on a pro-rata basis for the Attaching Party's share, if any, of SBC-13STATE's capacity creation costs.
- 20.7 Occupancy Permit and Attachment. After all required make-ready work is completed, SBC-13STATE will issue an occupancy permit confirming that Attaching Party may attach specified facilities to SBC-13STATE's Structure.

20.8 The Attaching Party must occupy the assigned space within a period not to exceed twelve (12) months from the issuance of the occupancy permit. If the Attaching Party 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 SBC-13STATE or Other User.

*SBC CALIFORNIA only: Space assignment shall not exceed nine (9) months in California.

20.9 The Attaching Party's obligation to pay semiannual pole attachment or conduit occupancy fees will commence on the date the Occupancy Permit is provided by SBC-13STATE to the Attaching Party.

21. CONSTRUCTION OF ATTACHING PARTY'S FACILITIES

21.1 Responsibility for Attaching and Placing Facilities. The Attaching Party shall be responsible for the actual attachment of its facilities to SBC-13STATE's poles and the placement of such facilities in SBC-13STATE'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 Responsibilities of Attaching Party. Attaching Party is responsible for the Authorized Contractors or contractors it selects.

21.2.1 As used in this Agreement, the term "Authorized Contractor" does not refer to contractors performing routine installation, maintenance, or repair work on Attaching Party's behalf or other contractors who may be selected by Attaching Party to perform work on Attaching Party's behalf without SBC-13STATE's approval.

21.2.2 Subject to state specific requirements, Authorized Contractors have received certification from SBC-13STATE to perform one or more of the following tasks within a specified SBC-13STATE construction district, as applicable:

- (a) installation of those sections of Attaching Party's ducts or facilities which connect to SBC-13STATE's conduit system;
- (b) installation of inner duct;
- (c) excavation work in connection with the removal of retired or inactive (dead) cables; or
- (d) Make-Ready work.

21.2.3 A person or entity approved as an Authorized Contractor is only an Authorized Contractor with respect to those tasks for which such person or entity has been approved by both parties and is an Authorized Contractor only in those SBC-13STATE construction districts agreed to by both parties.

21.2.4 Designation of an Authorized Contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an Authorized Contractor for other purposes, nor shall approval of an Authorized Contractor by one SBC-13STATE's construction district constitute approval of such Authorized Contractor for the area served by a different SBC-13STATE construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an Authorized Contractor shall, for the purposes of that job, be deemed to have been approved by all SBC-13STATE construction districts in which the work is to be performed.

21.3 Construction Schedule. After the issuance of an occupancy permit, Attaching Party shall provide SBC-13STATE with a construction schedule and thereafter keep SBC-13STATE informed of anticipated changes in the construction schedule.

22. USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY'S FACILITIES

22.1 Routine Maintenance of Attaching Party's Facilities. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within SBC-

13STATE's poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party'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 SBC-13STATE. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify SBC-13STATE of such use and must either vacate the maintenance duct within 30 days or, with SBC-13STATE'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 ATTACHING PARTY'S FACILITIES

- 23.1 Notification of Planned Modifications. Attaching Party shall notify SBC-13STATE in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities already attached to a SBC-13STATE Structure. The notice shall contain sufficient information to enable SBC-13STATE to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Attaching Party's present occupancy permit or requires a new or amended occupancy permit.
- 23.2 Replacement of Facilities and Overlashing Additional Cables. Attaching Party may replace existing facilities with new facilities occupying the same SBC-13STATE Structure, and may overlash 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 article.

24. REQUIRED REARRANGEMENTS OF ATTACHING PARTY'S FACILITIES

- 24.1 Required Rearrangement of Attaching Party's Facilities. Attaching Party agrees that Attaching Party will cooperate with SBC-13STATE and other users in making rearrangements to SBC-13STATE Structure as may be necessary, and that costs incurred by Attaching Party 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, SBC-13STATE shall give Attaching Party not less than 30 days prior written notice of the need for Attaching Party to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Attaching Party shall complete such rearrangements within the time prescribed in the notice. If Attaching Party does not rearrange facilities within noted time, SBC-13STATE will rearrange at Attaching Party's expense.

