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CARL J. LUMLEY

FILED

December 22, 1999

DEC 23 1999

Missouri Public
Service Commission

Dale Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Truman State Office Building, 5th Floor
301 West High Street
Jefferson City, Missouri 65101-1517

Via Federal Express

70-2000-384

Re: Petition of BroadSpan Communications, Inc. for Arbitration
of Unresolved Interconnection Issues Regarding Collocation
with Southwestern Bell Telephone Company.

Dear Mr. Roberts:

Enclosed please find for filing with the Commission an original and fifteen copies of
Petition of BroadSpan Communications, Inc. for Arbitration of Unresolved Interconnection
Issues Regarding Collocation with Southwestern Bell Telephone Company. Upon your receipt,
please file stamp the extra copy received and return to the undersigned in the enclosed, self-
addressed, stamped envelope. If you have any questions, please do not hesitate to contact us.

Very truly yours,

Carl J. Lumley

CJL:dn
Enclosures
cc. Parties of Records (W/Enclosures)

FILED

DEC 23 1999

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

PETITION OF BROADSPAN COMMUNICATIONS,)
INC., FOR ARBITRATION OF UNRESOLVED)
INTERCONNECTION ISSUES REGARDING)
COLLOCATION WITH SOUTHWESTERN BELL)
TELEPHONE COMPANY.)

Missouri Public
Service Commission

Case No. T0 - 2000 - 384

PETITION OF BROADSPAN COMMUNICATIONS, INC.
FOR ARBITRATION OF UNRESOLVED INTERCONNECTION
ISSUES REGARDING COLLOCATION WITH
SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW BroadSpan Communications, Inc. d/b/a Primary Network Communications (herein referred to as "PNC"), pursuant to Section 252 of the Telecommunications Act of 1996 (the FTA) and Section 386.230 R.S.Mo. (1994), and for its Petition for Arbitration of unresolved interconnection issues regarding Collocation with Southwestern Bell Telephone Company (SWBT), states to the Commission:

1. PNC is a competitive telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Missouri. Its principal Missouri offices are currently located at 11756 Borman Drive, Suite 101, St. Louis, Missouri 63146. It is an authorized provider of competitive intrastate interexchange and local exchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission, as well as an authorized provider of interstate interexchange telecommunications services under the jurisdiction of the Federal Communications Commission (FCC). PNC is a "telecommunications carrier" as defined in Section 3, 251, and 252 of the FTA.

2. All communications and pleadings in this docket should be directed to:

Carl J. Lumley
Leland B. Curtis
Curtis, Oetting, Heinz,
Garrett & Soule, P.C.
130 S. Bemiston, Suite 200
St. Louis, Missouri 63105
314-725-8788
314-725-8789 (FAX)

Colleen M. Dale
Primary Network Communications, Inc.
11756 Borman Drive, Suite 101
St. Louis, Missouri 63146
314-214-0066
314-569-7110 (FAX)

3. SWBT is a Missouri corporation with its principal office at One Bell Center, St. Louis, Missouri 63101. SWBT is a "local exchange telecommunications company" and a "public utility" as those terms are defined in Section 386.020, R.S.Mo. (1994), and it is duly authorized to provide certain telecommunications services within certain parts of the State of Missouri. SWBT is an "incumbent local exchange carrier" as defined in Section 252(j) and Section 251(h) of the FTA within its existing service areas in Missouri.

4. PNC and SWBT are parties to an Interconnection Agreement (the "Agreement") which was approved by the Commission on August 12, 1998, in Case No. TO-98-518, and included provisions regarding collocation. Subsequent to the issuance of orders by the FCC regarding cageless collocation, and at SWBT's insistence, the parties commenced negotiations

regarding amendments to the agreement to incorporate the provisions of the FCC orders. The parties submitted an interim agreement regarding such changes, which has been approved by the Commission, and continued negotiations, with a deadline for arbitration under Section 252 of the FTA of December 24, 1999.

5. Subsequently, PNC and SWBT reached agreement on all issues regarding permanent amendments to the collocation provisions of the interconnection agreement, except as set forth herein. A copy of the documentation regarding the agreed upon amendments is attached hereto as Exhibit A and incorporated herein by reference.

6. The unresolved issues, and the parties positions thereon, are as follows:

a. PNC proposed additional language regarding security badge processing delays as set forth in Exhibit A. SWBT never agreed to the language or offered an alternative solution. (Section 4.3B).

b. PNC proposed retention of existing language regarding the cost methodology for collocation prices. SWBT never agreed to the language or offered an alternative. (Section 6.4).

c. PNC proposed retention of existing language regarding completion intervals within three months of acceptance of price quote. SWBT proposed an exception allowing 180 days for shared or cageless collocation where power does not exist or in "Other Central Office Space" as defined in the agreed amendment. PNC indicated it would accept that exception if SWBT would grant it the same free facility tour rights in such circumstances as provided in the

agreed amendment for denials of collocation requests, and if SWBT would accept PNC's proposal on item d. below, and all other issues were resolved. SWBT never responded. (Section 7.12).

d. PNC proposed retention of existing language regarding liquidated damages for failure to meet completion intervals. SWBT never responded. (Section 7.13).

e. SWBT proposed limiting its response regarding denial of proposed collocation equipment for safety reasons to an attestation that all equipment installed by it after January 1, 1998 meets the standard. PNC responded that the FCC rule does not permit such a limit, but did offer to drop this issue if all other issues were resolved and SWBT agreed to add an attestation that it was not using the denied equipment at the premises. (Section 12.3).

f. PNC proposed additional language to clarify its parking rights at collocation sites. SWBT never responded. (Section 13.1).

7. PNC seeks relief from the Commission pursuant to its jurisdiction under Section 252 of the FTA and Section 386.230 R.S.Mo., as well as the aforesaid agreements of the parties, and requests the Commission to determine that SWBT must provide collocation to PNC pursuant to the agreed amendment and incorporate PNC's positions on the unresolved issues identified above.

8. The FTA establishes that SWBT is a telecommunications carrier, *FTA 3(49)*, a local exchange carrier (LEC), *FTA 3(44)*, and an incumbent local exchange carrier, *FTA 251(h)*. SWBT also is a Bell Operating Company. *FTA 3(35)*. SWBT is subject to the Commission's jurisdiction under Section 252 of the FTA. The Commission must arbitrate if PNC and SWBT fail to reach agreement on the issues addressed by FTA. *FTA 252(b)*. The Commission also must

arbitrate contractual differences between the parties pursuant to the Agreement and Section 386.230 R.S.Mo.

9. PNC respectfully requests arbitration of the issues identified herein.

10. PNC reserves the right to provide a full explanation of its positions on all the issues after discovery by means of testimony and briefs to be filed in accordance with the Commission's procedures.

11. The Commission should adopt a procedural schedule. Specifically, the Commission should adopt a standard protective order, allow immediate discovery, order the parties to file simultaneous direct testimony, order the parties to file simultaneous rebuttal testimony, order the parties to file a hearing memorandum, order the parties to appear for a hearing to allow cross-examination and Commission questions, and order the parties to file simultaneous post-hearing initial and reply briefs.

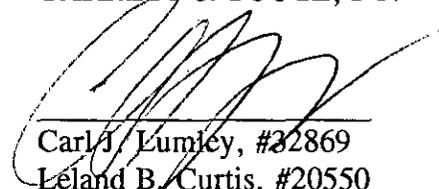
WHEREFORE, PREMISES CONSIDERED, the Commission should:

1. Set this case for arbitration and determine the unresolved issues between PNC and SWBT, as more particularly stated herein;
2. Adopt a procedural schedule as described herein, including a standard protective order and immediate discovery;
3. Adopt and approve an amendment to the Interconnection Agreement that incorporates the agreed provisions and PNC's positions on the unresolved issues;
4. Retain jurisdiction of this arbitration until the parties have submitted an amendment to the Agreement for approval by the Commission; and

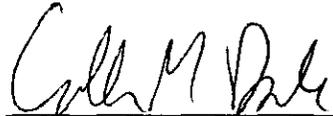
5. Grant such other and further relief to which PNC may be justly entitled.

Respectfully submitted,

CURTIS, OETTING, HEINZ,
GARRETT & SOULE, PC.



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Attorneys for BroadSpan
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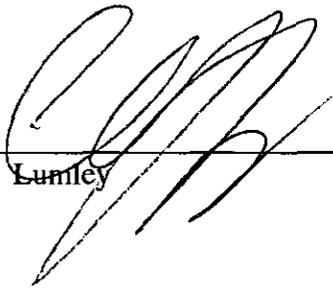
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing **BroadSpan's Petition for Arbitration of Unresolved Interconnection Issues Regarding Collocation with SWBT** was faxed this 22nd day of December, 1999, to:

Kathy Swaller
General Attorney-Missouri
Southwestern Bell Telephone Company
One Bell Center, Room 3536
St. Louis, Missouri 63101
(FAX) 314-331-2193

Martha Hogarty
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P.O. Box 7800
Jefferson City, Missouri 65101
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Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
(FAX) 573-751-9285



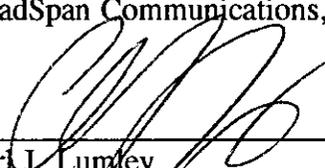
Carl J. Lumley

STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS)

) SS.

VERIFICATION

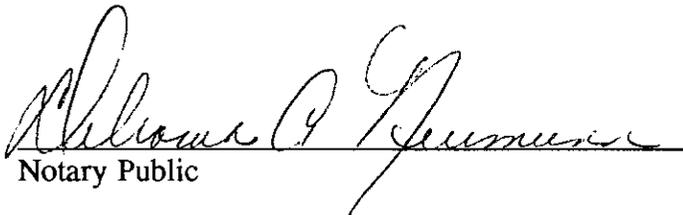
I, Carl J. Lumley, first being duly sworn, state on my oath that I am over the age of twenty-one years, sound of mind, and the attorney of petitioner BroadSpan Communications, Inc. I am authorized to act on behalf of BroadSpan Communications, Inc., regarding the foregoing Petition. I have read the Petition and I am informed and believe that the matters contained therein are true. Further, I hereby confirm that Carl J. Lumley, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 S. Bemiston, Suite 200, St. Louis, Missouri 63105, are authorized to sign all pleadings and documents necessary to obtain the decision of the Missouri Public Service Commission on the foregoing Petition, and to represent BroadSpan Communications, Inc., in this proceeding.



