

applicable to all traffic in that state exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to the extent they are ordered by Intervening Law, to apply uniformly to all traffic among AT&T-13STATE, CLEC and Commercial Mobile Radio Service (CMRS) carriers in the state where traffic is exchanged as Local Calls within the meaning of this Appendix.

- 4.2.2 The Parties further acknowledge that federal or state court challenges could be sustained against the FCC's ISP Compensation Order in particular, or against ISP intercarrier compensation generally. In particular, a court could order an injunction, stay or other retroactive ruling on ISP compensation back to the effective date of the FCC's ISP Compensation Order. Alternatively, a court could vacate the underlying Order upon which the compensation was based, and the FCC (either on remand or on its own motion) could rule that past traffic should be paid at different rates, terms or conditions. Because of these possibilities, the Parties agree that should the ISP Compensation Order be modified or reversed in such a manner that prior intercarrier compensation was paid under rates, terms or conditions later found to be null and void, then the Parties agree that, in addition to negotiating appropriate amendments to conform to such modification or reversal, the Parties will also agree that any billing true ups, reimbursements, or other accounting adjustments on past traffic shall be made uniformly and on the same date as for all traffic exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to apply to all traffic among AT&T-13STATE, CLEC, and CMRS carriers in the state where traffic is exchanged as Local Calls within the meaning of this Appendix.
- 4.3 In AT&T-12STATE the rates, terms and conditions for compensation of Section 251(b)(5) Traffic, as defined in Section 4.1 and ISP-Bound Traffic, as defined in Section 5.1 will be compensated at the FCC's interim ISP terminating compensation rate as set forth in Section 5.3.2 below in a specific state on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in a particular state. The Parties acknowledge that AT&T-12STATE has made such offer in its respective states of (i) Indiana, Ohio, Texas and Wisconsin effective on and after June 1, 2003; (ii) Arkansas and Michigan effective on and after July 6, 2003; (iii) California effective on and after August 1, 2003; (iv) Illinois effective on and after September 1, 2003; and (v) Kansas, Missouri, Oklahoma and Nevada on and after June 1, 2004. Until and unless AT&T CONNECTICUT chooses to offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic on and after a designated date pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan, the compensation set forth below in Section 4 will apply to all Section 251(b)(5) Traffic and ISP-Bound Traffic as for that particular state.
- 4.4 In instances where the originating carrier is originating telecommunications traffic over its own facilities, (i.e., not leased or purchased from AT&T-13STATE), the following tandem serving rate elements are applicable on a terminating MOU basis and includes compensation for the following sub-elements:
- 4.4.1 Tandem Switching - compensation for the use of tandem switching only consisting of a duration (per minute) rate element.
- 4.4.2 Tandem Transport - compensation for the transmission of traffic between the local tandem and the end offices subtending that tandem consisting of a transport termination (per minute) rate element and transport facility mileage (per minute, per mile) rate element.
- 4.4.3 End Office Switching in a Tandem Serving Arrangement - compensation for the local end office switching and line termination necessary to complete the transmission in a tandem-served arrangement. It consists of a call set-up rate (per message) and a call duration (per minute) rate.
- 4.5 In instances where the originating carrier is originating telecommunications traffic over its own facilities, (i.e., not leased or purchased from AT&T-13STATE), the following end office switching rate elements are applicable on a terminating MOU basis::
- 4.5.1 End Office Switching - compensation for the local end office switching and line termination necessary to complete the transmission in an end office serving arrangement. It consists of a call set-up rate (per message) and a call duration (per minute) rate.

- 4.6 CLEC shall only be paid End Office Serving Rate Elements.
- 4.7 Intercarrier Compensation for Wholesale Local Switching Traffic
- 4.7.1 Where CLEC purchases local switching from AT&T-12STATE on a wholesale basis, CLEC will deal directly with third party carriers for purposes of reciprocal compensation for calls originated by or terminated to the End Users served by such arrangements. AT&T-12STATE is required to provide CLEC with timely, complete and correct information to enable CLEC to meet the requirements of this section.
- 4.7.2 The following reciprocal compensation terms shall apply to all traffic exchanged between AT&T-12STATE and CLECs when CLEC purchases local switching from AT&T-12STATE on a wholesale basis:
- 4.7.2.1 For intra-switch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between AT&T-12STATE and CLEC, the Parties agree to impose no call termination charges pertaining to reciprocal compensation on each other.
- 4.7.2.2 For interswitch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between AT&T-12STATE and CLEC where CLEC's End User originates a call that is terminated to a AT&T-12STATE End User, such traffic shall be paid for reciprocally at the FCC Plan rate set forth in Section 5.3.2 for the transport and termination of Section 251(b)(5) Traffic, and ISP-Bound Traffic.
- 4.7.3 In AT&T CONNECTICUT, when CLEC purchases local switching from AT&T CONNECTICUT on a wholesale basis to provide service to its End Users, AT&T CONNECTICUT will be solely responsible for compensating the terminating third party carrier for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from CLEC's End Users. When CLEC purchases local switching from AT&T CONNECTICUT on a wholesale basis, CLEC can not seek intercarrier compensation from AT&T CONNECTICUT for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from either an AT&T CONNECTICUT End User or a third party carrier's End User.

## 5. **RATES, TERMS AND CONDITIONS OF FCC'S INTERIM ISP TERMINATING COMPENSATION PLAN**

- 5.1 In accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April, 27, 2001) ("FCC ISP Compensation Order"), "ISP-Bound Traffic" shall mean telecommunications traffic exchanged between CLEC and AT&T-13STATE in which the originating End User of one Party and the ISP served by the other Party are:
- both physically located in the same ILEC Local Exchange Area as defined by the ILEC's Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or
  - both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS) or other types of mandatory expanded local calling scopes.

In states in which AT&T-13STATE has offered to exchange Section 251(b)(5) Traffic and ISP-Bound traffic pursuant to the FCC's interim ISP terminating compensation plan set forth in the FCC ISP Compensation Order, traffic is presumed to be ISP-Bound Traffic in accordance with the rebuttable presumption set forth in Section 5.4 of this Appendix.

- 5.2 The Parties hereby agree that the following rates, terms and conditions set forth in Section 5 shall apply to the termination of all Section 251(b)(5) Traffic and all ISP-Bound Traffic exchanged between the Parties in each of the applicable state(s) AT&T-13STATE has made an offer as described in Section 4 above

effective on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in the particular state and all ISP-Bound Traffic is subject to the rebuttable presumption.

**5.3 Intercarrier Compensation for all ISP-Bound Traffic and Section 251(b)(5) Traffic**

5.3.1 The rates, terms, and conditions in Section 5 apply to the termination of all Section 251(b)(5) Traffic as defined in Section 4.1 and ISP-Bound Traffic as defined in Section 5.1 and ISP-Bound Traffic is subject to the rebuttable presumption.

5.3.2 The Parties agree to compensate each other for the transport and termination of all Section 251(b)(5) and ISP-Bound Traffic and traffic on a minute of use basis, at \$.0007 per minute of use.

5.3.3 Payment of Intercarrier Compensation on ISP-Bound Traffic and Section 251(b)(5) Traffic will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch.

**5.4 ISP-Bound Traffic Rebuttable Presumption**

5.4.1 In accordance with Paragraph 79 of the FCC's ISP Compensation Order, the Parties agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties exceeding a 3:1 terminating to originating ratio is presumed to be ISP-Bound Traffic subject to the compensation terms in this Section 5.4. Either Party has the right to rebut the 3:1 ISP-Bound Traffic presumption by identifying the actual ISP-Bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to Section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission approval. During the pendency of any such proceedings to rebut the presumption, the Parties will remain obligated to pay the rates set forth in Section 5.3.2 for Section 251(b)(5) Traffic and ISP-Bound Traffic.

5.5 For purposes of this Section 5.5, all Section 251(b)(5) Traffic and all ISP-Bound Traffic shall be referred to as "Billable Traffic" and will be billed in accordance with Section 13.0 below.

5.5.1 Each party will invoice the other party on a monthly basis for combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties at the rate set forth in Section 5.3.2.

**6. OTHER TELECOMMUNICATIONS TRAFFIC**

6.1 Except as set forth in Section 5 above, the terms of this appendix are not applicable to (i) interstate or intrastate Exchange Access traffic, (ii) Information Access traffic, or (iii) any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission, with the exception of ISP-Bound Traffic which is addressed in this Appendix. All Exchange Access traffic and IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

6.2 Foreign Exchange (FX) services are retail service offerings purchased by FX customers which allow such FX customers to obtain exchange service from a mandatory local calling area other than the mandatory local calling area where the FX customer is physically located, but within the same LATA as the number that is assigned. FX service enables particular end-user customers to avoid what might otherwise be toll calls between the FX customer's physical location and customers in the foreign exchange. FX Telephone Numbers" are those telephone numbers with rating and routing point that are different from those of the geographic area in which the End User is physically located. FX Telephone Numbers that deliver second dial tone and the ability for the calling party to enter access codes and an additional recipient telephone number remain classified as Feature Group A (FGA) calls, and are subject to the originating and terminating carrier's tariffed Switched Exchange Access rates (also known as "Meet Point Billed" compensation). There are two types of FX service:

6.2.1 "Dedicated FX Traffic" shall mean those calls routed by means of a physical, dedicated circuit delivering dial tone or otherwise serving an End User's station from a serving Central Office (also

known as End Office) located outside of that station's mandatory local calling area. Dedicated FX Service permits the End User physically located in one exchange to be assigned telephone numbers resident in the serving Central (or End) Office in another, "foreign," exchange, thereby creating a local presence in that "foreign" exchange.