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 SBC-13STATE within 12 hours of the current business day (or first business day following a non-business day) that such entity is entering the SBC-13STATE 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 25.3, 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 The Attaching Party shall either vacate the maintenance duct within 30 days or, with SBC-13STATE'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 Attaching Party occupies the maintenance ducts. If Attaching Party fails to vacate the maintenance duct as described above, SBC-13STATE may install a maintenance conduit at the Attaching Party's expense.
- 25.2 Designation of Emergency Repair Coordinators and Other Information. For each SBC-13STATE construction district, Attaching Party shall provide SBC-13STATE with the emergency contact number of Attaching Party's designated point of contact for coordinating the handling of emergency repairs of Attaching Party's facilities and shall thereafter notify SBC-13STATE 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, SBC-13STATE, Attaching Party, 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 SBC-13STATE 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 SBC-13STATE 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, SBC-13STATE shall promptly make a good faith effort to contact Attaching Party to notify Attaching Party of the emergency and to determine whether Attaching Party will respond to the emergency in a timely manner.
- 25.4.2 If notified by SBC-13STATE that an emergency exists which will require the replacement of a pole, Attaching Party shall transfer its facilities immediately, provided such transfer is necessary

to rectify the emergency. If the transfer is to an SBC-13STATE replacement pole, the transfer shall be in accordance with SBC-13STATE's placement instructions.

- 25.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise SBC-13STATE and thereby authorize SBC-13STATE (or any Other User sharing the pole with SBC-13STATE) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on Attaching Party's behalf at the Attaching Party's expense.
- 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 Attaching Party shall reimburse SBC-13STATE for the costs incurred by SBC-13STATE for work performed by SBC-13STATE on Attaching Party's behalf in accordance with the provisions of this article.

26. INSPECTION BY SBC OF ATTACHING PARTY'S FACILITIES AND NOTICE OF NON-COMPLIANCE

- 26.1 Post-Construction Inspections. SBC-13STATE will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of facilities to SBC-13STATE's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. SBC-13STATE will provide the Attaching Party advance written notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany SBC-13STATE on the post-construction inspection.
- 26.2 Right to Make Periodic or Spot Inspections. SBC-13STATE shall have the right, but not the obligation, to make Periodic or Spot Inspections of all facilities attached to SBC-13STATE's Structure. Periodic Inspections will not be made more often than once every 2 years unless in SBC-13STATE'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 Attaching Party's facilities are in compliance with this Agreement, there will be no charges incurred by the Attaching Party for the periodic or spot inspection. If Attaching Party's facilities are not in compliance with this Agreement, SBC-13STATE may charge Attaching Party 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 the Attaching Party 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 Attaching Party's facilities are not in compliance with the terms of this Agreement, Attaching Party shall bring its facilities into compliance within 30 days after being notified of such noncompliance. If any make ready or modification work to SBC-13STATE's Structures is required to bring Attaching Party's facilities into compliance, the Attaching Party shall provide notice to SBC-13STATE 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. If the violation creates a hazardous condition, facilities must be brought into compliance upon notification.
- 26.5 Notice of Noncompliance. If, at any time, SBC-13STATE determines that Attaching Party's facilities or any part thereof have not been placed or maintained or are not being used in accordance with the requirements of this Agreement, SBC-13STATE may send written notice to Attaching Party specifying the alleged noncompliance. Attaching Party agrees to acknowledge receipt of the notice as soon as