Carl J. Lumley

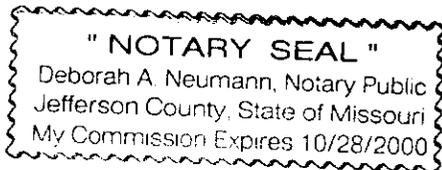
On this 23rd day of December, 1999, before me, a Notary Public, personally appeared Carl J. Lumley, and being first duly sworn upon his oath stated that he is over twenty-one years, sound of mind and the attorney of petitioner BroadSpan Communications, Inc., he signed the foregoing document as attorney of BroadSpan Communications, Inc., and the facts contained therein are true and correct according to the best of his information, knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year above-written.



Notary Public

My Commission Expires:



Carl Lumley

From: Carl Lumley
 Sent: Wednesday, December 15, 1999 8:47 AM
 To: Errol Phipps (E-mail)
 Subject: conf call

wanted to give you more input re our next call this afternoon
 collo

there are some bolded items throughout that are ready to go to regular text

✓ 4.1.3 we feel we must insist on sticking to the rule language

✓ 4.1.4 the language already allows you to have a say over placement, but if you still need the additional sentence, we need to modify it to "reasonably assign"

✓ 4.1.6 (new) to address the stalemate over virtual collo language (i.e. 5.1) we should reinsert the original provisions of 2.7, 2.7.1, 2.7.2, and then move 5.1 here - we don't feel we should have to give up the provisions on virtual collo just to add cageless collo (and note, the draft language does address virtual collo from time to time, such as in 5.11). None of this should be controversial - we just want these limited references so there is no confusion. OK

✓ 4.2.2 looks okay subject to your coaxial check

✓ 4.2.3 still have a stray comma after copper (last line)

✓ 4.3 thought we had agreed to delete the two references to central offices

✓ 4.3B still need to resolve the badge delays - how about "(provided SWBT shall process all security badge requests within two business days, and a badge shall function for all BCI collocation locations)"

✓ 5.9 okay to include your efficiency language

✓ 5.11 okay re turnaround

✓ 5.13 typo in "unused"

✓ 6.2 we accept your counterproposal

✓ 6.3.1 insert "including the Security Charge" after the parenthetical ref to common charge (line 4)

✓ 6.4 not revised correctly - line 2, delete "and" and retain "charges"

✓ 6.5 ok re sec charge, see above

✓ 7.8 ditto

✓ 7.13 if we keep this and resolve everything else, we'll accept the intervals language in 7.12, provided that if SWBT asserts the 180 days applies, we get the same tour rights as if it was asserted that space was not available

✓ 11.1 fire retardant ok, also can make it "BCI can demonstrate to the

PSC", ok, re two points, still need to insert rest of 51.323(a)(1) in line 10 after "point or points"

✓ 12.3 again, if resolve everything else, we'll accept the 98 date with the additional language we discussed - "and that neither SWBT nor any affiliated company is using the denied equipment within the premises"

marks ok at least in concept

alt? long?

13.1 need to clarify our parking rights - "In connection with its use of physical collocation space, BCI shall have the right to park vehicles on existing lots used by SWBT for the premises most proximate to the entrance to be used by BCI."

✓ at end still need to delete signature block

DSL

we can skip SMC6 for now, but as I mentioned we should hold the number for later use

2.3.4 we still object, but if we resolve everything else, we'll go with this with the modification that SWBT will also migrate *ok*

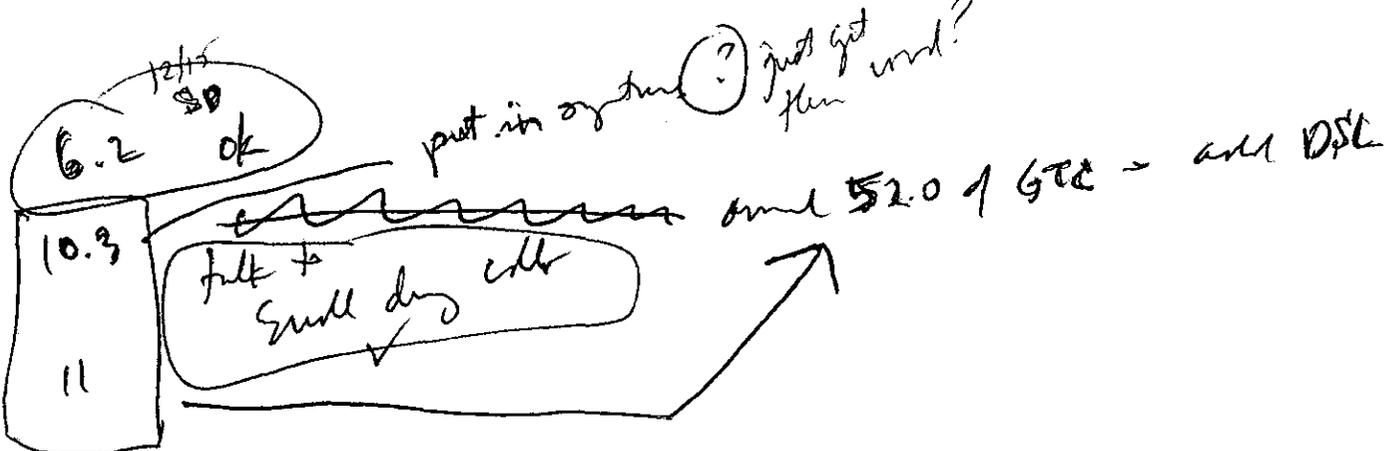
3.1.3 can delete

4.4 can drop HDSL repeater conditioning

8.3 should delete first half, about SFS, due to line share order *they agree*

8.4 should add 51.233(b) and def of known disturber, per line share order *wait till order up the*

of course, still need to hear back from you on the other items identified during the last call and my followup email



*12/10/99
for SWBT*

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APPENDIX COLLOCATION

This Appendix Collocation to Attachment 13: Ancillary Functions, sets forth terms and conditions applicable to the Parties' rights and obligations pertaining to physical collocation.

1.0 Introduction

- 1.1 SWBT is an incumbent local exchange carrier having a statutory duty to provide for “physical collocation” of “equipment necessary for interconnection or access to unbundled network elements” at its Eligible Structures. 47 U.S.C. 251(c)(6).
- 1.2 BCI wishes to locate certain of its equipment within the Eligible Structures of SWBT (as defined herein) and thereby connect with SWBT and with other Local Service Providers (as specified in Section 4.2 below).
- 1.3 This Appendix will govern BCI’s collocation of its equipment within SWBT’s Eligible Structures, subject also to the provisions of the Agreement to which this Appendix is included.

2.0 Definitions

- 2.1 “Active Central Office Switchroom Space” Denotes the existing central office switchroom space, which can be designated for physical collocation, with existing infrastructure systems sufficient to support requested collocation. Also denotes central office space that may contain obsolete unused equipment.
- 2.2 “Adjacent Space Collocation” is physical collocation at a BCI-provided controlled environmental vault — or similar structure to the extent technically feasible — on SWBT premises adjacent to an Eligible Structure.
- 2.3 “Caged Physical Collocation” is an individual enclosure (not including a top) in which BCI can install its telecommunications equipment within BCI’s Dedicated Collocation Space.
- 2.4 “Cageless Physical Collocation” is a collocation arrangement that does not require the construction of a cage or similar structure or the creation of a separate entrance to the Dedicated Collocation Space.
- 2.5 “Dedicated Collocation Space” means the space dedicated for BCI’s physical collocation arrangement located within a SWBT Eligible Structure.

2.6 “Eligible Structure” means (1) a SWBT central office, serving wire center or tandem office, or (2) a building or similar structure owned or leased by SWBT that houses its network facilities, or (3) a structure that houses SWBT facilities on public or private rights-of-way, controlled environmental vaults (CEVs), huts, and cabinets.

2.7 “Other Central Office Space” Denotes the space within the central office which can be designated for physical collocation where infrastructure systems sufficient to support requested collocation do not currently exist and must be constructed.

2.8 “Shared Physical Collocation Cage” is a caged Dedicated Collocation Space that is shared by two or more collocators within a SWBT Eligible Structure.

3.0 Purpose and Scope of Agreement

3.1 The Parties agree that this Agreement does not constitute, and shall not be asserted to constitute, an admission or waiver or precedent with any State commission, the Federal Communications Commission, any other regulatory body, any State or Federal Court, or in any other forum that SWBT has agreed or acquiesced that any piece of BCI’s equipment or facility is “equipment necessary for interconnection or access to unbundled network elements” under 47 U.S.C. 251(c)(6).

4.0 General Offerings

4.1 Subject to this Appendix, SWBT will provide physical collocation to BCI for the purpose of interconnecting with SWBT’s network or for obtaining access to SWBT’s unbundled network elements pursuant to 47 U.S.C. 251(c). Physical collocation shall be provided on a non-discriminatory basis, on a “first-come, first served” basis, and otherwise in accordance with the requirements of the Act (including 47 U.S.C. 251(c)(6), and applicable FCC rules thereunder). SWBT’s physical collocation offering includes the following:

4.1.1 **Caged Physical Collocation** – BCI may apply for Caged Physical Collocation in increments of 50 square feet. SWBT will charge BCI for the space it uses, the time and materials required to construct the “cage,” and any other expenses directly attributable to BCI — such as dedicated conduit to and/or within the cage. Each Caged Physical Collocation request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in BCI’s assigned bays and the location will be determined by BCI. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of BCI’s cost. Any available physical collocation option will require and include a minimum of one collocation interconnection power panel (CIPP).

SWBT will allow BCI to contract with other prospective collocators to share the caged Dedicated Collocation Space in a sublease type arrangement, provided the subleasing collocator's equipment is also used for interconnection with SWBT's network and/or access to SWBT's unbundled network elements. In a sublease arrangement, the initial collocator(s) shall not charge a subleasing collocator more than the prorated share (based on square footage used exclusively or in common) of SWBT's monthly rates and nonrecurring charges to the initial collocator. Each collocator in a sublease arrangement may interconnect with SWBT or order SWBT unbundled network elements to and provision service from the Dedicated Collocation Space regardless of which collocator was the original collocator.

- 4.1.2 **Shared Physical Collocation Cage** – A shared collocation cage is a caged collocation space shared by two or more Collocators pursuant to terms and conditions agreed to by the Collocators. BCI may apply for Shared Physical Collocation Cage in increments of 50 square feet. In making shared cage arrangements available, SWBT may not increase the cost of site preparation or nonrecurring charges above the cost for provisioning such a cage of similar dimensions and material to a single collocating party. SWBT must prorate the charge for site conditioning and preparation undertaken by SWBT to construct the shared collocation cage or condition the space for collocation use, regardless of how many carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to each party sharing the space based on the percentage of the total space of the shared cage utilized by the parties. The total of the collocators' combined floor space requirements must equal the total square footage of the shared cage. BCI's allocation of the total charge for site preparation will be based on the percentage of the total space utilized by BCI. If BCI submits a unique request, then only BCI will be charged for those costs directly attributable to BCI.