- 6.2.2 "Virtual Foreign Exchange (FX) Traffic" and "FX-type Traffic" shall refer to those calls delivered to telephone numbers that are rated as local to the other telephone numbers in a given mandatory local calling area, but where the recipient End User's station assigned that telephone number is physically located outside of that mandatory local calling area. Virtual FX Service also permits an End User physically located in one exchange to be assigned telephone numbers resident in the serving Central (or End) Office in another, "foreign," exchange, thereby creating a local presence in the "foreign" exchange. Virtual FX Service differs from Dedicated FX Service, however, in that Virtual FX End Users continue to draw dial tone or are otherwise served from a Central (or End) Office which may provide service across more than one Commission-prescribed mandatory local calling area, whereas Dedicated FX Service End Users draw dial tone or are otherwise served from a Central (or End) Office located outside their mandatory calling area.
- 6.2.3 FX Traffic is not Section 251(b)(5) Traffic and instead the transport and termination compensation for FX Traffic is subject to a Bill and Keep arrangement in AT&T-12STATE.
  - 6.2.3.1 To the extent that ISP-Bound Traffic is provisioned via an FX-type arrangement, such traffic is subject to a Bill and Keep arrangement. "Bill and Keep" refers to an arrangement in which neither of two interconnecting parties charges the other for terminating FX traffic that originates on the other party's network.
- 6.2.4 Intentionally left blank
- 6.2.5 Pursuant to the Connecticut Commission Arbitration Award in Docket. 01-01-29RE01, the originating Party will bill the terminating Party the appropriate originating access charges for all traffic, except ISP-Bound Traffic, that is terminated to a number that is provisioned as a Virtual FX, Dedicated FX or FX-type service as defined in Section 6.2 above in AT&T CONNECTICUT. In such circumstances, for ISP-Bound Traffic the appropriate compensation mechanism is bill and keep.
- 6.2.6 Segregating and Tracking FX Traffic
  - 6.2.6.1 For AT&T-12STATE, the terminating carrier is responsible for separately identifying IntraLATA Virtual FX, Dedicated FX, and FX-type Traffic from other types of Inter-carrier traffic for compensation purposes. The terminating carrier will be responsible for providing the originating carrier with an FX Usage Summary which includes a ten (10) digit telephone number level detail of the minutes of use terminated to FX Telephone Numbers on its network each month (or in each applicable billing period, if not billed monthly), or by any means mutually agreed by the Parties.
  - 6.2.6.2 Terminating carrier will not assess compensation charges to the Voice FX MOU and ISP FX MOU in AT&T-12STATE.
  - 6.2.6.3 Intentionally left blank
  - 6.2.6.4 For AT&T CONNECTICUT, FX traffic must be identified as voice FX and ISP FX. AT&T CONNECTICUT will work with CLEC in reviewing its data to determine the volume of IntraLATA FX traffic being exchanged for an agreed-upon period of time. The parties may agree to use traffic studies, retail sales of Dedicated FX lines, or any other agreed method of estimating the FX traffic to be assigned a factor. Once the data review is completed, the Parties will estimate the percentage of minutes of use that is attributable to FX traffic. For AT&T CONNECTICUT ISP FX percentage will be assigned ("PIFX") and voice FX percentage will be assigned ("PVFX"). The PIFX and PVFX ("FX factor") will be used in lieu of providing the actual minutes of use data. This plan will be applied on an individual CLEC basis.

6.2.6.4.1 The FX factor will be applied to the measured local usage minutes of use ("MOU") and result in the following billing adjustments:

- (i) Terminating carrier will multiply the measured local MOU by the FX factor to calculate the IntraLATA FX traffic.
- (ii) Terminating carrier will subtract both the voice FX MOU and ISP FX MOU from the measured local MOU.
- (iii) Terminating carrier will apply the appropriate compensation rate to the adjusted local MOU for Section 251(b)(5) Traffic, and ISP-Bound Traffic, as set forth in Section 5.3.2 above.
- (iv) Terminating carrier will not assess compensation charges to the ISP FX MOU in AT&T CONNECTICUT where such traffic is subject to a Bill and Keep Arrangement.
- (v) Originating carrier will apply the appropriate originating access charges only to the Voice FX MOU in AT&T CONNECTICUT.

6.2.6.4.2 The FX factor may be adjusted by the Parties on a quarterly basis.

6.2.6.5 Either Party may request an audit of the FX Usage Summary or the FX Factor on no fewer than thirty (30) business day's written notice and any audit shall be accomplished during normal business hours at the office of the Party being audited. Such audit must be performed by a mutually agreed-to auditor paid for by the Party requesting the audit. Such audits shall be requested within six months of having received the FX Usage Summary or the FX Factor and associated usage from the other Party and may not be requested more than twice per year, once per calendar year, unless the audit finds there has been a 20% or higher net error or variance in calculations, in which case a subsequent audit is required. Based upon the audit, previous compensation, billing and/or settlements will be adjusted for the past six (6) months.

6.2.6.5.1 If the FX factor is adjusted based upon the audit results, the adjusted FX factor will apply for the six (6) month period following the completion of the audit. If, as a result of the audit, either Party has overstated the FX factor or underreported the FX Usage by twenty percent (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit and will pay for the cost of a subsequent audit which is to happen within nine (9) months of the initial audit.

6.3 Private Line Services include private line-like and special access services and are not subject to intercarrier compensation. Private Line Services are defined as a digital point-to-point connection that provides a dedicated circuit of pre-subscribed bandwidth between any two points. Private Line Services are used to consolidate communications over one line for voice, data, video and multimedia.

6.4 The Parties recognize and agree that ISP and Internet traffic (excluding ISP-Bound Traffic as defined in Section 5.1) could also be exchanged outside of the applicable local calling scope, or routed in ways that could make the rates and rate structure in Sections 4 and 5 above not apply, including but not limited to ISP calls that fit the underlying Agreement's definitions of:

- FX Traffic
- Optional EAS Traffic
- IntraLATA Toll Traffic
- 800, 888, 877, ("8YY") Traffic
- Feature Group A Traffic
- MCA Traffic

6.5 The Parties agree that, for the purposes of this Appendix, either Party's End Users remain free to place ISP calls under any of the above classifications. Notwithstanding anything to the contrary herein, to the extent such ISP calls are placed, the Parties agree that Sections 4 and 5 above do not apply. The applicable

rates, terms and conditions for: (a) FX Traffic are set forth in Section 6.2; (b) Optional EAS Traffic are set forth in Section 7; (c) 8YY Traffic are set forth in Section 10; (d) Feature Group A Traffic are set forth in Section 6.2; (e) IntraLATA Toll Traffic are set forth in Section 12; and/or (f) MCA Traffic are set forth in Section 8.

## **7. OPTIONAL CALLING AREA TRAFFIC – AT&T ARKANSAS, AT&T KANSAS AND AT&T TEXAS**

- 7.1 Compensation for Optional Calling Area (OCA) Traffic, (also known as Optional Extended Area Service and Optional EAS) is for the termination of intercompany traffic to and from the Commission approved one-way or two-way optional exchanges(s) and the associated metropolitan area, except mandatory extended traffic as addressed in Sections 4.1 and 5.1 above. The transport and termination rate applies when AT&T ARKANSAS, AT&T KANSAS or AT&T TEXAS transports traffic and terminates it at its own switch.
- 7.2 In the context of this Appendix, Optional Calling Areas (OCAs) exist only in the states of Arkansas, Kansas and Texas, and are outlined in the applicable state Local Exchange tariffs. This rate is independent of any retail service arrangement established by either Party. CLEC and AT&T ARKANSAS, AT&T KANSAS and AT&T TEXAS are not precluded from establishing its own local calling areas or prices for purposes of retail telephone service; however the terminating rates to be used for any such offering will still be administered as described in this Appendix.
- 7.3 The state specific OCA Transport and Termination rates are outlined in Appendix Pricing.

## **8. MCA TRAFFIC -- AT&T MISSOURI**

- 8.1 For compensation purposes in the state of Missouri, Section 251(b)(5) Traffic and ISP-Bound Traffic shall be further defined as "Metropolitan Calling Area (MCA) Traffic" and "Non-MCA Traffic." MCA Traffic is traffic originated by a party providing a local calling scope plan pursuant to the Missouri Public Service Commission Orders in Case No. TO-92-306 and Case No. TO-99-483 (MCA Orders) and the call is a Section 251(b)(5) Traffic based on the calling scope of the originating party pursuant to the MCA Orders. Non-MCA Traffic is all Section 251(b)(5) Traffic and ISP-Bound Traffic that is not defined as MCA Traffic.
- 8.1.1 Either party providing Metropolitan Calling Area (MCA) service shall offer the full calling scope prescribed in Case No. TO-92-306, without regard to the identity of the called party's local service provider. The parties may offer additional toll-free outbound calling or other services in conjunction with MCA service, but in any such offering the party shall not identify any calling scope other than that prescribed in Case No. TO-92-306 as "MCA" service.
- 8.1.2 Pursuant to the Missouri Public Service Commission Order in Case No. TO-99-483, MCA Traffic shall be exchanged on a bill-and-keep intercompany compensation basis meaning that the party originating a call defined as MCA Traffic shall not compensate the terminating party for terminating the call.
- 8.2 The parties agree to use the Local Exchange Routing Guide (LERG) to provision the appropriate MCA NXXs in their networks. The LERG should be updated at least forty-five (45) days in advance of opening a new code to allow the other party the ability to make the necessary network modifications. If the Commission orders the parties to use an alternative other than the LERG, the parties will comply with the Commission's final order.
- 8.3 If CLEC provides service via resale or in conjunction with ported numbers in the MCA, the appropriate MCA NXXs will be updated by AT&T SOUTHWEST REGION 5-STATE.

## **9. PRIMARY TOLL CARRIER ARRANGEMENTS**

- 9.1 A Primary Toll Carrier (PTC) is a company that provides IntraLATA Toll Traffic Service for its own End User customers and potentially for a third party ILEC's End User customers. In this ILEC arrangement, the PTC would receive the ILEC End User IntraLATA toll traffic revenues and pay the ILEC for originating these toll calls (originating access and billing & collection charges). The PTC would also pay the terminating access charges on behalf of the ILEC. In those states wherein Primary Toll Carrier arrangements are mandated

and AT&T-13STATE is functioning as the PTC for a third party ILEC's End User customers, the following provisions apply to the IntraLATA toll traffic which is subject to the PTC arrangement:

- (i) AT&T-13STATE shall deliver such IntraLATA toll traffic that originated from that third party ILEC and terminated to CLEC as the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. AT&T-13STATE shall pay the CLEC on behalf of the originating third party ILEC for the termination of such IntraLATA toll traffic at the terminating access rates as set forth in the CLEC's Intrastate Access Service Tariff, but such compensation shall not exceed the compensation contained in the AT&T-13STATE Intrastate Access Service Tariff in the respective state; and/or
- (ii) AT&T-13STATE shall deliver such IntraLATA toll traffic that originated from CLEC and terminated to third party ILEC in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. CLEC shall pay AT&T-13STATE for the use of its facilities at the rates set forth in AT&T-13STATE's Intrastate Access Service Tariff. CLEC shall pay the ILEC for the termination of such traffic originated from CLEC.

## 10. INTRALATA 800 TRAFFIC

- 10.1 The Parties shall provide to each other IntraLATA 800 Access Detail Usage Data for Customer billing and IntraLATA 800 Copy Detail Usage Data for access billing in Exchange Message Interface (EMI) format. On a monthly basis the Parties agree to provide this data to each other at no charge. In the event of errors, omissions, or inaccuracies in data received from either Party, the liability of the Party providing such data shall be limited to the provision of corrected data only. If the originating Party does not send an End User billable record to the terminating Party, the originating Party will not bill the terminating Party any interconnection charges for this traffic.
- 10.2 IntraLATA 800 Traffic calls are billed to and paid for by the called or terminating Party, regardless of which Party performs the 800 query.

## 11. MEET POINT BILLING (MPB) AND SWITCHED ACCESS TRAFFIC COMPENSATION

- 11.1 Intercarrier compensation for Switched Access Traffic shall be on a Meet Point Billing ("MPB") basis as described below.
- 11.2 The Parties will establish MPB arrangements in order to provide Switched Access Services via the respective carrier's Tandem Office Switch in accordance with the MPB guidelines contained in the Ordering and Billing Forum's MECOD and MECAB documents, as amended from time to time.
- 11.3 Billing for the Switched Exchange Access Services jointly provided by the Parties via MPB arrangements shall be according to the multiple bill/single tariff method. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates. The residual interconnection charge (RIC), if any, will be billed by the Party providing the end office function.
- 11.4 The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.
- 11.5 As detailed in the MECAB document, the Parties will exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Access Services traffic jointly handled by the Parties via the Meet Point Billing arrangement. Information shall be exchanged in a mutually acceptable electronic file transfer protocol. Where the EMI records cannot be transferred due to a transmission failure, records can be provided via a mutually acceptable medium. The exchange of Access Usage Records ("AURs") to accommodate MPB will be on a reciprocal, no charge basis. Each Party agrees to provide the other Party with AURs based upon mutually agreed upon intervals.