- practicable. If Attaching Party does not dispute SBC-13STATE's assertion that such facilities are not in compliance, Attaching Party agrees to provide SBC-13STATE with a schedule for bringing such facilities into compliance, to bring the facilities into compliance within a reasonable time, and to notify SBC-13STATE in writing when the facilities have been brought into compliance.
- 26.6 Disputes over Alleged Noncompliance. If Attaching Party disputes SBC-13STATE's assertion that Attaching Party's facilities are not in compliance, Attaching Party shall notify SBC-13STATE in writing of the basis for Attaching Party's assertion that its facilities are in compliance.
- 26.7 Failure to Bring Facilities into Compliance. If Attaching Party has not brought the facilities into compliance within a reasonable time or provided SBC-13STATE with proof sufficient to persuade SBC-13STATE that SBC-13STATE erred in asserting that the facilities were not in compliance, and if SBC-13STATE determines in good faith that the alleged noncompliance causes or is likely to cause material damage to SBC-13STATE's facilities or those of other users, SBC-13STATE may, at its option and Attaching Party's expense, take such non-service affecting steps as may be required to bring Attaching Party's facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this Agreement.
- 26.8 Correction of Conditions by SBC-13STATE. If SBC-13STATE elects to bring Attaching Party's facilities into compliance, the provisions of this Section shall apply.
- 26.8.1 SBC-13STATE will, whenever practicable, notify Licensee in writing before performing such work. The written notice shall describe the nature of the work to be performed and SBC-13STATE's schedule for performing the work.
- 26.8.2 If Attaching Party's facilities have become detached or partially detached from supporting racks or wall supports located within a SBC-13STATE manhole, SBC-13STATE may, at Attaching Party's expense, reattach them but shall not be obligated to do so. If SBC-13STATE does not reattach Attaching Party's facilities, SBC-13STATE shall endeavor to arrange with Attaching Party for the reattachment of any facilities affected.
- 26.8.3 SBC-13STATE shall, as soon as practicable after performing the work, advise Attaching Party in writing of the work performed or action taken. Upon receiving such notice, Attaching Party shall inspect the facilities and take such steps as Attaching Party may deem necessary to insure that the facilities meet Attaching Party's performance requirements.
- 26.9 Attaching Party to Bear Expenses. Attaching Party shall bear all expenses arising out of or in connection with any work performed to bring Attaching Party's facilities into compliance with this Section; provided, however that nothing contained in this Section or any license issued hereunder shall be construed as requiring Attaching Party to bear any expenses which, under applicable federal or state laws or regulations, must be borne by persons or entities other than Attaching Party.

27. TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

- 27.1 Facilities to Be Marked. Attaching Party shall tag or otherwise mark all of Attaching Party's facilities placed on or in SBC-13STATE's Structure in a manner sufficient to identify the facilities as those belonging to the Attaching Party.
- 27.2 Removal of Untagged Facilities. SBC-13STATE may, without notice to any person or entity, remove from SBC-13STATE's poles or any part of SBC-13STATE's conduit system the Attaching Party's facilities, if SBC-13STATE determines that such facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on SBC-13STATE's poles or in SBC-13STATE's conduit system.
- 27.3 Notice to Attaching Party. If any of Attaching Party's facilities for which no occupancy permit is presently in effect are found attached to SBC-13STATE's poles or anchors or within any part of SBC-13STATE's conduit system, SBC-13STATE, without prejudice to other rights or remedies available to SBC-13STATE under this Agreement, and without prejudice to any rights or remedies which may exist

- independent of this Agreement, shall send a written notice to Attaching Party advising Attaching Party that no occupancy permit is presently in effect with respect to the facilities and that Attaching Party must, within 30 days, respond to the notice as provided in Section 27.6 of this Agreement.
- 27.4 Attaching Party's Response. Within 60 days after receiving a notice under Section 27.5 of this Agreement, Attaching Party shall acknowledge receipt of the notice and submit to SBC-13STATE, 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 SBC-13STATE approves Attaching Party's application for a new or amended occupancy permit, Attaching Party shall be liable to SBC-13STATE 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 SBC-13STATE 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 SBC-13STATE'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 Attaching Party and its predecessors had continuously complied with all applicable SBC-13STATE 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, the Attaching Party shall be liable for an unauthorized attachment and/or occupancy fee as specified in Section 29 of this Agreement. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Attaching Party shall rearrange or remove its unauthorized facilities at SBC-13STATE's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to SBC-13STATE or another Other User, and shall pay SBC-13STATE for all costs incurred by SBC-13STATE in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities.
- 27.7 Removal of Unauthorized Attachments. If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized facilities within the specified period of time, SBC-13STATE shall by written notice advise Attaching Party to remove its unauthorized facilities not less than 60 days from the date of notice and Attaching Party 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, SBC-13STATE may, at SBC-13STATE's option, remove Attaching Party's facilities at Attaching Party's expense.
- 27.8 No Ratification of Unpermitted Attachments or Unauthorized Use of SBC-13STATE's Facilities. No act or failure to act by SBC-13STATE with regard to any unauthorized attachment or occupancy or unauthorized use of SBC-13STATE's Structure shall be deemed to constitute a ratification by SBC-13STATE of the unauthorized attachment or occupancy or use, nor shall the payment by Attaching Party of fees and charges for unauthorized pole attachments or conduit occupancy exonerate Attaching Party 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 ATTACHING PARTY'S FACILITIES