If two or more requesting carriers have interconnection agreements with SWBT, SWBT will permit each requesting carrier to interconnect with SWBT or order unbundled network elements and provision service from shared collocation space, regardless of which requesting carrier was the original collocator. Each BCI request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in one of BCI's assigned bays and the location shall be determined by BCI. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of BCI's cost. Any available physical collocation option will require and include a minimum of one collocation interconnection power panel (CIPP).

- 4.1.3 **Cageless Physical Collocation** - Subject to technical feasibility and security requirements, SWBT will allow BCI to collocate in any unused space (space that is vacant and does not contain SWBT equipment, is not reserved for growth, is not used for administrative or other functions, and is not needed for access to, egress from, or work within occupied or reserved space) in SWBT's Eligible Structure, without requiring the construction of a

Rev. _____

cage or similar enclosure around BCI's Dedicated Collocation Space, and without requiring the creation of a separate entrance to BCI's Dedicated Collocation Space. SWBT will designate the space to be used for cageless collocation. SWBT must give BCI the option of collocating equipment in any unused space within SWBT's Eligible Structure, and may not require BCI to collocate in a room or isolated space separate from SWBT's own equipment. SWBT may require BCI to use a central entrance to the building in which the cageless collocation is provided, but may not require construction of a new entrance for BCI's or other collocating carriers' use, and once inside the building, SWBT must permit BCI to have direct access to BCI's equipment.

SWBT may not require BCI to use an intermediate interconnection arrangement (i.e., a POT bay) in lieu of direct connection to SWBT's network if technically feasible. ~~In addition, SWBT may not require BCI to collocate in a room or isolated space separate from SWBT's own equipment that only serves to increase the cost of collocation and decrease the amount of available collocation space.~~ SWBT may take reasonable steps to protect its own equipment, such as, but not limited to, enclosing SWBT equipment in its own cage, and other reasonable security measures as described herein. ~~SWBT may utilize reasonable segregation requirements that do not impose unnecessary additional cost on BCI.~~

SWBT must make cageless collocation space available in single-bay increments, meaning that BCI can purchase space in increments small enough to collocate a single relay rack, or bay, of equipment (10 square feet for standard equipment bays and 18 square feet for cabinetized equipment bays).

Each BCI request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in one of BCI's assigned bays and the location shall be determined by BCI. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of BCI's cost. Any available physical collocation option will require and include a minimum of one Collocation Interconnection Power Panel (CIPP).

- 4.1.4 **Adjacent Space Collocation** – When space is legitimately exhausted inside a SWBT Eligible Structure, SWBT will permit BCI to physically collocate in adjacent controlled environmental vaults or similar structures (e.g. used by SWBT to house telecommunications equipment) to the extent technically feasible. SWBT will permit BCI to construct or otherwise procure such adjacent structure, subject to reasonable safety and maintenance requirements, zoning and other state and local regulations, and SWBT's right to exercise reasonable control over the design, construction, and placement of such adjacent structures. BCI will be responsible for securing the required licenses and permits, the required site preparations, and retain responsibility for building and site maintenance associated with placing the adjacent structure. SWBT will be allowed to reserve

12/15
pm
fcc

X 12/15

X 12/15

reasonable amounts of space adjacent to its premises needed to expand its premises to meet building growth requirements. SWBT reserves the right to assign the location of the designated space where the adjacent structure will be placed.

control by res. central on plant, in "rooms" area

SWBT will provide a standard offering of 100 AMPS of AC power to the adjacent structure when Central Office Switchboard AC capacity exists and 200 AMPS of DC power to the adjacent structure up to 200 cable feet from the Central Office power source. When power requirements are outside of these office capacity and distance limitations, SWBT will treat the requirements as a unique request and coordinate a mutually agreeable solution for provisioning power with BCI. At its option, BCI may choose to provide its own AC and DC power to the adjacent structure. SWBT will provide power and physical collocation services and facilities to such adjacent structures, subject to the same nondiscrimination requirements as other collocation arrangements in this Agreement. SWBT must permit BCI to place its own equipment (subject to the other requirements of this Appendix).

✓

[Handwritten signature]

OK - only on side to expansion

At its option, BCI may choose to utilize a temporary adjacent structure until interior space is available in a given Eligible Structure. Any temporary adjacent structure placed by BCI should be removed at BCI's expense once interior space is available in the Eligible Structure. Appropriate charges applicable for collocation within the Eligible Structure will apply. SWBT will work cooperatively with BCI to relocate facilities into the Eligible Structure.

✓

4.1.5 All other requests for physical collocation will be analyzed on a case-by-case basis. When BCI requests a particular collocation arrangement, BCI is entitled to a rebuttable presumption that such arrangement is technically feasible if any LEC with a substantially similar network has deployed such collocation arrangement in any incumbent LEC premises. If SWBT refuses to provide such a collocation arrangement, or an equally cost-effective arrangement, SWBT must rebut the presumption before the state commission that the particular premises in question cannot support the arrangement because of either technical reasons or lack of space.

✓

4.2 Interconnection Arrangements

4.2.1 SWBT shall provide, at the request of BCI, the connection between BCI's optional POT frame or equipment bay and the SWBT network. The connection cannot be provided by BCI. BCI will not be permitted access to the SWBT Main Distribution Frame or Intermediate Distribution Frame. If regeneration equipment is required, for any reason, it will be at BCI's expense. Interconnection Arrangements options are as follows: DS1 Arrangement, DS3 Arrangement, Copper Cable Arrangement, Shielded Cable Arrangement, and Fiber Arrangement.

Handwritten notes:
OK
must 4.1.1.6
add language to 1.7, 2.7.1, 2.7.2
revised
new 2.7.3
must be 4.1

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4.2.2 SWBT shall permit BCI to interconnect its network with that of another collocated telecommunications carrier within the same Eligible Structure and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same Eligible Structure provided that the collocated equipment is also used for interconnection with SWBT or for access to SWBT's unbundled network elements. Within a contiguous area within the Eligible Structure, SWBT shall permit BCI to construct such facilities using coaxial, [Note: coaxial not mentioned in CFR. Still checking to see if we will agree anyway.] copper or optical fiber facilities subject to the same reasonable safety requirements that SWBT imposes on its own equipment and facilities. BCI will not be permitted to place cable over SWBT's switches or other critical equipment. SWBT will reasonably designate the route and space to be used for such facilities. [Rearranged paragraph for more logical flow]

If the collocators are not located on the same floor and cannot physically pull the cable themselves through the SWBT provided structure(s), SWBT will perform the necessary construction and perform the cable pull on a time and materials basis. At no time will BCI be allowed access to any portion of the central office other than the collocation area — except for reasonable access to restrooms and parking lots where available. SWBT will not make the physical connection with BCI's equipment, SWBT will not (accept) any liability for the cable or the connections and SWBT will not maintain any records concerning these connections.

4.2.3 SWBT shall provide, at the request of BCI, the connection between the equipment in the collocation spaces of BCI and other telecommunications carriers on a time and materials basis. Available connections include, copper cable, coaxial cable, and fiber optic cable.

4.2.4 SWBT shall permit BCI to place its own connecting transmission facilities within SWBT's Eligible Structure outside the physical collocation space, subject to reasonable safety limitations. BCI shall not have access to SWBT's Main Distribution Frame and/or Intermediate Distribution Frame. As provided herein, SWBT may require reasonable security arrangements to protect its equipment and ensure network reliability.

4.3 Security

Except as provided below, SWBT may only impose security arrangements that are as stringent as the security arrangements that SWBT maintains at its own premises for its own employees or authorized contractors. SWBT must allow Collocator to access its physical collocation space 24 hours a day, seven days a week, in central offices without requiring either a security escort of any kind or delaying a Collocator's employees' entry into SWBT's central office. Reasonable security measures that SWBT may adopt include, but are not limited to, the following:

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- A. Installing security cameras or other monitoring systems; or
- B. Requiring Collocator personnel to use badges with computerized tracking systems; or
- C. Requiring Collocator employees to undergo the same level of security training, or its equivalent, that SWBT's own employees, or third party contractors providing similar functions, must undergo; provided, however, that SWBT may not require Collocator employees to receive such training from SWBT itself, but must provide information to Collocator on the specific type of training required so Collocator's employees can conduct their own training.
- D. SWBT may take reasonable steps to protect its own equipment, such as enclosing the equipment in a cage.

(provided, SWBT shall security logs with the business logs)

5.0 Space Availability

5.1 At the request of Collocator, SWBT will provide space for physical collocation as described above. SWBT is not required to provide physical collocation at a particular Eligible Structure if it demonstrates to BCI or the state commission that physical collocation is not practical for technical reasons or because of space limitations. In such cases and with the qualifications set forth above, SWBT will provide Adjacent Structure Collocation as described above or Virtual Collocation, except at points where SWBT proves to BCI or the state commission that Adjacent Structure Collocation and/or Virtual Collocation is not technically feasible. If Adjacent Structure Collocation or Virtual Collocation is not technically feasible, SWBT will make a good faith effort to provide other methods of interconnection and access to unbundled network elements to the extent technically feasible.

When providing virtual collocation, SWBT shall, at a minimum, install, maintain, and repair collocated equipment within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of SWBT itself. [Don't think this fits. Virtual collocation is not provided under this appendix.]

See 5.11

5.2 The determination whether there is sufficient space to accommodate physical collocation at a particular Eligible Structure will be made initially by SWBT. SWBT will notify Collocator within ten (10) days of submission of a completed Application for physical collocation by Collocator as to whether its request for space is been granted or denied due to a lack of space. When space for physical collocation in a particular Eligible Structure is not available, SWBT shall place Collocator on the waiting list for collocation in a particular Eligible Structure according to the date Collocator submitted its application for

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physical collocation in that Eligible Structure.