- 11.6 MPB shall also apply to all jointly provided Switched Access MOU traffic bearing the 900, or toll free NPAs (e.g., 800, 877, 866, 888 NPAs, or any other non-geographic NPAs). The Party that performs the SSP function (launches the query to the 800 database) will bill the 800 Service Provider for this function.
- 11.7 Each Party will act as the Official Recording Company for switched access usage when it is jointly provided between the Parties. As described in the MECAB document, the Official Recording Company for tandem routed traffic is: (1) the end office company for originating traffic, (2) the tandem company for terminating traffic and (3) the SSP company for originating 800 traffic.
- 11.8 AT&T-13STATE and CLEC agree to provide the other Party with notification of any discovered errors in the record exchange process within ten (10) business days of the discovery.
- 11.9 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) consecutive months of prior usage data.

## 12. COMPENSATION FOR ORIGINATION AND TERMINATION OF INTERLATA TRAFFIC

- 12.1 Where a CLEC originates or terminates its own end user InterLATA Traffic not subject to Meet Point Billing, the CLEC must purchase feature group access service from AT&T-13STATE's state or federal access tariffs, whichever is applicable, to carry such InterLATA Traffic.

## 13. INTRALATA TOLL TRAFFIC COMPENSATION

- 13.1 For intrastate IntraLATA Message Telephone Service (MTS) toll traffic, compensation for termination of such traffic will be at terminating access rates. For intrastate IntraLATA 800 Service, compensation for termination of such traffic will be at originating access rates, including the Carrier Common Line (CCL) charge where applicable. The appropriate access rates are set forth in each Party's Intrastate Access Service Tariff, but such compensation shall not exceed the compensation contained in an AT&T-13STATE's tariff in whose exchange area the End User is located.
- 13.2 For interstate IntraLATA MTS toll traffic, compensation for termination of such traffic will be at terminating access rates. For interstate IntraLATA 800 Service, compensation for termination of such traffic will be at originating access rates, including the CCL charge where applicable. The appropriate access rates are set forth in each Party's interstate Access Service Tariff, but such compensation shall not exceed the compensation contained in the AT&T-13STATE's tariff in whose exchange area the End User is located.

## 14. BILLING ARRANGEMENTS FOR TERMINATION OF SECTION 251(b)(5) TRAFFIC, ISP-BOUND TRAFFIC, OPTIONAL EAS TRAFFIC AND INTRALATA TOLL TRAFFIC

- 14.1 In AT&T-13STATE, each Party, unless otherwise agreed, will calculate terminating interconnection minutes of use based on standard switch recordings made within the terminating carrier's network for Section 251(b)(5) Traffic, Optional EAS Traffic, ISP-Bound Traffic and IntraLATA Toll Traffic. These recordings are the basis for each Party to generate bills to the other Party.
- 14.1.1 Where CLEC is using terminating recordings to bill intercarrier compensation, AT&T-12STATE will provide the terminating Category 11-01-XX records by means of the Daily Usage File (DUF) to identify traffic that originates from an End User being served by a third party telecommunications carrier using an AT&T-12STATE non-resale offering whereby AT&T-12STATE provides the end office switching on a wholesale basis. Such records will contain the Operating Company Number (OCN) of the responsible LEC that originated the calls which CLEC may use to bill such originating carrier for MOUS terminated on CLEC's network.
- 14.2 For those usage based charges where actual charge information is not determinable by AT&T-2STATE because the jurisdiction (i.e., intrastate vs. local) or origin of the traffic is unidentifiable, the Parties will jointly develop a Percent Local Usage (PLU) factor in order to determine the appropriate charges PLU is calculated by dividing the Local MOU delivered to a Party for termination by the total MOU delivered to a Party for termination.

- 14.2.1 CLEC and **AT&T-2STATE** agree to exchange such reports and/or data as provided in this Attachment to facilitate the proper billing of traffic. Either Party may request an audit of such usage reports on no fewer than thirty (30) business day's written notice and any audit shall be accomplished during normal business hours at the office of the Party being audited. Such audit must be performed by a mutually agreed-to auditor paid for by the Party requesting the audit. Such audits shall be requested within six months of having received the usage reports from the other Party and may not be requested more than twice per year, once per calendar year for each call detail type unless the audit finds there has been a 20% or higher net error or variance in calculations, in which case a subsequent audit is required. Based upon the audit, previous compensation, billing and/or settlements will be adjusted for the past six (6) months. Also, if the PLU is adjusted based upon the audit results, the adjusted PLU will apply for the six (6) month period following the completion of the audit. If, as a result of the audit, either Party has overstated the PLU or underreported the call detail usage by twenty percent (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit and will pay for the cost of a subsequent audit which is to happen within nine (9) months of the initial audit.
- 14.3 In states in which **AT&T-13STATE** has offered to exchange Section 251(b)(5) Traffic and ISP-Bound traffic pursuant to the FCC's interim ISP terminating compensation plan set forth in the FCC ISP Compensation Order, ISP-Bound Traffic will be calculated using the 3:1 Presumption as set forth in Section 5.4 of this Appendix.
- 14.4 The measurement of minutes of use over Local Interconnection Trunk Groups shall be in actual conversation seconds. The total conversation seconds over each individual Local Interconnection Trunk Group will be totaled for the entire monthly bill and then rounded to the next whole minute.
- 14.5 All ISP-Bound Traffic for a given usage month shall be due and owing at the same time as payments for Section 251(b)(5) under this Appendix. The Parties agree that all terms and conditions regarding disputed minutes of use, nonpayment, partial payment, late payment, interest on outstanding balances, or other billing and payment terms shall apply to ISP-Bound Traffic the same as for Section 251(b)(5) Traffic under this Appendix.
- 14.6 For billing disputes arising from Intercarrier Compensation charges, the party challenging the disputed amounts (the "Non-Paying Party") may withhold payment for the amounts in dispute (the "Disputed Amounts") from the party rendering the bill (the "Billing Party") only for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Late payment charges and interest will continue to accrue on the Disputed Amounts while the dispute remains pending. The Non-Paying Party need not pay late payment charges or interest on the Disputed Amounts for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Upon resolution of the dispute pertaining to the Disputed Amounts in accordance with the dispute resolution provisions of the General Terms and Conditions: (1) the Non-Paying Party will remit the appropriate Disputed Amounts to the Billing Party, together with all related interest and late payment charges, to the Billing Party within ten (10) business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Billing Party; and/or (2) the Billing Party will render all appropriate credits and adjustments to the Non-Paying Party for the Disputed Amounts, together with all appropriate interest and late payment charges, within ten (10) business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Non-Paying Party.
- 14.7 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) consecutive months of prior usage data.

## 15. RESERVATION OF RIGHTS AND SPECIFIC INTERVENING LAW TERMS

- 15.1 In the event the pricing scheme in the FCC's Interim ISP Compensation Order (defined in Section 5 of this Attachment) is modified, eliminated or replaced, then the Parties agree to negotiate an appropriate amendment to conform to such change in accordance with the Intervening Law provisions of this

Agreement and such new or changed provisions will apply on a prospective basis, beginning with the effective date of the new order, unless a determination is made as to retroactive application in the decision rendering such modification, elimination or replacement, in which instance, the new or changed provisions will apply retroactively as set forth in the new order. Either Party may begin billing the other Party according to the terms of the new order, beginning sixty (60) days after delivering a request to negotiate the change. True-up of any retroactive application, for either the amendment negotiation period and/or for the retroactive application period provided in the order, shall occur within one hundred and twenty (120) days of the effective date of the order, or be subject to dispute under Section 9 of the General Terms and Conditions of this Agreement.

## 16. SWITCHED ACCESS TRAFFIC

16.1 For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an End User physically located in one local exchange and delivered for termination to an End User physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in **AT&T-13STATE**'s local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the End User's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology. Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks:

- (i) IntraLATA toll Traffic or Optional EAS Traffic from a CLEC End User that obtains local dial tone from CLEC where CLEC is both the Section 251(b)(5) Traffic provider and the IntraLATA toll provider,
- (ii) IntraLATA toll Traffic or Optional EAS Traffic from an AT&T End User that obtains local dial tone from AT&T where AT&T is both the Section 251(b)(5) Traffic provider and the IntraLATA toll provider;
- (iii) Switched Access Traffic delivered to AT&T from an Interexchange Carrier (IXC) where the terminating number is ported to another CLEC and the IXC fails to perform the Local Number Portability (LNP) query; and/or
- (iv) Switched Access Traffic delivered to either Party from a third party competitive local exchange carrier over interconnection trunk groups carrying Section 251(b)(5) Traffic and ISP-Bound Traffic (hereinafter referred to as "Local Interconnection Trunk Groups") destined to the other Party.

Notwithstanding anything to the contrary in this Agreement, each Party reserves its rights, remedies, and arguments relating to the application of switched access charges for traffic exchanged by the Parties prior to the Effective Date of this Agreement and described in the FCC's Order issued in the Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Exempt from Access Charges, WC Docket No. 01-361 (Released April 21, 2004).

16.2 In the limited circumstances in which a third party competitive local exchange carrier delivers Switched Access Traffic as described in Section 15.1 (iv) above to either Party over Local Interconnection Trunk Groups, such Party may deliver such Switched Access Traffic to the terminating Party over Local Interconnection Trunk Groups. If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify the traffic with the goal of removing such traffic from the Local Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 15.1(iv) above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other party, the Parties agree to jointly file a complaint or any other appropriate action with the applicable Commission

to seek any necessary permission to remove the traffic from such interconnection trunks up to and including the right to block such traffic and to obtain compensation, if appropriate, from the third party competitive local exchange carrier delivering such traffic to the extent it is not blocked.

## **17. ALTERNATE TANDEM PROVIDER**

- 17.1 An Alternate Tandem Provider shall mean a Telecommunications Carrier, with no End Users, that provides tandem switching services to CLEC with whom it is directly interconnected for the purpose of delivering Third Party Originating Carrier traffic via direct interconnection arrangements with **AT&T-13STATE** to (i) **AT&T-13STATE**'s End User; (ii) to an End User of a Third Party Terminating Carrier that utilizes local switching from **AT&T-12STATE** purchased on a wholesale basis to provide service to its End Users; and/or (iii) a Third Party Terminating Carrier's End User.
- 17.2 "Third Party Originating Carrier" means a Competitive Local Exchange Carrier (CLEC), Incumbent Local Exchange Carrier (ILEC), Commercial Mobile Radio Service (CMRS) provider and/or Out-of Exchange Local Exchange Carrier (OE-LEC) that sends traffic originated by its End Users to an Alternate Tandem Provider.
- 17.3 Third Party Terminating Carrier shall mean Competitive Local Exchange Carrier (CLEC), Incumbent Local Exchange Carrier (ILEC), Commercial Mobile Radio Service (CMRS) provider, Out-of Exchange Local Exchange Carrier (OE-LEC), **AT&T-13STATE** as the Incumbent Local Exchange Carrier (ILEC) or a Carrier that utilizes local switching from **AT&T-12STATE** purchased on a wholesale basis to provide service to its End Users, to which traffic is terminated when CLEC uses an Alternate Tandem Provider.
- 17.4 When Alternate Tandem Provider sends Traffic originated by the End Users of CLEC functioning as the Third Party Originating Carrier to an End User of **AT&T-13STATE** who is functioning as the Third Party Terminating Carrier, CLEC is responsible for all Minutes of Use ("MOUs") billed by **AT&T-13STATE** for the termination of such traffic.