- 28.1 When Applicant no longer intends to occupy space on a SBC-13STATE pole or in a SBC-13STATE duct or conduit, Applicant will provide written notification to SBC-13STATE 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 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from SBC-13STATE'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 SBC-13STATE's manholes.
- 28.1.3 Applicant shall be solely responsible for the removal of its own facilities from SBC-13STATE's Structure.
- 28.2 At SBC-13STATE's request, Attaching Party shall remove from SBC-13STATE's Structure any of Attaching Party's facilities which are no longer in active use. Upon request, the Attaching Party will provide proof satisfactory to SBC-13STATE that an Attaching Party's facility is in active service. Attaching Party shall not abandon any of its facilities by leaving such facilities on or in SBC-13STATE's Structure.
- 28.3 Removal Following Termination of Occupancy permit. Attaching Party shall remove its facilities from SBC-13STATE's poles, ducts, conduits, or rights-of-way within 30 days after termination of the occupancy permit.
- 28.4 Removal Following Replacement of Facilities. Attaching Party shall remove facilities no longer in service from SBC-13STATE's Structures within 30 days after the date Attaching Party 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 Attaching Party's facilities on or in SBC-13STATE's Structure would cause a forfeiture of the rights of SBC-13STATE to occupy the property where such Structure is located, SBC-13STATE will promptly notify Attaching Party in writing and Attaching Party shall not, without due cause and justification, refuse to remove its facilities within such time as may be required to prevent such forfeiture. SBC-13STATE will give Attaching Party not less than 30 days from the date of notice to remove Attaching Party's facilities unless prior removal is required to prevent the forfeiture of SBC-13STATE's rights. At Attaching Party'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 Attaching Party's facilities.
- 28.6 Removal of Facilities by SBC-13STATE: Notice of Intent to Remove. If Attaching Party fails to remove its facilities from SBC-13STATE's Structure in accordance with the provisions of Sections 28.1-28.6 of this Agreement, SBC-13STATE may remove such facilities and store them at Attaching Party's expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to Attaching Party for any injury, loss, or damage resulting from such actions. SBC-13STATE shall give Attaching Party not less than 30 days prior written notice of its intent to remove Attaching Party's facilities pursuant to this section.
- 28.7 Removal of Facilities by SBC-13STATE. If SBC-13STATE removes any of Attaching Party's facilities pursuant to this article, Attaching Party shall reimburse SBC-13STATE for SBC-13STATE's 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 Exhibit I of this Appendix. All rates, charges and fees shall be subject to all applicable federal and state laws, rules, regulations, and commission orders.
- 29.2 Changes to Rates, Charges and Fees. Subject to applicable federal and state laws, rules, regulations and orders, SBC-13STATE shall have the right to change the rates, charges and fees outlined in this Agreement. SBC-13STATE will provide the Attaching Party 60 days written notice, advising the Attaching Party of the specific changes being made and the effective date of the change. If the changes outlined in the notice are not acceptable to the Attaching Party, Attaching Party may either (1) seek renegotiation 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. SBC-13STATE may require Attaching Party, Authorized Contractors, and other persons acting on Attaching Party'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 the Attaching Party'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 Attaching Party, an Authorized Contractor, or other person acting on Attaching Party's behalf, Attaching Party shall promptly submit to SBC-13STATE 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 SBC-13STATE 60 days written notice.
- 30.2 Payment and Performance Bonds in Favor of Contractors and Subcontractors. Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, materialmen and other persons or entities performing work or providing materials in connection with Attaching Party's performance under this Agreement. In the event any lien, claim or demand is made on SBC-13STATE by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, SBC-13STATE may require, in addition to any security provided under Section 30.1 of this Agreement, that Attaching Party execute payment or performance bonds, or provide such other security, as SBC-13STATE may deem reasonable or necessary to protect SBC-13STATE from any such lien, claim or demand.