- 5.3 If SWBT contends space for physical collocation is not available in premises, SWBT must also allow Collocator to tour the entire central office or other eligible structure in question, not just the area in which space was denied, without charge, within ten days of the receipt of SWBT's denial of space. If Collocator disputes SWBT's determination, Collocator can elect a review to be made by a mutually agreed to third party engineer, under a non-disclosure agreement. All costs of the third-party inspection, including but not limited to all payments to the third-party engineer in connection with the inspection, shall be shared equally by SWBT and Collocator. The engineer shall take into consideration SWBT's planned use for the eligible structure under review. The engineer shall serve as a *non-binding mediator* and all related discussions shall be confidential and inadmissible in any proceeding. Any resolution achieved through such mediation shall be documented by signed writing, which documentation shall be enforceable and admissible when relevant in any proceeding. If Collocator does not elect to use such mediation or if such mediation is unsuccessful, then Collocator can present the dispute to the state commission.
- 5.4 Within ten (10) days of Collocator submitting a request to SWBT for physical collocation, if SWBT finds that it must deny the request, SWBT must file its response, under seal, with the Commission. The response shall include the following information:
- A. Central Office Common Language Identifier, where applicable;
 - B. The identity of the requesting Collocator, including amount of space sought by Collocator;
 - C. Total amount of space at the premises;
 - D. Floor plans including measurements of the premises, showing:
 - 1. Space housing SWBT network equipment or administrative offices;
 - 2. Space housing unused obsolete equipment, if any;
 - 3. Space which does not currently house SWBT equipment or administrative offices but is reserved by SWBT for future use;
 - 4. Space occupied by collocators for the purpose of network interconnection or access to unbundled network elements;
 - 5. Space, if any, occupied by third parties for other purposes;

6. Remaining space, if any.
- E. Identification of turnaround space for the switch or other equipment, if any;
- F. Central office rearrangement/expansion plans, if any and
- G. Description of other plans, if any, that may relieve space exhaustion.
- 5.5 SWBT will maintain a publicly available document, posted for viewing on SWBT's publicly available Internet site, indicating all premises that are full, and will update such a document within ten days of the date at which a premises runs out of physical collocation space.
- 5.6 Upon request, SWBT must submit to Collocator within ten days of the submission of the request a report indicating the available collocation space in a particular SWBT premises. Collocator may request a report by submitting a completed Collocation Space Availability Report Request with the required fees — \$121.00 per premises — for the requested report(s). This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. This report must also include measures that SWBT is taking to make additional space available for collocation. For more than 20 requests at once from Collocator regarding offices where there is no current collocation or collocation forecasted, SWBT will provide the additional information on a scheduled basis of ten additional offices every ten days.
- 5.7 In any Central Office in which all options for physical collocation offered by SWBT have been exhausted, SWBT shall not be permitted to provide additional space in that Central Office for any of its affiliates.
- 5.8 SWBT is not required to lease or construct additional space to provide for physical collocation when existing space has been exhausted. Moreover, SWBT is not required to, nor shall this Appendix create any obligation or expectation, to relinquish used, or forecasted space to undertake the construction of new quarters or to construct additions to existing quarters in order to satisfy any request for additional space or the placement of Collocator equipment or facilities, whether through an initial request for physical collocation or a subsequent request for more space in an Eligible Structure. SWBT and Collocator shall not unreasonably warehouse forecasted space.
- 5.9 To the extent possible, SWBT will make contiguous space available to Collocator if Collocator seeks to expand an existing physical collocation arrangement, ~~and such request meets SWBT's non-discriminatory practices regarding efficient space utilization.~~

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- 5.10 When planning renovations of existing Eligible Structures or constructing or leasing new Eligible Structures, SWBT will take into account projected demand based upon its knowledge of Collocator demand for Collocation.
- 5.11 SWBT may retain a limited amount of floor space for SWBT's own specific future uses for a time period on terms no more favorable to SWBT for like equipment than those that apply to other telecommunications carriers, including Collocator, seeking to reserve Collocation space for their own future use. Except for space needed for switching equipment "turnaround" by SWBT and Collocators [~~CLECs do not need switching equipment turnaround space~~] (e.g., the installation of new switching equipment to replace then-existing switching equipment), if any, and/or otherwise permitted or directed by applicable rule or order, SWBT will relinquish any space held for future use before denying a request for Virtual Collocation on grounds of space limitations, unless SWBT proves to the Commission that Virtual Collocation at that point is not technically feasible. In any such event, SWBT and Collocator will attempt to reach a mutually agreeable alternative method of interconnection.
- 5.12 **SWBT must, upon request, remove obsolete unused equipment from an Eligible Structure to increase the amount of space available for collocation.**
- 5.13 SWBT may impose reasonable restrictions on the warehousing of unused space by collocating telecommunications carriers, provided, however, that SWBT shall not set a maximum space limitation on Collocator unless SWBT proves to the Commission that space constraints make such restrictions necessary.
- 6.0 Application for Collocated Space**
- 6.1 For each Eligible Structure in which BCI desires to physically collocate equipment, BCI must submit a Physical Collocation Application with the applicable Engineering Design Charge. A copy of the Physical Collocation Application may be obtained from Collocator's Collocation Services account manager. A Physical Collocation Application must also be used for each subsequent request to place equipment in an Eligible Structure.
- 6.2 SWBT will provide BCI with the price quotation within the number of days set forth below from receipt of BCI's Physical Collocation Application Form and Engineering Design Charge. When sufficient space is not available for physical collocation at a particular Eligible Structure as determined above, SWBT will refund the unused portion of the Engineering Design Charge to BCI within thirty-five (35) business days of that determination.

Price quote intervals will run concurrent with the ten (10) day notification interval for

availability of space:

Number of Applications by BCI	Quotation Interval
1 - 5	35 Business Days
6 - 10	40 Business Days
11 - 15	45 Business Days

Should BCI submit six (6) or more applications within five (5) business days, the quotation interval will be increased by five (5) business days for every five (5) additional applications or fraction thereof. Any material revision to an application will be treated as a new application and will be subject to the time intervals set forth above. For purposes of this section, "material revision" means a change having a greater impact than 15% of the price quotation. [See SWBT's counterproposal below]

All revisions to an initial request for a physical collocation arrangement submitted by Collocator must be in writing via a new application form. If the revision is major, a new interval for the physical collocation arrangement will be established which shall not exceed two months. A major revision will include: adding telecommunications equipment that requires additional electrical power; changes in the configuration of the cage; an increase of 10% or more of the square footage of the cage area requested; adding design and engineering requirements above those which SWBT normally deploys and practices (i.e., redundancy of certain mechanical and electrical systems); and accelerating the project schedule. However, minor revisions will not require that a new interval be established. Examples of minor revisions include: adding bays of equipment that do not significantly impact the existing/proposed electrical systems; adding light fixtures and outlets which do not exceed the capacity of the existing/proposed electrical system; changes in the configuration of the cage which do not significantly impact the overall design of the space; and adjustments to the heat release projection which do not cause a change in the proposed/existing mechanical system. Collocator will be required to pay any applicable engineer design fee, if the revision is major. No additional application fees shall be applicable if the revision is minor. All engineering design work that is determined not to be major is deemed to be minor.

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BCI may obtain a shorter interval for the return of price quotes than that set forth above by scheduling a meeting with SWBT at least twenty (20) business days prior to submission of the first application to discuss, coordinate and prioritize Collocator applications.

- 6.3 SWBT will contract for and perform the construction and preparation activities underlying the Preparation Charge, including, any Custom Work charges, using same or consistent practices that are used by SWBT for other construction and preparation work performed in the Eligible Structure. SWBT's price quotation will consist of a "Preparation Charge,"

"Monthly Charge," Security Charge, and "Completion Interval."

- 6.3.1 The Preparation Charge will represent a one-time charge for SWBT's preparation of the Collocated Space and related modifications to the Eligible Structure. The Preparation Charge will consist of two Components: (i) the charge to BCI associated with modifying the Eligible Structure to provide physical collocation ("Common Charge"), as set forth in Section 7.3, and (ii) the charge associated with preparing the Collocated Space ("Collocated Space Charge"). SWBT will quote the portion of the Preparation Charge that consists of charges for subcontracted work ("Subcontractor Charges").
- 6.3.2 The Monthly Charge will consist of, the monthly charges for floor space, power usage, maintenance, administration, and taxes for equipment charged by SWBT to BCI for use of the Dedicated Collocated Space. Additional monthly charges may be added to this list upon approval of the state commission at the time the ICB is submitted for approval.
- 6.3.3 Collocator shall pay a security charge equal to its proportionate share of any reasonable security arrangements SWBT employs to protect SWBT's equipment and ensure network reliability.
- 6.3.4 The Completion Interval will consist of SWBT's estimate of the amount of time required for it to prepare the Collocated Space to comply with BCI's collocation application.
- 6.4 SWBT's price quotation will be calculated using an estimated actual cost methodology for nonrecurring ~~and recurring~~ charges subject to true-up and a Missouri PSC approved forward-looking costing methodology for recurring ~~and nonrecurring~~ charges will be used. [Still checking. Probably okay.] SWBT's price quotation will be sufficient to cover SWBT's reasonable costs and will be no greater than necessary for SWBT to earn a reasonable profit. BCI will have 65 calendar days to accept or reject the price quotation. Upon acceptance, BCI may ask the State Commission to review any of SWBT's charges for conformity with the above standards. However, BCI remains committed to occupy the space regardless of the Commission's decision concerning pricing.
- 6.5 Prior to any obligation for BCI to accept or reject SWBT's price quotation, SWBT will permit BCI to inspect the Collocated Space to determine its suitability for BCI's intended uses. Such inspection shall be made with a SWBT employee escort, the cost of which will be billed to BCI at SWBT's then current loaded labor rate for a first level management employee. Subject to an appropriate non-disclosure agreement, SWBT will permit BCI to review the construction plans as they exist at that time and to inspect supporting documents for the Preparation Charge, including the Common Charge, the Collocated Space Charge, and any Custom Work charge. During this review, BCI may request changes to the plans for the Collocated Space and to the extent possible, SWBT will incorporate the changes into the construction plans and the associated charges. [You

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requested that we add reference to security charge. The security is built into the Common Charges.]