# APPENDIX RECORDING

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## APPENDIX RECORDING (Recording, Message Processing And Provision Of Interexchange Carrier Transported Message Detail Appendix)

### 1. INTRODUCTION

- 1.1 This Appendix sets forth the terms and conditions under which AT&T-13STATE will provide recording, message processing and message detail services to a Facility-Based Provider as described in **Exhibit I** and **Exhibit II**, Exhibits I and II are part of this Appendix by reference. The terms and conditions under this Appendix will also apply when the Facility-Based Provider is the Recording Company.
- 1.1.1 **AT&T Inc. (AT&T)** means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, Nevada Bell Telephone Company d/b/a AT&T Nevada, The Ohio Bell Telephone Company d/b/a AT&T Ohio, Pacific Bell Telephone Company d/b/a AT&T California, The Southern New England Telephone Company d/b/a AT&T Connecticut, Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin.
- 1.1.2 **AT&T-2STATE** - As used herein, **AT&T-2STATE** means **AT&T CALIFORNIA** and **AT&T NEVADA**, the applicable AT&T-owned ILEC(s) doing business in California and Nevada.
- 1.1.3 **AT&T-13STATE** - As used herein, **AT&T-13STATE** means **AT&T SOUTHWEST REGION 5-STATE**, **AT&T MIDWEST REGION 5-STATE**, **AT&T-2STATE** and **AT&T CONNECTICUT** the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.1.4 **AT&T CONNECTICUT** - As used herein, **AT&T CONNECTICUT** means The Southern New England Telephone Company, the applicable above listed ILEC doing business in Connecticut.
- 1.1.5 **AT&T MIDWEST REGION 5-STATE** - As used herein, **AT&T MIDWEST REGION 5-STATE** means Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, The Ohio Bell Telephone Company d/b/a AT&T Ohio, and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin, the applicable AT&T-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.
- 1.1.6 **AT&T SOUTHWEST REGION 5-STATE** - As used herein, **AT&T SOUTHWEST REGION 5-STATE** means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

### 2. DEFINITIONS

- 2.1 **"Access Usage Record" (AUR)** - a message record which contains the usage measurement reflecting the service feature group, duration and time of day for a message and is subsequently used to bill access to Interexchange Carriers (IXCs).
- 2.2 **"Assembly and Editing"** - the aggregation of recorded customer message details to create individual message records and the verification that all necessary information required ensuring all individual message records meet industry specifications is present.
- 2.3 **"Billing Company"** - the company that bills End Users for the charges incurred in originating and terminating IXC transported calls.
- 2.4 **"Billable Message"** - a message record containing details of a completed IXC transported call which is used to bill an end user.

- 2.5 **"Centralized Message Distribution System" (CMDS)** - the national network of private line facilities used to exchange Exchange Message Interface (EMI) formatted billing data between AT&T-13STATE and the Billing Company.
- 2.6 **"Data Transmission"** - the forwarding by AT&T-13STATE of IXC transported toll message detail and/or access usage record detail in EMR format over data lines or on magnetic tapes to the appropriate Billing Company.
- 2.7 **"Exchange Message Interface" (EMI)** - Industry standard message format as described in accordance with the Telcordia Practice BR010-200-010 developed for the interexchange of telecommunications message information.
- 2.8 **"Interexchange Carrier" (IXC)** - A third party transmission provider that carries long distance voice and non-voice traffic between user locations for a related recurring fee. IXCs provide service interstate and intrastate. In some states IXCs are permitted to operate within a LATA.
- 2.9 **"Interexchange Carrier Transported"** - telecommunications services provided by an IXC or traffic transported by facilities belonging to an IXC.
- 2.10 **"Local Access and Transport Area" (LATA)** - service areas defined in FCC Docket 78-72.
- 2.11 **"Message Processing"** - the creation of individual EMI formatted billable message detail records from individual recordings that reflect specific billing detail for use in billing the End User and/or access usage records from individual recordings that reflect the service feature group, duration and time of day for a message, Carrier Identification Code, among other fields, for use in billing access to the Interexchange Carriers. Message Processing includes performing CMDS online edits required to ensure message detail and access usage records are consistent with CMDS specifications.
- 2.12 **"Originating Local Exchange Carrier Company"** - the company whose local exchange telephone network is used to originate calls thereby providing originating exchange access to IXCs.
- 2.13 **"Provision of Message Detail"** - the sorting of all billable message detail and access usage record detail by Revenue Accounting Office, Operating Company Number or Service Bureau, splitting of data into packs for invoicing, and loading of data into files for data transmission to CLEC for those records created internally or received from other Local Exchange Carrier Companies or Interexchange Carriers through AT&T-13STATE's internal network or national CMDS.
- 2.14 **"Record"** - a logical grouping of information as described in the programs that process information and create the data files.
- 2.15 **"Recording"** - the creation and storage on magnetic tape or other medium of the basic billing details of a message in Automatic Message Accounting (AMA) format converted to EMI layout.
- 2.16 **"Service Switching Point" (SSP)** - a signaling point that can launch queries to databases and receive/interpret responses used to provide specific customer services.
- 2.17 **"Recording Company"** - the company that performs the functions of recording and message processing of Interexchange Carrier (IXC) transported messages and the provision of message detail.
- 2.18 **"Switching Control Point" (SCP)** - the real time database system that contains routing instructions for 800 calls. In addition to basic routing instructions, the SCP may also provide vertical feature translations, i.e., time of day, day of week routing, out of area screening and/or translation of the dialed 800 number to its assigned working telephone number.
- 2.19 **"800 SCP Carrier Access Usage Summary Record" (SCP Record)** - a summary record which contains information concerning the quantity and types of queries launched to an AT&T-13STATE SCP.
- 2.20 **"Terminating Local Exchange Carrier Company"** - the company whose local exchange telephone network is used to terminate calls thereby providing terminating exchange access to IXCs.

### 3. RESPONSIBILITIES OF THE PARTIES

- 3.1 AT&T-13STATE will record all IXC transported messages for CLEC carried over all Feature Group Switched Access Services that are available to AT&T-13STATE provided recording equipment or operators. Unavailable messages (i.e., certain operator messages that are not accessible by AT&T-13STATE-provided equipment or operators) will not be recorded. The recording equipment will be provided at locations selected by AT&T-13STATE.
- 3.2 AT&T-13STATE will perform assembly and editing, message processing and provision of applicable access usage record detail for IXC transported messages if the messages are recorded by AT&T-13STATE.
- 3.3 AT&T-13STATE will provide access usage records that are generated by AT&T-13STATE.
- 3.4 Assembly and editing will be performed on all IXC transported messages recorded by AT&T-13STATE, during the billing period established by AT&T-13STATE and selected by CLEC.
- 3.5 Standard EMI record formats for the provision of billable message detail and access usage record detail will be established by AT&T-13STATE and provided to CLEC.
- 3.6 Recorded billable message detail and access usage record detail will not be sorted to furnish detail by specific end users, by specific groups of end users, by office, by feature group or by location.
- 3.7 AT&T-13STATE will provide message detail to CLEC in data files, (a File Transfer Protocol or Connect:Direct "NDM"), or any other mutually agreed upon process to receive and deliver messages using software and hardware acceptable to both parties.
- 3.8 In **Exhibit II**, CLEC will identify separately the location where the data transmissions should be sent (as applicable) and the number of times each month the information should be provided, except for AT&T-2STATE. For AT&T-2STATE, CLEC will identify the location and number of times each month the information should be provided via Appendix Data Exchange's Technical Requirements Form document. AT&T-13STATE reserves the right to limit the frequency of transmission to existing AT&T-13STATE processing and work schedules, holidays, etc.
- 3.9 AT&T-13STATE will determine the number data files required to provide the access usage record detail to CLEC.
- 3.10 Recorded billable message detail and/or access usage record detail previously provided CLEC and lost or destroyed through no fault of AT&T-13STATE will not be recovered and made available to CLEC except on an individual case basis at a cost determined by AT&T-13STATE.
- 3.11 When AT&T-13STATE receives rated billable messages from an IXC or another Local Exchange Carrier (LEC) that are to be billed by CLEC, AT&T-13STATE will forward those messages to CLEC.
- 3.12 AT&T-13STATE will record the applicable detail necessary to generate access usage records and forward them to CLEC for its use in billing access to the IXC.
- 3.13 When CLEC is the Recording Company, the CLEC agrees to provide its recorded billable messages detail and access usage record detail data to AT&T-13STATE under the same terms and conditions of this Appendix.

### 4. BASIS OF COMPENSATION

- 4.1 AT&T-13STATE as the Recording Company, agrees to provide recording, assembly and editing, message processing and provision of message detail for Access Usage Records (AURs) ordered/required by the CLEC in accordance with this Appendix on a reciprocal, no-charge basis. CLEC, as the Recording Company, agrees to provide any and all Access Usage Records (AURs) required by AT&T-13STATE on a reciprocal, no-charge basis. The Parties agree that this mutual exchange of records at no charge to either Party shall otherwise be conducted according to the guidelines and specifications contained in the Multiple Exchange Carrier Access Billing (MECAB) document.

## 5. LIABILITY

- 5.1 Except as otherwise provided herein, neither Party shall be liable to the other for any special, indirect, or consequential damage of any kind whatsoever. A Party shall not be liable for its inability to meet the terms of this Agreement where such inability is caused by failure of the first Party to comply with the obligations stated herein. Each Party is obliged to use its best efforts to mitigate damages.
- 5.2 When either Party is notified that, due to error or omission, incomplete data has been provided to the non-Recording Company, each Party will make reasonable efforts to locate and/or recover the data and provide it to the non-Recording Company at no additional charge. Such requests to recover the data must be made within sixty (60) calendar days from the date the details initially were made available to the non-Recording Company. If written notification is not received within sixty (60) calendar days, the Recording Company shall have no further obligation to recover the data and shall have no further liability to the non-Recording Company.
- 5.3 If, despite timely notification by the non-Recording Company, message detail is lost and unrecoverable as a direct result of the Recording Company having lost or damaged tapes or incurred system outages while performing recording, assembly and editing, rating, message processing, and/or transmission of message detail, both Parties will estimate the volume of lost messages and associated revenue based on information available to it concerning the average revenue per minute for the average interstate and/or intrastate call. In such events, the Recording Company's liability shall be limited to the granting of a credit adjusting amounts otherwise due from it equal to the estimated net lost revenue associated with the lost message detail.
- 5.4 Each Party will not be liable for any costs incurred by the other Party when transmitting data files via data lines and a transmission failure results in the non-receipt of data.
- 5.5 Each Party agrees to defend, indemnify, and hold harmless the other Party from any and all losses, damages, or other liability, including attorney fees, that it may incur as a result of claims, demands, or other suits brought by any party that arise out of the use of this service by the other Party, its customers or end users.
- 5.6 Each Party also agrees to release, defend, indemnify and hold harmless the other Party from any claim, demand or suit that asserts any infringement or invasion of privacy or confidentiality of any person(s), caused or claimed to be caused, directly or indirectly, by the Party's employees and equipment associated with provision of this service. This includes, but is not limited to suits arising from disclosure of any customer specific information associated with either the originating or terminating numbers used to provision this service.
- 5.7 Each Party also agrees to release, defend, indemnify and hold harmless the Recording Company from any claim, demand or suit to perform under this Agreement should any regulatory body or any State or Federal Court find the existing terms of this contract to either be illegal, unenforceable, against public policy, or improper for the Recording Company.
- 5.8 Each Party makes no representations or warranties, express or implied, including but not limited to any warranty as to merchantability or fitness for intended or particular purpose with respect to services provided hereunder. Additionally, each Party assumes no responsibility with regard to the correctness of the data supplied when this data is accessed and used by a third party.