- 6.6 SWBT's price quotation will constitute a firm offer that BCI may accept in writing within sixty-five (65) days of BCI's receipt of the price quotation, subject only to the true-up procedure specified in Section 8.8 below. SWBT will not reserve the Collocated Space for BCI during this sixty-five day period. If BCI does not accept the price quotation in writing within sixty-five (65) days of BCI's receipt of the price quotation, the price quotation will be automatically rescinded. Within thirty business days following acceptance, payment will be made pursuant to paragraphs 7.2 and 7.3. Failure to make such payment will be deemed a withdrawal of BCI's acceptance.
- 6.7 BCI may better SWBT's quoted Collocated Space Charge or quoted Completion Interval for the collocated space by subcontracting the preparation of the Collocated Space with contractors approved by SWBT. SWBT's approval of contractors will be based on the same criteria that it uses in approving contractors for its own purposes, which approval will not be unreasonably withheld. BCI will be responsible for the cost of its own contractors; SWBT will adjust the Preparation Charge to account for BCI's provision of its own contractors.
- 7.0 **Preparation of the Collocated Space**
- 7.1 SWBT agrees, at BCI's sole cost and expense as set forth herein, to prepare the Collocated Space in accordance with working drawings and specifications prepared by SWBT. The preparation will be arranged by SWBT in compliance with all applicable codes, ordinances, resolutions, regulations and laws. Only after BCI has made the initial payments required by Sections 7.2 and 7.3, SWBT will pursue diligently the preparation of the Collocated Space for use by BCI.
- 7.2 Prior to any obligation on SWBT to start any preparation of the Collocated Space, BCI will pay SWBT fifty percent (50%) of the Collocated Space Charge and eighty-five percent (85%) of any custom work charge required to create or vacate any entrance facility for BCI (Custom Work). The remainder of the Collocated Space Charge and any Custom Work charge are due upon completion and prior to occupancy by BCI. **Collocator also has the option of submitting a surety bond to cover these charges, in lieu of a check.**
- 7.3 In addition and prior to any obligation on SWBT to start any preparation of the Eligible Structure for physical collocation, BCI will pay SWBT fifty percent (50%) of the Common Charge. The other fifty percent (50%) of the Common Charge is due upon completion and prior to occupancy by BCI. SWBT shall not permit Collocator to have access to the Dedicated Collocation Space for any purpose other than inspection during

construction of Collocator's dedicated physical collocation space until SWBT is in receipt of complete payment of the Preparation Charge and any Custom Work charges. **Collocator also has the option of submitting a surety bond to cover these charges, in lieu of a check.**

- 7.4 INTENTIONALLY LEFT BLANK.
- 7.5 SWBT will provide costs for the preparation of the collocated space. SWBT will allow BCI to evaluate those costs and make a decision as to whether BCI wishes to obtain their own contractor for the preparation of the collocated space.
- 7.6 SWBT will contract for or perform the preparation of the working drawings and specifications for the modification of the Eligible Structure and the preparation of the Collocated Space. Prior to SWBT commencing any construction or preparation activities on the collocated space, SWBT will provide copies of the working drawings and specifications to BCI, and BCI must approve these working drawings and specifications within seven days of receipt. Upon BCI's request, SWBT will modify the working drawings and specifications in accord with BCI's requested alterations. SWBT will provide copies of the modified working drawings and specifications to BCI and BCI must approve these modified working drawings and specifications within seven days of receipt. The Completion Interval will be abated between SWBT's provision of the working drawings and specifications to BCI and BCI's approval of those working drawings and specifications.
- 7.7 BCI may better SWBT's bids by subcontracting the preparation of the Collocated Space with contractors approved by SWBT. SWBT's approval of contractors will be based on the same criteria that it uses in approving contractors for its own purposes, which approval will not be unreasonably withheld. BCI will be responsible for the cost of its own contractors; SWBT will adjust the Preparation Charge to account for BCI's provision of its own contractors.
- 7.8 Except for construction and preparation activities performed by BCI's own contractors, SWBT or SWBT's subcontractors will perform the construction and preparation activities underlying the Preparation Charge, including the Common Charge, the Collocated Space Charge, and the Subcontractor Charges, and any Custom Work charges, using same or consistent practices that are used by SWBT for other construction and preparation work performed in the Eligible Structure. [See 6.5 re: security charge reference.] ✓
- 7.9 SWBT will provide to BCI ordinary construction documentation submitted to and received from contractors or its internal engineering or installation work force, including but not limited to as-built drawings, for any work related to construction of the Collocated Space.

- 7.10 SWBT will permit BCI to inspect the ongoing preparation of the Collocated Space at regular intervals. At a minimum, SWBT will permit BCI to inspect the Collocated Space when construction is approximately 25% completed, when construction is approximately 50% completed, and when construction is approximately 75% completed. During such inspections, BCI shall be escorted by a SWBT employee to be charged to BCI at the loaded labor rate of a first line management employee. Should BCI's inspections reveal that SWBT or SWBT's subcontractors have deviated from the approved working drawings and specifications in the construction of the Collocated Space, SWBT will correct those deviations as soon as reasonably practicable.
- 7.11 SWBT will notify BCI when construction of the Collocated Space is 50% completed. SWBT will confirm its Completion Interval, if possible; otherwise SWBT will notify BCI of all jeopardies that could delay the preparation of the Collocated Space.
- 7.12 Except as provided below, SWBT will exercise due diligence to prepare the Collocated Space in a reasonable time period, not to exceed three months from BCI's acceptance of SWBT's price quotation, unless otherwise mutually agreed to in writing by BCI and SWBT. In the event that SWBT is not able to prepare the Collocated Space within the quoted Completion Interval, SWBT will provide BCI with a revised Completion Interval within seven (7) working days after SWBT ascertains that the original Completion Interval cannot be met. If the revised Completion Interval is objectionable to BCI, and the parties cannot resolve BCI's objection, the issue may be presented to the State Commission for review. Alternatively, if the revised Completion Interval is objectionable to BCI, BCI may individually subcontract the further preparation of the Collocated Space with contractors approved by SWBT. SWBT's approval of contractors will be based on the same criteria that it uses in approving contractors for its own purposes, which approval will not be unreasonably withheld. BCI will be responsible for the cost of its own contractors; SWBT will, however, reduce the Preparation Charge by BCI's cost of providing its own contractors.

SWBT will complete construction of all Active Central Office Switchroom Space requests for shared and cageless collocation in 90 days from the receipt of BCI's acceptance of the quotation.

Unless otherwise mutually agreed to by the Parties in writing, where power does not exist or in Other Central Office Space, SWBT will complete construction of requests for shared or cageless collocation within 180 days from receipt of BCI's acceptance of the quotation.

SWBT will provide BCI reduced intervals for augments to interconnection and/or power arrangements into its existing physical collocation space. BCI must submit to SWBT's Interexchange Carrier Service Center (ICSC) a completed application for a Subsequent

Job. For the reduced build-out interval to apply, this application must include an up-front payment of the non-recurring **Engineering Design Charge**. In addition, the application must include an accurate front equipment view (a.k.a. rack elevation drawing) specifying bay(s) for BCI's point of termination. Unless mutually agreed to, reduced intervals for augments to interconnection and/or power arrangements, where sufficient power infrastructure is available, shall be provided within (60) days after acceptance of the quote. Other augments requiring additional bay spaces, SWBT bays, SWBT cable racks, cage expansions and/or power requests that exceed existing power infrastructure, within Active Central Office space will have a construction interval mutually agreed upon between BCI and SWBT, not to exceed 90 days.

7.13 If SWBT is not able to prepare the Collocated Space within the quoted Completion Interval, SWBT will be liable to BCI for liquidated damages in the amount of \$1,000.00 for each day between the expiration of the quoted Completion Interval and the completion of the Collocated Space. This provision is subject to the Force Majeure clause in Paragraph 13 of the General Terms and Conditions of this Agreement.

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7.14 SWBT will notify BCI within five (5) days after preparation is complete that preparation of the Collocated Space has been completed.

8.0 Occupancy of the Collocated Space

8.1 The "Commencement Date" for a particular Collocated Space shall be the first day after which BCI has been notified that the Collocated Space is complete.

8.2 On or after the Commencement Date, BCI will be permitted to access the Collocated Space and Eligible Structure for the limited purpose of inspecting the collocation space. At BCI's request and at SWBT's expense, SWBT will correct all errors in SWBT's preparation of the Collocated Space as soon as reasonably practicable. After BCI has approved both SWBT's preparation of the Collocated Space, and paid all applicable charges in accordance with paragraph 7.3, BCI may occupy the Collocated Space and shall have access to the space 24 hours per day, 7 days per week, without a security escort of any kind or any delay, but subject to reasonable security measures as provided in Section 4.3.

8.3 SWBT will provide a drawing that details the layout of a POTS frame provided by SWBT, if any, at the time of completion of the collocated space.

8.4 SWBT will provide BCI, at the time of the price quotation, sufficient detailed information that will enable BCI to determine the amount of cable required to reach from the SWBT designated manhole to BCI's collocated space within the Eligible Structure.

- 8.5 Unless there are unusual circumstances, BCI must place telecommunications equipment in the Collocated Space within sixty (60) days after BCI is permitted to occupy the Collocated Space under Sections 8.1 and 8.2 above, provided, however, that this sixty (60) day period will not begin until the price quotation is approved by the Commission. If BCI fails to comply with this requirement, SWBT may offer the Collocated Space to another collocator provided, however, that SWBT may extend an additional ninety (90) days to BCI upon a demonstration by BCI that it exercised its best effort to comply with this requirement and that circumstances beyond BCI's reasonable control that prevented BCI from complying with this requirement.
- 8.6 Beginning on the first date of occupancy of the Collocated Space, BCI will pay the Monthly Charge to SWBT for each month that BCI occupies the Collocated Space. The Monthly Charge may be increased upon thirty (30) days' notice by SWBT.
- 8.7 In the event that BCI cancels a request for Collocated Space or fails to occupy a Collocated Space in the time provided under Section 8.5 above, then in addition to any other remedies that SWBT might have, BCI will owe to SWBT its reasonable non-recoverable costs less estimated net salvage and less the amounts already paid to SWBT. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; trued-up Subcontractor Charges, the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs. If the amounts already paid to SWBT plus the estimated net salvage exceed SWBT's reasonable nonrecoverable costs, SWBT will refund to BCI the excess amount within thirty (30) days of the cancellation of the request. SWBT will provide to BCI's third party accounting firm under a nondisclosure agreement a detailed invoice itemizing its non-recoverable costs.
- 8.8 Within one hundred twenty (120) days of the completion date of the Collocated Space, SWBT will perform a true up of all Subcontractor Charges using the actual amounts billed by subcontractors. Any amounts incurred above the Subcontractor Charges will be billed to BCI or, alternatively, any amount below such Charges will be remitted to BCI.
- 9.0 **Billing and Payment of Collocation Charges**
- 9.1 Billing shall occur on or about the 25th day of each month with payment due thirty (30) days from the bill date. Payment of a bill does not waive BCI's right to dispute the charges contained therein.
- 9.2 Charges for interconnection shall be as set forth in any interconnection agreement between SWBT and BCI and in any applicable tariffs.