## **EXHIBIT I SERVICES**

The attached pages of this Exhibit show the service options that are offered under this Agreement.

### **EXPLANATION OF SERVICE OPTIONS**

#### **ORIGINATING 1+ DDD RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL AND ACCESS USAGE RECORDS**

- Option #1:** This option has been withdrawn.
- Option #2:** The Recording Company performs recording, assembly and editing of the billable message detail and extracts that detail to the IXC for all 1+ IXC transported messages originating from the CLEC end office. The Recording Company creates Access Usage Records for this traffic and forwards those AUR records to the CLEC.
- Option #3:** The Interexchange Carriers do own billable message recording for their 1+ IXC transported messages originating from the CLEC end office. The Recording Company performs recording for Access purposes only, assembles and edits this data, creates AURs and forwards the AUR records to the CLEC.

#### **ORIGINATING OPERATOR RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL AND ACCESS USAGE RECORDS**

- Option #4:** CLEC Non-Equal Access End Office - The Interexchange Carriers do own billable message recording. The Recording Company performs local and intraLATA operator services for the CLEC. The Recording Company performs recording at the operator switch for all 0+, 0-, Coin Sent Paid, CAMA and International IXC transported messages. The Recording Company assembles and edits this data, creates AURs and forwards the AUR records to the CLEC.
- Option #5:** CLEC Equal Access End Office - The Interexchange Carriers do own billable message recording. The Recording Company performs local and intraLATA operator services for the CLEC. The Recording Company performs recording at the operator switch for 0- only IXC transported messages. The Recording Company assembles and edits this data, creates AURs and forwards the AUR records to the CLEC.
- Option #6:** This option has been withdrawn.
- Option #7:** This option has been withdrawn.

#### **800 RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL**

- Option #8:** Recording Company performs SSP function for CLEC end office and bills query charge to the appropriate Interexchange Carrier. The Recording Company performs recording for Access purposes only, assembles and edits this data, creates AURs and forwards AUR records to CLEC.
- Option #9:** This option has been withdrawn.
- Option #10:** Recording Company performs SCP function for CLEC. The Recording Company performs recording at the SCP, assembles and edits this data, creates SCP records and forwards SCP records to the CLEC.

## **TERMINATING RECORDINGS - IXC TRANSPORTED ACCESS USAGE RECORDS**

- Option #11:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group B, Feature Group C and Feature Group D terminating usage recordings including Feature Group B over D and Feature Group C over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option #12:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group B terminating usage recordings excluding B over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option #13:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group B terminating usage recordings including Feature Group B over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option #14:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group D terminating usage recordings including B over D and C over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option #15:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group D terminating usage recordings including B over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.

## EXHIBIT II

### INVOICE DESIGNATION

COMPANY NAME:

EXCHANGE COMPANY I.D. NUMBER (OCN):

BILLABLE INVOICE INTERVAL:

Check One:

- ☐ Daily (Full Status RAO Companies will receive billable messages daily, Monday-Friday excluding holidays.)
- ☐ Bill period (Please choose a maximum of five dates for AT&T SOUTHWEST REGION 5-STATE. A file will be created approximately 3 to 5 workdays after the chosen bill date(s):

1 3 5 7 9 11 13 15 17 19 21 23 25 27 29

AUR INVOICE INTERVAL:

Check One:

- ☐ Daily (Full Status RAO Companies will receive AURs daily, Monday-Friday except holidays.)
- ☐ Bill period (Please choose a maximum of five dates for AT&T SOUTHWEST REGION 5-STATE. A file will be created approximately 3 to 5 workdays after the chosen bill date(s):

1 3 5 7 9 11 13 15 17 19 21 23 25 27 29

# APPENDIX RESALE

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## APPENDIX RESALE

### 1. INTRODUCTION

- 1.1 This Appendix set forth terms and conditions for Resale Services provided by the applicable AT&T Inc. (AT&T) owned Incumbent Local Exchange Carrier (ILEC) and CLEC.
- 1.2 **AT&T Inc. (AT&T)** means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, Nevada Bell Telephone Company d/b/a AT&T Nevada, The Ohio Bell Telephone Company d/b/a AT&T Ohio, Pacific Bell Telephone Company d/b/a AT&T California, The Southern New England Telephone Company d/b/a AT&T Connecticut, Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin.
- 1.3 **AT&T-2STATE** - As used herein, **AT&T-2STATE** means **AT&T CALIFORNIA** and **AT&T NEVADA**, the applicable AT&T-owned ILEC(s) doing business in California and Nevada.
- 1.4 **AT&T-4STATE** - As used herein, **AT&T-4STATE** means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, and AT&T Oklahoma the applicable AT&T-owned ILEC(s) doing business in Arkansas, Kansas, Missouri and Oklahoma.
- 1.5 **AT&T-7STATE** - As used herein, **AT&T-7STATE** means **AT&T SOUTHWEST REGION 5-STATE**, **AT&T CALIFORNIA** and **AT&T NEVADA**, the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.6 **AT&T-8STATE** - As used herein, **AT&T-8STATE** means **AT&T SOUTHWEST REGION 5-STATE**, **AT&T CALIFORNIA**, **AT&T NEVADA** and **AT&T CONNECTICUT** the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.7 **AT&T-10STATE** - As used herein, **AT&T-10STATE** means **AT&T SOUTHWEST REGION 5-STATE** and **AT&T MIDWEST REGION 5-STATE** an the applicable AT&T-owned ILEC(s) doing business in Arkansas, Illinois, Indiana, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas and Wisconsin.
- 1.8 **AT&T-12STATE** - As used herein, **AT&T-12STATE** means **AT&T SOUTHWEST REGION 5-STATE**, **AT&T MIDWEST REGION 5-STATE** and **AT&T-2STATE** the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.9 **AT&T-13STATE** - As used herein, **AT&T-13STATE** means **AT&T SOUTHWEST REGION 5-STATE**, **AT&T MIDWEST REGION 5-STATE**, **AT&T-2STATE** and **AT&T CONNECTICUT** the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.10 **AT&T ARKANSAS** - As used herein, **AT&T ARKANSAS** means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, the applicable AT&T-owned ILEC doing business in Arkansas.
- 1.11 **AT&T CALIFORNIA** - As used herein, **AT&T CALIFORNIA** means Pacific Bell Telephone Company d/b/a AT&T California, the applicable AT&T-owned ILEC doing business in California.
- 1.12 **AT&T CONNECTICUT** - As used herein, **AT&T CONNECTICUT** means The Southern New England Telephone Company d/b/a AT&T Connecticut, the applicable above listed ILEC doing business in Connecticut.
- 1.13 **AT&T KANSAS** - As used herein, **AT&T KANSAS** means Southwestern Bell Telephone Company d/b/a AT&T Kansas, the applicable AT&T-owned ILEC doing business in Kansas.
- 1.14 **AT&T ILLINOIS** - As used herein, **AT&T ILLINOIS** means Illinois Bell Telephone Company d/b/a AT&T Illinois, the applicable AT&T-owned ILEC doing business in Illinois.

- 1.15 **AT&T INDIANA** - As used herein, **AT&T INDIANA** means Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, the applicable AT&T-owned ILEC doing business in Indiana.
- 1.16 **AT&T MICHIGAN** - As used herein, **AT&T MICHIGAN** means Michigan Bell Telephone Company d/b/a AT&T Michigan, the applicable AT&T-owned doing business in Michigan.
- 1.17 **AT&T MIDWEST REGION 5-STATE** - As used herein, **AT&T MIDWEST REGION 5-STATE** means Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, The Ohio Bell Telephone Company d/b/a AT&T Ohio, and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin, the applicable AT&T-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio and Wisconsin.
- 1.18 **AT&T MISSOURI** - As used herein, **AT&T MISSOURI** means Southwestern Bell Telephone Company d/b/a AT&T Missouri, the applicable AT&T-owned ILEC doing business in Missouri.
- 1.19 **AT&T NEVADA** - As used herein, **AT&T NEVADA** means Nevada Bell Telephone Company d/b/a AT&T Nevada, the applicable AT&T-owned ILEC doing business in Nevada.
- 1.20 **AT&T OHIO** - As used herein, **AT&T OHIO** means The Ohio Bell Telephone Company d/b/a AT&T Ohio, the applicable AT&T-owned ILEC doing business in Ohio.
- 1.21 **AT&T OKLAHOMA** - As used herein, **AT&T OKLAHOMA** means Southwestern Bell Telephone Company d/b/a AT&T Oklahoma, the applicable AT&T-owned ILEC doing business in Oklahoma.
- 1.22 **AT&T SOUTHWEST REGION 5-STATE** - As used herein, **AT&T SOUTHWEST REGION 5-STATE** means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma and Texas.
- 1.23 **AT&T TEXAS** - As used herein, **AT&T TEXAS** means Southwestern Bell Telephone Company d/b/a AT&T Texas, the applicable AT&T-owned ILEC doing business in Texas.
- 1.24 **AT&T WISCONSIN** - As used herein, **AT&T WISCONSIN** means Wisconsin Bell, Inc. d/b/a AT&T Wisconsin, the applicable AT&T-owned ILEC doing business in Wisconsin.
- 1.25 The prices at which AT&T agrees to provide CLEC with Resale Services are contained in the applicable Appendix Pricing and/or the applicable Commission ordered tariff where stated.

## 2. DESCRIPTION AND CHARGES FOR SERVICES

- 2.1 Resale services are available in accordance with section 251(C)(4) of the Act and consistent with Section 2.12.1.3 of the General Terms and conditions of the Agreement.
- 2.2 A list of Telecommunications Services currently available for resale at the wholesale discount rate for each service determined by the appropriate Commission is set forth in Appendix Pricing. Except as otherwise expressed herein, consistent with **AT&T-13STATE**'s obligation under Section 251(c)(4)(A) of the Act and any other applicable limitations or restrictions, CLEC may resell other Telecommunications Services offered at retail by **AT&T-13STATE** at the discount set forth in Appendix Pricing.
- 2.3 **AT&T-13STATE** will offer products and services to CLEC for resale pursuant to relevant decisions of the appropriate Commission.
- 2.4 Telecommunications Services will be offered by **AT&T-13STATE** to CLEC for resale on terms and conditions that are reasonable and nondiscriminatory.
- 2.5 Grandfathered services are available per appropriate state specific tariff to CLEC for resale at the applicable discount only to the same End User, at the existing End User's location, to which **AT&T-13STATE** provides the service, either at retail or through resale.