10.0 **Relocation of Collocated Space**

- 10.1 In the event that SWBT determines it necessary for the Collocated Space to be moved within an Eligible Structure or to another Eligible Structure, BCI is required to do so. In such an event, BCI shall be responsible for the preparation of the new Collocated Space at the new location if such relocation arises from circumstances beyond the reasonable control of SWBT, including condemnation or government order or regulation that makes the continued occupancy of the Eligible Structure uneconomical or when an unsafe or hazardous condition makes abandonment of a central office necessary. Otherwise SWBT shall be responsible for any such preparation and will bear all SWBT and BCI costs associated with the preparation and relocation. If Collocated Space is relocated under this Section 10.1, SWBT and BCI will cooperate to insure that BCI will not experience out of service conditions beyond reasonable cutover intervals while collocated equipment is relocated, reconnected, and tested. SWBT will not be required to maintain a building strictly for the purposes of providing collocation.
- 10.2 In the event that BCI requests that the Collocated Space be moved within an Eligible Structure or to another Eligible Structure, SWBT shall permit BCI to relocate the Collocated Space, subject to the availability of space. BCI shall be responsible for all applicable charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new Collocated Space and the new Eligible Structure as applicable.
- 11.0 Fiber Optic Cable and Demarcation Point**
- 11.1 BCI may use single mode fire retardant dielectric fiber optic cable as a transmission medium, or other technically appropriate media as may be approved by SWBT. Said approval shall not be unreasonably withheld. BCI may use copper cable or coaxial cable if approved by the PSC ^{+ PSC} ~~only where BCI can demonstrate that interconnection of copper or coaxial cable will not impair SWBT's ability to serve its own customers or other collocators.~~ BCI may use microwave transmission facilities as a transmission medium to the Eligible Structure where Collocated Space is located, except where microwave transmission facilities are not practical for technical reasons or because of space limitations in which case virtual collocation of such facilities is required where technically feasible. SWBT shall provide an interconnection point or points. SWBT will provide at least — ~~but not more than~~ — two separate points of entry to the Eligible Structure wherever there are at least two entry points for SWBT's cable facilities and at which space is available for new facilities in at least two of those entry points. Where such space is not immediately available, if SWBT makes additional entry points available for SWBT's use, SWBT will size such separate points of entry to accommodate BCI's use of such entry points. In each instance, where SWBT performs such work in order to accommodate its own needs and those specified by BCI's written request, BCI and SWBT will share the costs of sizing the entry points incurred by SWBT by prorating those costs using the number of cables to be
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placed in the entry point by each of the two parties in the first twelve (12) months thereafter.

- 11.2 BCI and SWBT agree that the demarcation point between SWBT's network and BCI's network for interconnection and access to unbundled network elements will be within BCI's Collocated Space unless requested otherwise by BCI in which case SWBT shall designate the point(s) of termination within the Eligible Structure. Both BCI and SWBT are responsible for equipment maintenance and other ownership obligations and responsibilities on their side of that demarcation point.

12.0 Technical Requirements

- 12.1 Other than reasonable security restrictions, SWBT will place no restriction on access to the BCI Collocated Space by BCI's employees and designated agents. Such space will be available to BCI employees and designated agents twenty-four (24) hours per day each day of the week. SWBT may require BCI's employees to undergo the same level of security training, or its equivalent, that SWBT's own employees, or third party contractors providing similar functions must undergo; provided that SWBT may not require BCI's employees to receive such training from SWBT itself, but must provide information to BCI on the specific type of training required so BCI's employees can conduct their own training.
- 12.2 Subject to the other provisions hereof, BCI may collocate the amount and type of telecommunications equipment necessary in its Collocated Space for access to SWBT's unbundled network elements and for interconnection to SWBT and, subject to Section 4.2 hereof, other collocators. All BCI equipment placed in the Collocated Space will conform to the equipment standards set forth in this Agreement and be operated in a manner not inconsistent with SWBT's network. Except as provided herein or as otherwise agreed in writing by the Parties, BCI shall only collocate and use equipment as allowed by applicable law. Where space permits and for the purposes set forth in this Section 12.2, SWBT shall allow BCI to locate remote switching module equipment in the Collocated Space if the Collocated Space is within a SWBT central office or tandem office; provided, however, that SWBT shall have no requirement to provide remote switching module equipment on a virtual collocation basis. No power-generating or external power-storage equipment, but in no event lead acid batteries, shall be placed in the Collocated Space. The point of termination (POT) bay will be located inside the caged area, equipped and cabled as requested by BCI to minimize cable additions on an ongoing basis.
- 12.3 SWBT shall permit the collocation of any type of equipment used or useful for interconnection or access to unbundled network elements. Whenever SWBT objects to collocation of equipment by BCI for the purposes within the scope of section 251(c)(6) of

standards to which BCI and SWBT may agree in writing.

- 12.6 Where security will permit, and where available, SWBT will provide access to eyewash stations, shower stations, bathrooms, and drinking water within the Eligible Structure. Whenever possible, SWBT will design Collocated Space to allow for such access on a twenty-four (24) hour per day, seven (7) day per week basis.
- 12.7 SWBT will provide transmission and power cabling diversity to the Collocated Space under the same guidelines then used for diversity cabling for SWBT within the Eligible Structure. On a custom work order basis, SWBT will consider BCI's special cabling needs and will implement them where possible.
- 12.8 SWBT will notify BCI prior to the scheduled start dates of all construction activities (including power additions or modifications) in the general area of BCI's Collocated Space with potential to disrupt BCI's services. If possible, SWBT will provide such notification to BCI at least fourteen (14) days before the scheduled start date of such construction activity. SWBT will inform BCI as soon as practicable by telephone of all emergency-related activities that SWBT or its subcontractors are performing in the general area of the BCI Collocated Space, or in the general area of the AC and DC power plants which support BCI equipment. If possible, notification of any emergency-related activity will be made immediately prior to the start of the activity so that BCI may take reasonable actions necessary to protect BCI's Collocated Space.
- 12.9 SWBT will comply with all federal and state laws regarding environmental, health and safety issues as applicable to SWBT. SWBT is required to provide BCI a copy of any environmental, health and safety questionnaires that SWBT has previously completed or is required to complete in the future for its own purposes.

13.0 Use of Collocated Space

- 13.1 The Dedicated Collocation Space is to be used by Collocator for purposes of collocating equipment and facilities within SWBT's Eligible Structure for interconnection with SWBT's network, pursuant to 47 U.S.C. 251(c)(2) and subject to Section 4.2, interconnection to other collocators, and for obtaining access to SWBT's unbundled network elements, pursuant to 47 U.S.C. 251(c)(3). Consistent with the nature and the environment of the Eligible Structure and Collocated Space, BCI shall not use the Collocated Space for office, retail, or sales purposes. No signage or markings of any kind by BCI shall be permitted on the Eligible Structure or on the SWBT grounds surrounding the Eligible Structure. BCI may, however, place signage and markings on the inside of its Collocated Space. *In connection with its use of physical collocated space, BCI shall have the right to place notices on SWBT property pertinent to the entrance to be used.* BCI shall not have access to SWBT's Main Distribution Frame or Intermediate

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Distribution Frame, DSXs, DCS, or any other SWBT equipment or facilities not specifically designated by SWBT for Collocator access.

- 13.2 BCI will list all of its equipment and facilities that will be placed within the Collocated Space, with the associated power requirements, floor loading, and heat release of each piece on the "Physical Collocation Application Form." BCI warrants that this list is complete and accurate. Any incompleteness or inaccuracy may be a material breach of the particular physical collocation arrangement to which that list was associated. BCI shall not place or leave any equipment or facilities within the Collocated Space beyond those listed on the Physical Collocation Application Form.
- 13.2.1 Except as may be required by law, including state and federal regulations, the foregoing imposes no obligation upon SWBT to purchase additional plant or equipment, relinquish used or forecasted space or facilities, or to undertake the construction of new quarters or to construct additions to existing quarters in order to satisfy a subsequent request for additional space or the placement of additional equipment or facilities.
- 13.3 BCI may use the Collocated Space for placement of equipment and facilities only. BCI's employees, agents and contractors shall be permitted access to the Collocated Space at all times, provided that BCI's employees, agents and contractors comply with SWBT's policies and practices pertaining to fire, safety and security. BCI agrees to comply promptly with all laws, ordinances and regulations affecting the use of the Collocated Space. Upon BCI's termination of the use of the Collocated Space, BCI shall surrender the Collocated Space to SWBT, in the same condition as when first occupied by BCI, ordinary wear and tear excepted.
- 13.4 BCI equipment or operating practices representing a significant demonstrable technical threat to SWBT's network or facilities, including the Eligible Structure, are strictly prohibited.
- 13.5 Notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in Collocated Space shall not interfere with or impair service over any facilities of SWBT or the facilities of any other person or entity located in the Eligible Structure; create hazards for or cause damage to those facilities or to the Eligible Structure; impair the privacy of any communications carried in, from, or through the Eligible Structure; or create hazards or cause physical harm to any individual or the public. Any of the foregoing events in this Section may be a material breach of the particular physical collocation arrangement.
- 13.6 Subject to this Appendix, BCI may place or install in or on the Collocated Space such fixtures and equipment as it shall deem desirable for the conduct of business. Personal property, fixtures and equipment placed by BCI in the Collocated Space shall not become

the Act, SWBT shall prove to the state commission that the equipment will not be actually used by BCI for the purpose of obtaining interconnection or access to unbundled network elements. SWBT may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that SWBT applies to its own equipment. SWBT may not object to the collocation of equipment on the grounds that the equipment fails to comply with National Equipment and Building Specifications performance standards. If SWBT denies collocation of BCI's equipment, citing safety standards, it must provide to BCI within five business days of the denial a list of all equipment that SWBT locates within the premises in question, together with an affidavit attesting that all of ~~that~~ the equipment installed since January 1, 1998 meets or exceeds the safety standard that SWBT contends BCI's equipment fails to meet. Equipment used for interconnection and access to unbundled network elements includes, but is not limited to:

- 1) Transmission equipment including, but not limited to, optical terminating equipment and multiplexers, and
- 2) Equipment being collocated to terminate basic transmission facilities pursuant to § 66.1401 and 64.1402 of Chapter 47 of the CFR as of August 1, 1996.
- 3) Digital subscriber line accesses multiplexers, routers, asynchronous transfer mode multiplexers, and remote switching modules.

Nothing in this Agreement requires SWBT to permit collocation of equipment used solely for switching or solely to provide enhanced services; provided, however, that SWBT may not place any limitations on the ability of BCI to use all the features, functions, and capabilities of equipment collocated pursuant hereto, including, but not limited to, switching and routing features and functions and enhanced services functionalities.

SWBT shall permit BCI to collocate equipment and connect such equipment to unbundled network transmission elements obtained from SWBT and shall not require BCI to bring its own transmission facilities to SWBT's premises in which it seeks to collocate equipment.