### 3. TERMS AND CONDITIONS OF SERVICE

- 3.1 Except as otherwise expressly provided herein, for Telecommunications Services included within this Appendix that are offered by AT&T-13STATE to AT&T-13STATE's End Users through tariff(s), the rules and regulations associated with AT&T-13STATE's retail tariff(s) shall apply when the services are resold by CLEC, with the exception of any tariff resale restrictions; provided, however, any tariff restrictions on further resale by the End User shall continue to apply. Use limitations shall be in parity with services offered by AT&T-13STATE to its End Users.
- 3.2 CLEC shall only sell Plexar®, Centrex and Centrex-like services to a single End User or multiple End User(s) in accordance with the terms and conditions set forth in the corresponding AT&T-13STATE retail tariff(s) applicable within that state.
- 3.3 Except where otherwise explicitly permitted in AT&T-13STATE's corresponding retail tariff(s), CLEC shall not permit the sharing of a service by multiple End User(s) or the aggregation of traffic from multiple End User(s) onto a single service.
- 3.3.1 This section applies only to AT&T TEXAS:
- 3.3.1.1 Within the State of Texas, based upon the Texas Commission's arbitration order, AT&T TEXAS will permit aggregation for purposes of the resale of volume discount offers. Volume discount offers include such items as intraLATA toll, but do not include such items as packages of vertical features.
- 3.4 CLEC shall only resell services furnished under this Appendix to the same category of End User(s) to whom AT&T-13STATE offers such services (for example, residence service shall not be resold to business End Users).
- 3.4.1 AT&T-13STATE - CLEC may only resell "special needs services" as identified in associated state specific tariffs to persons who are eligible for each such service. As used herein, the term "special needs services" means services for the physically disabled where the disability is related to vision, speech, hearing or motion. Further, to the extent CLEC resells services that require certification on the part of the End User, CLEC shall ensure that the End User has obtained proper certification, continues to be eligible for the program(s), and complies with all rules and regulations as established by the appropriate Commission and the state specific AT&T-13STATE tariffs.
- 3.4.2 This section applies only to AT&T SOUTHWEST REGION 5-STATE, AT&T WISCONSIN, AT&T OHIO and AT&T INDIANA:
- 3.4.2.1 Where available for resale according to associated retail state specific tariffs, CLEC may only resell AT&T SOUTHWEST REGION 5-STATE, AT&T WISCONSIN, AT&T OHIO and AT&T INDIANA low income assistance services, (e.g. LifeLine and Link-Up services), to persons who are eligible for each such service. Further, to the extent CLEC resells services that require certification on the part of the End User, CLEC shall ensure that the End User meets all associated tariff eligibility requirements, has obtained proper certification, continues to be eligible for the program(s), and complies with all rules and regulations as established by the appropriate Commission and the state specific AT&T SOUTHWEST REGION 5-STATE, AT&T WISCONSIN, AT&T OHIO and AT&T INDIANA tariffs.
- 3.4.3 This section applies only to AT&T CALIFORNIA, AT&T CONNECTICUT and AT&T ILLINOIS:
- 3.4.3.1 AT&T CALIFORNIA, AT&T CONNECTICUT and AT&T ILLINOIS LifeLine and Link-Up services are not available for resale.
- 3.4.3.2 CLEC is exclusively responsible for all aspects of any similar CLEC-offered program, including ensuring that any similar CLEC-offered program(s) complies with all applicable federal and state requirements, obtaining all necessary End User certifications and recertifications, submitting written designation that any of CLEC's End User or applicants are eligible to participate in such programs, submitting CLEC's claims for reimbursement to any

applicable governmental authority and any other activities required by any applicable governmental authority.

3.4.4 This section applies only to **AT&T NEVADA**:

3.4.4.1 **AT&T NEVADA** low income assistance services, (e.g., LifeLine and Link-Up services) are available for resale for a maximum period of 90 days from contract approval date. The CLEC has 90 days from the contract approval date to coordinate with the appropriate federal and state government agencies to establish the CLEC's own low income assistance service(s). At the end of the 90 day period, CLEC is responsible for initiating Local Service Requests (LSR) to the ILEC for converting any existing ILEC Customer Service Records (CSR) from low income designated services to normal residential service. CLEC will be responsible for designating its own billing records and establishing and administering its low income assistance services internally.

3.4.4.2 CLEC is exclusively responsible for all aspects of any similar CLEC-offered program, including ensuring that any similar CLEC-offered program(s) complies with all applicable federal and state requirements, obtaining all necessary End User certifications and recertifications, submitting written designation that any of CLEC's End User or applicants are eligible to participate in such programs, submitting CLEC's claims for reimbursement to any applicable governmental authority and any other activities required by any applicable governmental authority.

3.5 **Promotions**

3.5.1 Promotions are available for the Telecommunications Services outlined in Appendix Pricing in the "Resale" category and in accordance with state specific Commission requirements.

3.5.2 This section applies only to **AT&T NEVADA** and **AT&T MISSOURI**:

3.5.2.1 Promotions of eighty-nine (89) days or less are not available to CLEC for resale.

3.5.2.2 Promotions of ninety (90) days or more are available to CLEC for resale at the applicable wholesale discount, state specific.

3.5.3 This section applies only to **AT&T CALIFORNIA**, **AT&T MIDWEST REGION 5-STATE**, **AT&T CONNECTICUT** and **AT&T ARKANSAS**:

3.5.3.1 Promotions of ninety (90) days or less are not available to CLEC for resale.

3.5.3.2 Promotions of ninety-one (91) days or more are available to CLEC for resale and at the applicable wholesale discount, state specific.

3.5.4 This section applies only to **AT&T KANSAS**, **AT&T TEXAS** and **AT&T OKLAHOMA**:

3.5.4.1 Promotions on Telecommunications Services are available to CLEC for resale. The applicable, state specific, wholesale discount will be applied to those promotions of ninety-one (91) days or more.

3.6 CLEC shall not use a resold service to avoid the rates, terms and conditions of **AT&T-13STATE**'s corresponding retail tariff(s).

3.7 CLEC shall not use resold local Telecommunications Services to provide access or interconnection services to itself, interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunications providers; provided, however, that CLEC may permit its End Users to use resold local exchange telephone service to access IXCs, wireless carriers, CAPs, or other retail telecommunications providers.

3.8 A Federal End User Common Line charge and any other appropriate Commission-approved charges, as set forth in the appropriate **AT&T-13STATE** federal and applicable state tariff(s) will apply to each local exchange line furnished to CLEC under this Appendix for resale.

- 3.9 To the extent allowable by law, CLEC shall be responsible for Primary Interexchange Carrier (both PIC and LPIC) change charges associated with each local exchange line furnished to CLEC for resale. CLEC shall pay all charges for PIC and LPIC changes at the tariffed rate(s).
- 3.10 AT&T-13STATE shall provide the services covered by this Appendix subject to availability of existing facilities and on a nondiscriminatory basis with its other customers. CLEC shall resell the services provided herein only in those service areas in which such resale services or any feature or capability thereof are offered to End Users at retail by AT&T-13STATE as the incumbent local exchange carrier.
- 3.11 When an End User converts existing service to CLEC resold service of the same type without any additions or changes, charges for such conversion will apply as set forth in Appendix Pricing in the "OTHER (Resale)" category, listed as "conversion charges", and are applied per billable telephone number.
- 3.11.1 When an End User(s) subscribes to CLEC resold service, recurring charges for the service shall apply at the wholesale discount set forth in Appendix Pricing. The tariff rates for such resold service shall continue to be subject to orders of the appropriate Commission.
- 3.11.2 When CLEC converts an End User(s) existing service and additions or changes are made to the service at the time of the conversion, the normal service order charges and/or non-recurring charges associated with said additions and/or changes will be applied in addition to the conversion charge. CLEC will receive a wholesale discount on all non-recurring service order charges for the services listed in Appendix Pricing under the heading "Resale"; no wholesale discount is available for the non-recurring service order charges for those services listed in Appendix Pricing under the heading "OTHER (Resale)."
- 3.11.3 For the purposes of ordering service furnished under this Appendix, each request for new service (that is, service not currently being provided to the End User on AT&T-13STATE's network, without regard to the identity of that End User's non-facilities based local service provider of record) shall be handled as a separate initial request for service and shall be charged per billable telephone number.
- 3.11.4 Where available, the tariff retail additional line rate for Service Order Charges shall apply only to those requests for additional residential service to be provided at the same End User premises to which a residential line is currently provided on AT&T-13STATE's network, without regard to the identity of that End User's non-facilities based local service provider of record.
- 3.12 If CLEC is in violation of any provision of this Appendix, AT&T-13STATE will notify CLEC of the violation in writing. Such notice shall refer to the specific provision being violated. CLEC will have thirty (30) calendar days to correct the violation and notify AT&T-13STATE in writing that the violation has been corrected. AT&T-13STATE will bill CLEC a sum equal (i) the charges that would have been billed by AT&T-13STATE to CLEC or any Third Party but for the stated violation and (ii) the actual revenues CLEC billed its End User(s) in connection with the stated violation, whichever is greater. Should CLEC dispute the stated violation, CLEC must notify AT&T-13STATE in writing of the specific details and reasons for its dispute within fourteen (14) calendar days of receipt of the notice from AT&T-13STATE and comply with Sections 8.3 through 8.7 of the General Terms and Conditions of the Agreement to which this Appendix is attached. Resolution of any dispute by CLEC of the stated violation shall be conducted in compliance with the Dispute Resolution provisions set forth in the General Terms and Conditions of the Agreement to which this Appendix is attached.
- 3.13 AT&T-13STATE's services are not available at wholesale rates to CLEC for its own use or for the use of any of CLEC's affiliates and/or subsidiaries or the use of CLEC's parent or any affiliate and/or subsidiary of CLEC's parent company, if any.
- 3.14 This section applies only to AT&T SOUTHWEST REGION 5-STATE:
- 3.14.1 CLEC may convert current AT&T SOUTHWEST REGION 5-STATE End User(s) that have existing term, volume, termination liability or any customer specific pricing contracts (collectively referred to hereinafter as "CSP Contracts") for services offered within the state of Kansas or Texas, and