- 12.4 Subject to the other provisions hereof, including Section 14.1, BCI may select its own vendors for all required engineering and installation services associated with its collocated equipment. SWBT will not require BCI to use SWBT's internal engineering or installation work forces for the engineering and installation of BCI's collocated equipment.
- 12.5 SWBT will provide adequate lighting, ventilation, power, heat, air conditioning, and other environmental conditions for BCI's space and equipment using the same standards that SWBT uses for those elements for its own similar space and equipment, or using other

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a part of the Collocated Space, even if nailed, screwed otherwise fastened to the Collocated Space, but shall retain their status as personality and may be removed by BCI at any time. Any damage caused to the Collocated Space by the removal of such property shall be promptly repaired by BCI at its expense.

- 13.7 In no case shall BCI or any person purporting to be acting through or on behalf of BCI make any rearrangement, modification, improvement, addition, repair, or other alteration to Collocated Space or the Eligible Structure without the advance written permission and direction of SWBT, which permission and direction will not be unreasonably withheld. SWBT will consider a modification, improvement, addition, repair, or other alteration requested by BCI, provided that SWBT will have the right to reject or modify any such request to the extent permitted by law. The cost of any such construction shall be paid by BCI in accordance with SWBT's then-standard custom work order process.

14.0 **Standards**

- 14.1 This Appendix and the physical collocation provided hereunder is made available subject to and in accordance with the standards set forth in (i) Bellcore Network Equipment Building System (NEBS) Generic Requirements (GR-63-CORE and GR-1089-CORE), as may be amended at any time and from time to time, and any successor documents; (ii) SWBT's Emergency Operating Procedures, as may be amended from time to time; and (iii) any statutory and/or regulatory requirements in effect at the execution of this Agreement or that subsequently become effective and then when effective. BCI shall strictly observe and abide by the standards set forth in each; SWBT shall strictly observe and abide by the standards set forth in SWBT's Emergency Operating Procedures and the statutory and/or regulatory requirements referenced above. BCI acknowledges the standards set forth in SWBT's publications entitled "Interconnector's Technical Publication for Physical Collocation" dated February 1997 and "Technical Publication 76300, Installation Guide," and BCI will follow those publications, except as those publications are modified by this Appendix. In the event of any inconsistency between this Appendix and SWBT's "Interconnector's Technical Publication for Physical Collocation" and "Technical Publication 76300, Installation Guide," and any revision of the foregoing publications (whether or not objected to by BCI), this Appendix will control.
- 14.2 **The Parties have already resolved BCI's objections** to any of the provisions in SWBT's "Interconnector's Technical Publication for Physical Collocation," "Technical Publication 76300, Installation Guide," or SWBT's Emergency Operating Procedures.
- 14.3 Any revision to SWBT's Technical Publication for Physical Collocation, its Technical Publication 76300, or its Emergency Operating Procedures shall become effective and thereafter applicable under this Appendix thirty (30) days after such revision is released by SWBT. At BCI's discretion, BCI may pursue objections to these revisions informally with

SWBT or with the State Commission, or may invoke the applicable dispute resolution provisions of this Agreement. Notwithstanding the foregoing, any revision made to address situations potentially harmful to SWBT's network, the Eligible Structure, or the Collocated Space, or to comply with statutory and/or regulatory requirements shall become effective immediately. SWBT will immediately notify BCI of any such revisions, and BCI may object to those revisions in the manner and with the effect specified in this section 14.3.

- 14.4 BCI warrants and represents that all equipment or facilities placed in an Eligible Structure shall be in compliance with this Appendix.

15.0 Responsibilities of the Parties

- 15.1 BCI and SWBT each are responsible for providing to the other's personnel a contact number for technical personnel who are reasonably accessible 24 hours a day, 7 days a week and who are knowledgeable regarding the technical implementation of the collocation provided for in the particular Eligible Structure.
- 15.2 BCI and SWBT are each responsible for providing trouble report upon request from the other.
- 15.3 BCI is responsible for bringing the transmission media permitted by Section 11.1 to the points of entry to the Eligible Structure designated by SWBT, and for leaving sufficient cable length in order for SWBT to fully extend the BCI-provided cable through the cable vault to the Dedicated Collocated Space. The cost of extending the cable to the Dedicated Collocation Space will be identified in the estimated price quotation. SWBT shall base the cost upon the loaded labor rate multiplied by the number of work hours required to perform the task and other charges that may be appropriate and specific to the work project in question.
- 15.4 Upon reasonable notice to SWBT, SWBT will fully extend the BCI-provided cable through the cable vault to the Collocated Space on the same day that BCI brings the BCI-provided cable to the points of entry to the Eligible Structure designated by SWBT. While performing this operation, SWBT will be liable for any damage to the BCI-provided cable that results from the placing operation. As used in this section, "same day" means same business day, provided that BCI makes cables available at the points of entry to the Eligible Structure designated by SWBT by noon; otherwise, "same day" means the same time that the cable is made available on the next business day.
- 15.5 BCI is responsible for removing any equipment, property or other items that it brings into the Dedicated Collocated Space or any other part of the Eligible Structure. If BCI fails to remove any equipment, property, or other items from the Dedicated Collocated Space

within thirty (30) days after discontinuance of use, SWBT may perform the removal and shall charge BCI on a time and materials basis applicable to custom work. Further, in addition to the other provisions herein, BCI shall indemnify and hold SWBT harmless from any and all claims, expenses, fees, or other costs associated with any such removal by SWBT.

- 15.6 BCI is solely responsible for the design, engineering, testing, performance, and maintenance of the equipment and facilities used by BCI in the Dedicated Collocated Space. BCI will be responsible for servicing, supplying, repairing, installing and maintaining the following facilities within the Dedicated Collocated Space: (a) its fiber optic, coaxial, or copper cable(s), as applicable; (b) its equipment; (c) optional point of termination cross connects in its Dedicated Collocation Space or the optional POT Frame/cabinet located in the collocation common area except if on SWBT's equipment; (d) any requested dedicated point of termination maintenance, including replacement of fuses and circuit breaker restoration, to the extent such fuses and circuit breakers are within BCI's Dedicated Collocation Space or in the optional POT Frame/cabinet located in the collocation common area if and as required; (e) the connection cable and associated equipment which may be required within the Dedicated Collocation Space to or in the optional POT Frame/cabinet located in the collocation common area to the point(s) of termination of that cable within BCI's Dedicated Collocation Space; and (f) any power cables required beyond the SWBT provided Collocation Interconnection Power Panel (CIPP) to BCI's equipment. SWBT must always engineer, furnish and install the Collocation Interconnect Power Panel (CIPP) within BCI-provided equipment bay, the associated power cables to the CIPP from the SWBT provided power distribution source and terminate and test the power cables. The CIPP will be placed within BCI-provided equipment bay in a location within the bay as designated by BCI.
- 15.7 BCI and SWBT each are responsible for immediate verbal notification to the other of significant outages or operations problems which could impact or degrade the other's network, switches, or services, and for providing an estimated clearing time for restoral. In addition, written notification must be provided within twenty-four (24) hours.
- 15.8 BCI and SWBT are each responsible for coordinating with the other to ensure that services are installed in accordance with the service request.
- 15.9 BCI is responsible for testing to identify and clear a trouble when the trouble has been isolated to a BCI-provided facility or piece of equipment. SWBT is responsible for testing to identify and clear a trouble when the trouble has been isolated to an SWBT-facility or piece of equipment.
- 16.0 **Services, Utilities, Maintenance, and Facilities**

- 16.1 SWBT shall maintain for the Eligible Structure customary building services and utilities (excluding telephone facilities), including janitor and elevator services, 24 hours a day. BCI shall be permitted a single-line business telephone service for the Collocated Space. If technically feasible for BCI in the Collocated Space, BCI may provide its own telephone service; otherwise, SWBT will provide that service subject to applicable SWBT tariffs. Upon BCI's request, such SWBT service shall be available at the BCI Collocated Space on the day that the space is turned over to BCI by SWBT.
- 16.2 SWBT will provide negative DC and AC power, back-up power, heat, air conditioning and other environmental support necessary for BCI's equipment, in the same manner that it provides such support items for its own equipment within its Eligible Structures. Collocator is not permitted to, and will not, place any AC or DC power-generating or power-storing devices (including, for example, rectifiers, battery plants, AC or DC generators) in the Eligible Structure. Power will support Collocator Telecom Equipment at the specified DC and AC voltages. At a minimum, the Power and SWBT's associated performance, availability, restoration, and other operational characteristics shall be at parity with that provided to SWBT's substantially similar telecommunications equipment unless otherwise mutually agreed in writing. All necessary Power will be supplied on a timely basis. A physical collocation space will be considered timely delivered only if it is fully operational, including power, at the time it is turned over to Collocator. The use of at least one Collocation Interconnect Power Panel (CIPP) will be required with each application. This panel will provide a location for DC power terminations in all physical collocation arrangements. This panel will reside within one of Collocator's equipment bays within their designated space.
- 16.3 SWBT shall maintain the exterior of the Eligible Structure and grounds, and all entrances, stairways, passageways, and exits used by BCI to access the Collocated Space.
- 16.4 SWBT agrees to make, at its expense, all changes and additions to the Eligible Structure required by laws, ordinances, orders or regulations of any municipality, county, state, or other public authority including the furnishing of required sanitary facilities and fire protection facilities, except fire protection facilities specially required because of the installation of telephone or electronic equipment and fixtures in the Collocated Space.
- 17.0 Quiet Enjoyment**
- 17.1 Subject to the other provisions of this Appendix, SWBT covenants that it has full right and authority to permit the use of the Collocated Space by BCI and that, so long as BCI performs all of its obligations under this Appendix, BCI may peaceably and quietly enjoy the Collocated Space during the term of this Appendix.
- 18.0 Assignment**

18.1 BCI may permit, with the written approval of SWBT any third party to jointly occupy BCI's Collocated Space for the purposes of interconnecting with the SWBT network and/or UNEs. Such approval of SWBT will not be unreasonably withheld. In such instance, BCI will retain its obligation to pay a monthly charge to SWBT for the Collocated Space. BCI may interconnect with other collocators at the same Eligible Structure, in accord with Section 4.2 above.

19.0 Casualty Loss

19.1 If the Collocated Space is damaged by fire or other casualty, and the Collocated Space is not rendered untenable in whole or in part, SWBT shall repair the Collocated Space at its expense (as hereafter limited) and the Monthly Charge will not be abated.