- 3.14.2 AT&T SOUTHWEST REGION 5-STATE and any other reseller of AT&T SOUTHWEST REGION 5-STATE local service may convert current CLEC End User(s) that have existing CSP Contracts for services offered within the states of Arkansas, Kansas, Texas, Oklahoma or Missouri.
- 3.14.3 In the event of a conversion under either Section 3.14.1 or 3.14.2, CLEC and AT&T SOUTHWEST REGION 5-STATE shall comply with all of the terms and conditions set forth in Sections 3.14.4 and 3.14.5.
- 3.14.4 Responsibilities of CLEC in connection with Assumption of CSP Contract Conversions.
- 3.14.4.1 CLEC shall sign an "Assumption of Existing Agreement" assuming the balance of the terms, including volume, term and termination liability remaining on any current retail AT&T SOUTHWEST REGION 5-STATE or resold End User CSP Contract at the time of conversion. CLEC may assume the CSP Contract at the wholesale discount of 5.0% in Arkansas and Kansas and 5.62% in Texas. CLECs may assume tariffed volume and term contracts at the wholesale discount of 8.0% in the states of Arkansas and Kansas and 8.04% in the state of Texas.
- 3.14.4.2 AT&T OKLAHOMA and AT&T MISSOURI tariffed and Individual Case Basis (ICB) contracts may be assumed, but receive no wholesale discount.
- 3.14.4.3 CLEC shall not charge CLEC's End User termination liability when an existing CSP contract between CLEC and its End User is converted to AT&T SOUTHWEST REGION 5-STATE or any other local service provider reselling AT&T SOUTHWEST REGION 5-STATE local service.
- 3.14.4.4 If another reseller of AT&T SOUTHWEST REGION 5-STATE local service converts a current CLEC End User(s) that has an existing CSP Contract, it is CLEC's responsibility to address assumption of the CSP contract and termination liability with the other reseller. CLEC agrees that AT&T SOUTHWEST REGION 5-STATE has no responsibilities in such a situation, and CLEC further agrees that it will not make any Claim against AT&T SOUTHWEST REGION 5-STATE in connection with any conversion by another reseller of AT&T SOUTHWEST REGION 5-STATE local service of any CLEC End User(s) that has an existing CSP contract.
- 3.14.5 Responsibilities of AT&T SOUTHWEST REGION 5-STATE in connection with Assumptions of CSP Contract Conversions:
- 3.14.5.1 AT&T SOUTHWEST REGION 5-STATE will not charge its retail End User termination liability when an existing CSP contract is converted to CLEC for resale.
- 3.14.5.2 AT&T SOUTHWEST REGION 5-STATE will assume in writing the balance of the terms, including volume, term and termination liability remaining on a current CSP contract between CLEC and its End User at the time that CLEC's End User is converted to AT&T SOUTHWEST REGION 5-STATE.
- 3.15 This section applies only to AT&T MIDWEST REGION 5-STATE:
- 3.15.1 AT&T MIDWEST REGION 5-STATE retail contracts may be assumed unless expressly prohibited by the contract. Contracts for grandfathered and/or sunsetted services may not be assumed.
- 3.15.2 Subject to the provisions of Section 3.15.1, the following shall apply:
- 3.15.2.1 AT&T ILLINOIS tariffed and Individual Case Basis (ICB) contracts that are assumed receive a wholesale discount of 3.16%.
- 3.15.2.2 AT&T MICHIGAN tariffed and Individual Case Basis (ICB) contracts that are assumed receive a wholesale discount of 3.42%.
- 3.15.2.3 AT&T OHIO, and AT&T WISCONSIN tariffed and Individual Case Basis (ICB) contracts may be assumed, but receive no wholesale discount.

- 3.15.2.4 AT&T INDIANA tariffed and Individual Case Basis (ICB) contracts that are assumed will receive an interim wholesale discount of 3.39%.
- 3.15.2.5 Final wholesale discount will be applied on a going forward basis awaiting the outcome of the pending cost study.
- 3.15.2.6 AT&T MIDWEST REGION 5-STATE Non-Standard Service contracts may be assumed, but receive no wholesale discount.
- 3.15.3 If CLEC elects to terminate a AT&T MIDWEST REGION 5-STATE retail contract which CLEC had previously assumed, CLEC will be assessed the applicable termination charges remaining unless CLEC elects to simultaneously replace the existing contract with a contract of greater term and/or volume at the same discount CLEC receives for the previously assumed but now terminated contract.

#### 4. ANCILLARY SERVICES

##### 4.1 E911 Emergency Service

- 4.1.1 The terms and conditions for reselling AT&T-13STATE 911 services are contained in Appendix 911.

##### 4.2 White Pages

- 4.2.1 Subject to AT&T-13STATE's practices, as well as the rules and regulations applicable to the provision of White Pages directories, AT&T-13STATE will include in appropriate White Pages directories the primary alphabetical listings of all CLEC End Users located within the local directory scope. The rules, regulations and AT&T-13STATE practices are subject to change from time to time.
- 4.2.2 Additional Listing services, as set forth in Appendix Pricing, may be purchased by CLEC for its End Users on a per listing basis.
- 4.2.3 Liability Relating to End User Listings
  - 4.2.3.1 CLEC hereby releases AT&T-13STATE from any and all liability for damages due to errors or omissions in CLEC's End User listing information as provided to AT&T-13STATE under this Appendix, and/or CLEC's End User listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, consequential, punitive or incidental damages.
  - 4.2.3.2 In addition to any other indemnity obligations in this Appendix or the Agreement to which this Appendix is attached, CLEC shall indemnify, protect, save harmless and defend AT&T-13STATE and AT&T-13STATE's officers, employees, agents, representatives and assigns from and against any and all losses, liability, damages and expense arising out of any demand, claim, suit or judgment by a Third Party in any way related to any error or omission in CLEC's End User listing information, including any error or omission related to non-published or non-listed End User listing information. CLEC shall so indemnify regardless of whether the demand, claim or suit by the third party is brought jointly against CLEC and AT&T-13STATE, and/or against AT&T-13STATE alone. However, if such demand, claim or suit specifically alleges that an error or omission appears in CLEC's End User listing information in the White Pages directory, AT&T-13STATE may, at its option, assume and undertake its own defense, or assist in the defense of the CLEC, in which event the CLEC shall reimburse AT&T-13STATE for reasonable attorney's fees and other expenses incurred by AT&T-13STATE in handling and defending such demand, claim and/or suit.
- 4.2.4 Each CLEC subscriber will receive one copy per primary End User listing of AT&T-13STATE's White Pages directory in the same manner and at the same time that they are delivered to AT&T-13STATE's subscribers.

- 4.2.5 If CLEC's End User already has a current AT&T-13STATE local White Pages directory, AT&T-13STATE shall not be required to deliver a directory to that End User until new White Pages directories are published for that End User's location.
- 4.2.6 AT&T-8STATE will provide CLEC with 1/8<sup>th</sup> page in each directory (where the CLEC has or plans to have local telephone exchange customers) for the CLEC to include CLEC specific-information (i.e., business office, residence office, repair bureau, etc.) in the White Pages directory on an "index-type" informational page. No advertising will be permitted on such informational page. This page will also include specific information pertaining to other CLECs. At its option, CLEC shall provide AT&T-8STATE with its logo and information in the form of a camera-ready copy, sized at 1/8<sup>th</sup> of a page. The content of CLEC's camera-ready copy shall be subject to AT&T-8STATE approval. In those directories in which AT&T-8STATE includes Spanish Customer Guide Pages, this informational page will also be provided in Spanish at CLEC's request, subject to the guidelines set forth above.
- 4.2.7 At its request, CLEC may purchase one one-sided "Informational Page" in the informational section of the White Pages directory covering a geographic area where CLEC provides local telecommunications exchange service. Such page shall be no different in style, size, color and format than AT&T-8STATE "Informational Page". Sixty (60) calendar days prior to the directory close date, the CLEC shall provide to AT&T-8STATE the "Informational Page" in the form of camera-ready copy.
- 4.3 Resale Operator Services and Directory Assistance (OS/DA)
- 4.3.1 The rates, terms and conditions for reselling AT&T-13STATE OS/DA services are contained in Appendix OS/DA and Appendix Pricing.
- 4.4 Payphone Services
- 4.4.1 CLEC may provide certain local Telecommunications Services to payphone service providers ("PSPs") for PSPs' use in providing payphone service. Local Telecommunications Services which PSPs use in providing payphone service that are provided to PSPs by CLEC by means of reselling AT&T-13STATE's services offered pursuant to the appropriate payphone section(s) of AT&T-13STATE's state specific tariff(s) applicable in each state covered by this Appendix are referred to in this Appendix as "Payphone Lines." In its Common Carrier Docket No. 96-128, the FCC ordered AT&T-13STATE to compensate PSP customers of CLECs that resell AT&T-13STATE's services for certain calls originated from pay telephones. (Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, FCC Docket No. 96-128, Report and Order, para. 86 (1996)). This compensation is referred to in this Agreement as "Payphone Compensation".
- 4.4.2 The Parties desire that AT&T-13STATE satisfy the obligation to pay Payphone Compensation to PSPs that are customers of CLEC by paying the Payphone Compensation to CLEC, who will then forward the Payphone Compensation directly to the PSPs.
- 4.4.3 AT&T-13STATE will pay Payphone Compensation due with respect to Payphone Lines in compliance with the current or any future order of the FCC. AT&T-13STATE will pay Payphone Compensation to CLEC only for IntraLATA subscriber 8YY calls for which AT&T-13STATE provides the 8YY service to the subscriber and carries the call.
- 4.4.4 AT&T-13STATE will not be required to pay any Payphone Compensation for non-sent paid calls.
- 4.4.5 AT&T-13STATE will pay CLEC the Payphone Compensation due to CLEC's PSP customer(s) within sixty (60) calendar days after the close of the calendar quarter during which the call(s) for which Payphone Compensation is due were made. However, payment may be made later than sixty (60) calendar days if AT&T-13STATE deems it necessary to investigate a call or calls for possible fraud.
- 4.4.6 Where the capability exists, AT&T-13STATE will make payment of any Payphone Compensation due to CLEC under this Appendix by crediting CLEC's bill for the Payphone Line over which the call that gives rise to the Payphone Compensation was placed. AT&T-13STATE will not automatically

issue a check to CLEC if the credit for Payphone Compensation exceeds the balance due to AT&T-13STATE on the bill. Where the capability to credit CLEC's bill does not exist, AT&T-13STATE will make payment by rendering a check.