19.2 If the Collocated Space is damaged by fire or other casualty, and the Collocated Space is rendered untenable in whole or in part and such damage or destruction can be repaired within a reasonable time, SWBT has the option to repair the Collocated Space at its expense (as hereafter limited) and the Monthly Charge shall be abated while BCI is deprived of use of the Collocated Space. If the Collocated Space cannot be repaired within a reasonable time, or SWBT opts not to rebuild, then the collocation arrangement with respect to that Collocated Space will terminate. Upon BCI's written request, SWBT will provide to BCI a comparable suitable collocation arrangement at another mutually agreeable location.

19.3 Any obligation on the part of SWBT to repair the Collocated Space shall be limited to repairing, restoring, and rebuilding the Collocated Space as prepared by SWBT for BCI and shall not include any obligation to repair, restore, rebuild or replace any alterations or improvements made by BCI or by SWBT on request of BCI; or any fixture or other equipment installed in the Collocated Space by BCI or by SWBT on request of BCI. The limitation contained in this section will not apply to any damage resulting from intentional misconduct or a negligent act or omission by SWBT, its employees, or agents.

19.4 In the event that an Eligible Structure is so damaged by fire or other casualty that closing, demolition, or substantial alteration or reconstruction of that Eligible Structure shall be advisable in SWBT's opinion, then, notwithstanding that any particular Collocated Space in the same Eligible Structure may not be damaged, SWBT, at its option, may terminate the collocation arrangement with respect to a Collocated Space in the same Eligible Structure by giving BCI ten (10) days prior written notice within thirty (30) days following the date of such occurrence.

20.0 Re-entry

- 20.1 If BCI materially breaches any of its obligations under this Appendix with respect to a particular Collocated Space, and the breach shall continue for forty-five (45) days after BCI's receipt of written notice of breach, SWBT may, immediately or at any time thereafter, without notice or demand, enter and repossess that particular Collocated Space, expel BCI and any person or entity claiming under BCI, remove BCI's property, forcibly if necessary, and terminate the collocation arrangement with respect to that particular Collocated Space, without prejudice to any other remedies SWBT might have. SWBT must notify BCI by facsimile that it has repossessed a Collocated Space within twenty-four (24) hours of its repossession of that Collocated Space. Thereafter, until the breach is cured or otherwise resolved by the parties, SWBT may also refuse additional applications for collocation and/or refuse to complete any pending orders for additional space by BCI in the Eligible Structure where that Collocated Space is located.
- 20.2 If BCI is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, SWBT may, immediately or at any time thereafter, without notice or demand, enter and repossess any and all Collocated Spaces, expel BCI and any person or entity claiming under BCI, remove BCI's property, forcibly if necessary, and terminate all collocation arrangements with respect to those Collocated Spaces, without prejudice to any other remedies SWBT might have. SWBT must notify BCI by facsimile that it has repossessed a Collocated Space within twenty-four (24) hours of its repossession of that Collocated Space. SWBT may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service by BCI at any time thereafter.
- 20.3 SWBT may refuse requests for additional space in Eligible Structures if BCI is in material breach for forty-five days or more of this Appendix, including BCI's owing any past due charges hereunder. In any and each such event, BCI hereby releases and shall hold SWBT harmless from any duty to negotiate with BCI or any of its affiliates for any additional space or physical collocations.
- 21.0 SWBT's Right of Access**
- 21.1 SWBT, its agents, employees, and other SWBT-authorized persons shall have the right to enter Collocated Space at any reasonable time on three days advance notice of the time and purpose of the entry to examine its condition, make repairs required to be made by SWBT hereunder, and for any other purpose deemed reasonable by SWBT. SWBT may access the Collocated Space for purpose of averting any threat of harm imposed by BCI or its equipment or facilities upon the operation of SWBT equipment, facilities and/or personnel located outside of the Collocated Space; in such case, SWBT will immediately notify BCI by telephone of that entry and will leave written notice of entry in the Collocated Space. If routine inspections are required, they shall be conducted at a mutually agreeable time.

22.0 Limitation of Liability

22.1 Limitation of liability provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions portion of this Agreement.

22.2 BCI acknowledges and understands that SWBT may provide space in or access to its Eligible Structures to other persons or entities (Others), which may include competitors of BCI; that such space may be close to the Collocated Space, possibly including space adjacent to the Collocated Space and/or with access to the outside of the Collocated Space; and that any cage around the Collocated Space is a permeable boundary that will not prevent the Others from observing or even damaging BCI's equipment and facilities.

23.0 Indemnification

23.1 Indemnification provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions Portion of the Agreement.

24.0 Dispute Resolution

24.1 Except as otherwise provided herein, all disputes arising under this Appendix will be resolved in accordance with the dispute resolution procedures set forth in the General Terms and Conditions portion of this Agreement.

25.0 Insurance

25.1 BCI shall, at its sole cost and expense procure, maintain, pay for and keep in force the insurance coverage specified below and any additional insurance and/or bonds required by law and underwritten by insurance companies having a BEST Insurance rating of A+VII or better, and which are authorized to do business in the state of Missouri. SWBT shall be named as an ADDITIONAL INSURED on BCI's general liability policy. BCI may meet the insurance coverage requirements specified below utilizing its captive insurer or by establishing that it is authorized under the laws of the state of Missouri to self-insure for any of the coverage requirements specified below.

25.2 BCI shall maintain Comprehensive General Liability insurance including Products/Completed Operations Liability insurance including the Broad Form Comprehensive General Liability endorsement (or its equivalent(s)) with a Combined Single limit for Bodily Injury and Property Damage of \$1,000,000. Said coverage shall include the contractual, independent contractors products/completed operations, broad form property, personal injury and fire legal liability.

- 25.3 BCI shall maintain, if use of an automobile is required or if BCI is provided or otherwise allowed parking space by SWBT in connection with this Appendix, automobile liability insurance with minimum limits of \$1 million each accident for Bodily Injury, Death and Property Damage combine. Coverage shall extend to all owned, hired and non-owned automobiles. BCI hereby waives its rights of recovery against SWBT for damage to BCI's vehicles while on the grounds of the Eligible Structure and BCI will hold SWBT harmless and indemnify it with respect to any such damage or damage to vehicles of BCI's employees, contractors, invitees, licensees or agents.
- 25.4 BCI shall maintain Workers' Compensation insurance with benefits afforded in accordance with the laws of the state of Missouri.
- 25.5 BCI shall maintain Employer's Liability insurance with minimum limits of \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease per employee and \$500,000 for bodily injury by disease policy aggregate.
- 25.6 BCI shall maintain Umbrella/Excess liability coverage in an amount of \$5 million excess of coverage specified above.
- 25.7 BCI shall maintain all Risk Property coverage on a full replacement cost basis insuring all of BCI's personal property situated on or within the Eligible Structure or the Collocated Space. BCI releases SWBT from and waives its right of recovery, claim, action or cause of action against SWBT, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to BCI or located on or in the space at the instance of BCI by reason of fire or water or the elements or any other risks would customarily be included in a standard all risk property insurance policy covering such property, regardless of cause or origin, including negligence of SWBT, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on BCI's fixtures and other personal property shall contain a waiver of subrogation against SWBT, and any rights of BCI against SWBT for damage to BCI's fixtures or personal property are hereby waived.
- 25.8 SWBT has no liability for loss of profit or revenues should an interruption of service occur.
- 25.9 The limits set forth above may be increased by SWBT from time to time during the term of occupancy to at least such minimum limits as shall then be customary in respect of comparable situations within the existing SWBT Eligible Structures.
- 25.10 All policies purchased by BCI shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by SWBT.

- 25.11 All insurance must be in effect on or before occupancy date and shall remain in force as long as any of BCI's facilities or equipment remains within the Collocated Space or the Eligible Structure. If BCI fails to maintain the coverage, SWBT may pay the premiums thereon and, if so, shall be reimbursed by BCI.
- 25.12 BCI shall submit certificates of insurance and copies of policies reflecting the coverages specified above prior to the commencement of the work called for in this Appendix. BCI shall arrange for SWBT to receive thirty (30) days advance written notice from BCI's insurance company(ies) of cancellation, non-renewal or substantial alteration of its terms.
- 25.13 BCI must also conform to the recommendation(s) made by SWBT's Property Insurance Company, which BCI has already agreed to or to such recommendations as it shall hereafter agree to. With respect to recommendations for which SWBT seeks BCI's agreement, SWBT will provide BCI copies of recommendations and compliance requirements by its Property Insurer for BCI's review.
- 25.14 Failure to comply with the provisions of this section will be deemed a material violation of this Appendix.

26.0 Miscellaneous

- 26.1 If BCI constitutes more than one person, partnership, corporation, or other legal entities, the obligation of all such entities under this Appendix is joint and several.
- 26.2 This Appendix may not be modified by the Parties except by a subsequent written document executed by the Parties.
- 26.3 Whenever this Appendix requires the consent of a party, any request for such consent shall be in writing.
- 26.4 Neither party shall be deemed to have waived or impaired any right, authority, or option reserved by this Appendix (including the right to demand exact compliance with every term, condition and covenant herein, or to declare any breach hereof to be a default and to terminate this Appendix prior to the expiration of its term), by virtue of any custom or practice of the parties at variance with the terms hereof or any failure, refusal or neglect to exercise any right under this Appendix or to insist upon exact compliance by the other with its obligations hereunder, including any rule or procedure, or any waiver, forbearance, delay, failure or omission by SWBT to exercise any right, power or option, whether of the same, similar or different nature, with respect to one or more other collocators.

- 26.5 No remedy herein conferred upon is intended to be exclusive of any other remedy in equity, provided by law, or otherwise, but each shall be in addition to every other such remedy.
- 26.6 The BCI and all persons acting through or on behalf of BCI shall comply with the provisions of the Fair Labor Standards Act, the Occupational Safety and Health Act, and all other applicable federal, state, county, and local laws, ordinances, regulations and codes (including identification and procurement of required permits, certificates, approvals and inspections) in its performance hereunder.
- 27.0 Applicability Of Other Rates, Terms and Conditions**
- 27.1 This appendix, and every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement or any other appendices or attachments to this Agreement which are legitimately related to such interconnection, service or network element; and all such rates, terms and conditions are incorporated by reference herein and as part of every interconnection, service and network element provided hereunder.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed and delivered this Agreement as of the day and year first above written.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT.

**BROADSPAN COMMUNICATIONS, INC.
DBA PRIMARY NETWORK
COMMUNICATIONS**

**SOUTHWESTERN BELL TELEPHONE
COMPANY**

Signature: _____

Signature: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____

Title: President - Industry Markets

Date: _____

Date: _____