- 4.4.7 Nothing in this Appendix entitles CLEC to receive or obligates AT&T-13STATE to provide any call detail or other call record for any call that gives rise to Payphone Compensation.
- 4.4.8 CLEC represents and warrants that the only AT&T-13STATE services that CLEC will make available to PSPs as Payphone Lines are the payphone services that AT&T-13STATE offers pursuant to the appropriate payphone section(s) of AT&T-13STATE's state specific tariff(s) applicable in each state covered by this Appendix.
- 4.4.9 Except as provided otherwise in this Section 4.4.9, CLEC shall pay the entire amount of the Payphone Compensation due with respect to each Payphone Line to the PSP that is the CLEC's customer for that Payphone Line. CLEC shall make such payment on or before the last business day of the calendar quarter following the calendar quarter during which the call(s) for which Payphone Compensation is due to the PSP were made. If AT&T-13STATE pays any Payphone Compensation to CLEC later than sixty (60) calendar days after the close of the calendar quarter during which the call(s) for which Payphone Compensation is due were made, then CLEC shall pay the entire amount of such Payphone Compensation to the PSP that is CLEC's customer for that Payphone Line within ten (10) calendar days after receiving such Payphone Compensation from AT&T-13STATE.
- 4.4.10 In addition to any other indemnity obligations in this Appendix or in the Agreement to which this Appendix is attached, CLEC shall indemnify, protect, save harmless and defend AT&T-13STATE and AT&T-13STATE's officers, employees, agents, representatives and assigns from and against any and all losses, costs, liability, damages and expense (including reasonable attorney's fees) arising out of any demand, claim, suit or judgment by any Third Party, including a PSP, in any way relating to or arising from any of the following:
  - 4.4.10.1 CLEC's failure to comply with all the terms and conditions of this Appendix; or
  - 4.4.10.2 Use by a PSP customer of CLEC of any service other than a Payphone Line to provide pay telephone service; or
  - 4.4.10.3 False representation by CLEC.
- 4.5 Suspension of Service
  - 4.5.1 CLEC may offer to resell Customer Initiated Suspension and Restoral Service to its End Users at the associated state specific retail tariff rates, terms and conditions for suspension of service at the request of the End User.
  - 4.5.2 AT&T-13STATE will offer CLEC local service provider initiated suspension service for CLEC's purposes at the associated AT&T-13STATE state specific retail tariff rate for company initiated suspension of service. Carrier Disconnect Service is the provider initiated suspension service available to CLECs in AT&T MIDWEST REGION 5-STATE. Service specifics may be obtained in state specific CLEC Handbooks.
    - 4.5.2.1 CLEC shall be exclusively responsible for placing valid orders for the suspension and the subsequent disconnection or restoral of service to each of its End Users.
    - 4.5.2.2 Should CLEC suspend service for one of its End Users and fail to submit a subsequent disconnection order within the maximum number of calendar days permitted for a company initiated suspension pursuant to the state specific retail tariff, CLEC shall be charged and shall be responsible for all appropriate monthly service charges for the End User's service from the suspension date through the disconnection date.
    - 4.5.2.3 Should CLEC suspend service for one of its End Users and subsequently issue a restoral order, CLEC shall be charged the state specific tariff rate for the restoral plus all

appropriate monthly service charges for the End User's service from the suspension date through the restoral date.

## 5. USE OF AT&T BRAND

- 5.1 Except where otherwise required by law, CLEC shall not, without AT&T-13STATE's prior written authorization, offer the services covered by this Appendix using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of AT&T-13STATE or its Affiliates, nor shall CLEC state or imply that there is any joint business association or similar arrangement with AT&T-13STATE in the provision of Telecommunications Services to CLEC's customers.

## 6. RESPONSIBILITIES OF AT&T-13STATE

- 6.1 AT&T-13STATE shall allow CLEC to place service orders and receive phone number assignments (for new lines). These activities shall be accomplished by facsimile or electronic interface. AT&T-13STATE shall provide interface specifications for electronic access for these functions to CLEC. However, CLEC shall be responsible for modifying and connecting any of its systems with AT&T-13STATE-provided interfaces, as outlined in Appendix OSS.
- 6.2 AT&T-13STATE shall implement CLEC service orders within the same time intervals AT&T-13STATE uses to implement service orders for similar services for its own End Users.
- 6.2.1 Methods and procedures for ordering are outlined in the CLEC Handbook, available on-line, as amended by AT&T-13STATE in its sole discretion from time to time. All Parties agree to abide by the procedures contained therein.
- 6.3 CLEC will have the ability to report trouble for its End Users to the appropriate AT&T-13STATE trouble reporting center(s) twenty-four (24) hours a day, seven (7) days a week. CLEC will be assigned customer contact center(s) when initial service agreements are made. CLEC End Users calling AT&T-13STATE will be referred to CLEC at the number provided by CLEC. Nothing herein shall be interpreted to authorize CLEC to repair, maintain, or in any way touch AT&T-13STATE's network facilities, including those on End User premises.
- 6.3.1 Methods and procedures for trouble reporting are outlined in the CLEC Handbook, available on-line, as amended by AT&T-13STATE in its sole discretion from time to time. All Parties agree to abide by the procedures contained therein.
- 6.4 AT&T-13STATE will provide CLEC with detailed billing information necessary for CLEC to issue bill(s) to its End User(s). CLEC has the option of receiving a daily usage file ("DUF") in accordance with the terms and conditions set forth in Section 8.8 of the General Terms and Conditions of the Agreement to which this Appendix is attached. Should CLEC elect to subscribe to the DUF, CLEC agrees to pay AT&T-13STATE the charges specified in Appendix Pricing under the "OTHER (Resale)" category listed as "Electronic Billing Information Data (daily usage) (per message)".
- 6.5 AT&T-13STATE shall make Telecommunications Services that AT&T-13STATE provides at retail to subscribers who are not Telecommunications Carriers available for resale consistent with the obligation under Section 251(c)(4)(A) of the Act, any and all obligations established by appropriate Commission(s) and other applicable limitations.
- 6.6 CLEC's End User's activation of Call Trace shall be handled by the AT&T-13STATE operations centers responsible for handling such requests. AT&T-13STATE shall notify CLEC of requests by its End Users to provide call records to the proper authorities. Subsequent communication and resolution of each case involving one of CLEC's End Users (whether that End User is the victim or the suspect) will be coordinated through CLEC.
- 6.6.1 CLEC acknowledges that for services where reports are provided to law enforcement agencies (for example, Call Trace) only billing number and address information shall be provided. It shall be CLEC's responsibility to provide additional information necessary for any police investigation.

- 6.6.1.1 In addition to any other indemnity obligations in this Appendix or the Agreement to which this Appendix is attached, CLEC shall indemnify AT&T-13STATE against any Claim that insufficient information led to inadequate prosecution.
- 6.6.2 AT&T-13STATE shall handle law enforcement requests consistent with the Law Enforcement Section of the General Terms and Conditions of the Agreement to which this Appendix is attached.
- 6.7 This section applies only to AT&T CALIFORNIA:
- 6.7.1 Cooperation on Fraud
- 6.7.1.1 Traffic Alert Referral Service
- 6.7.1.1.1 Traffic Alert Referral Service ("TARS") is a service that monitors traffic patterns associated with a CLEC's resold lines. On no less than thirty (30) calendar days written notice, CLEC may order AT&T CALIFORNIA's TARS. In providing TARS to CLEC, AT&T CALIFORNIA notifies the CLEC of traffic abnormalities that indicate the possible occurrence of intraLATA fraud and furnishes to CLEC information on all 1+ alerts. CLEC understands and agrees that AT&T CALIFORNIA will use electronic mail to provide such information and that such information will only be available via electronic mail at the present time. It is the responsibility of CLEC to provide AT&T CALIFORNIA with the correct email address. Information will be provided on a per-alert basis and will be priced on a per-alert basis. AT&T CALIFORNIA grants to CLEC a non-exclusive right to use the information provided by AT&T CALIFORNIA. CLEC will not permit anyone but its duly authorized employees or agents to inspect or use this information. CLEC agrees to pay AT&T CALIFORNIA a recurring usage rate as set forth in Appendix Pricing in the "OTHER (Resale)" category listed as "Traffic Alert Referral Service".
- 6.7.1.2 CLEC shall be liable for all fraud associated with any resale service to which it subscribes. AT&T CALIFORNIA takes no responsibility, will not investigate, and will make no adjustments to CLEC's account(s) in cases of fraud or any other related End User dispute.
- 6.7.1.3 In addition to any other indemnity obligations in this Appendix or in the Agreement to which this Appendix is attached, AT&T CALIFORNIA shall not be liable for any damages to CLEC or to any other person or entity for AT&T CALIFORNIA's actions or the conduct of its employees in providing TARS to CLEC. CLEC shall indemnify, defend, and hold AT&T CALIFORNIA harmless from any and all claims, lawsuits, costs, damages, liabilities, losses, and expenses, including reasonable attorney fees, resulting from or in connection with CLEC's use of AT&T CALIFORNIA's TARS, except when such claims, lawsuits, costs, damages, liabilities, losses, or expenses are proximately caused by the willful misconduct or gross negligence of AT&T CALIFORNIA or its employees.
- 6.8 This section applies only to AT&T CALIFORNIA:
- 6.8.1 AT&T CALIFORNIA will make available to CLEC an optional service, Repair Transfer Service ("RTS"). In the event a CLEC's End User dials 611 (811-8081 for Priority Business customers) for repair, AT&T CALIFORNIA will provide a recorded announcement of the CLEC name and number and AT&T CALIFORNIA will automatically transfer the caller to the CLEC designated 800/888 number for repair service. CLEC must provide written notification to AT&T CALIFORNIA at least thirty (30) calendar days prior to the implementation of RTS. Written notification must include the CLEC name and 800/888 numbers for RTS to the CLEC repair bureau and business office. There will be no charges associated with the initial set-up for RTS, however, charges will apply to any subsequent changes to the recorded name announcement and telephone number. Rates for subsequent changes are set forth in the Appendix Pricing in the "OTHER (Resale)" category listed as "Repair Transfer Service". Subsequent charges include: Recorded Name Announcement, 800/888 Telephone Number and Name Announcement & Telephone Number.

## 7. RESPONSIBILITIES OF CLEC

- 7.1 Prior to submitting an order under this Appendix, CLEC shall obtain End User authorization as required by applicable federal and state laws and regulations, and assumes responsibility for applicable charges as specified in Section 258(b) of the Act. AT&T-13STATE shall abide by the same applicable laws and regulations.
- 7.2 Only an End User can initiate a challenge to a change in its local service provider. If an End User notifies AT&T-13STATE or CLEC that the End User requests local exchange service, the Party receiving such request shall be free to provide service to such End User, except in those instances where the End User's account is local PIC protected. It is the responsibility of the End User to provide authorization in a FCC approved format to the current provider of record to remove local service provider protection before any changes in local service provider are processed.
- 7.2.1 AT&T-13STATE shall be free to connect an End User to any competitive local exchange carrier based upon that competitive local exchange carrier's request and that competitive local exchange carrier's assurance that proper End User authorization has been obtained. CLEC shall make any such authorization it has obtained available to AT&T-13STATE upon request and at no charge.
- 7.2.1.1 The following applies to AT&T MICHIGAN only: The Parties will adhere to the requirements adopted by the Commission in its Case No. U-11900 with respect to the selection of primary local exchange carriers and primary interexchange carriers.
- 7.3 When an End User changes or withdraws authorization, each Party shall release customer-specific facilities in accordance with the End User's direction or the direction of the End User's authorized agent. Further, when an End User abandons its premise, AT&T-13STATE is free to reclaim the facilities for use by another customer and is free to issue service orders required to reclaim such facilities.
- 7.4 Neither Party shall be obligated by this Appendix to investigate any allegations of unauthorized changes in local exchange service (slamming) on behalf of the other Party or a Third Party. If AT&T-13STATE, on behalf of CLEC, agrees to investigate an alleged incidence of slamming, AT&T-13STATE shall charge CLEC an investigation fee as set forth in Appendix Pricing in the "OTHER (Resale)" category, listed as "Slamming Investigation Fee".
- 7.5 Should AT&T-13STATE receive an order from CLEC for services under this Appendix, and AT&T-13STATE is currently providing the same services to another local service provider for the same End User, CLEC agrees that AT&T-13STATE may notify the local service provider from whom the End User is being converted of CLEC's order coincident with or following processing CLEC's order. It shall then be the responsibility of the former local service provider of record and CLEC to resolve any issues related to the End User. This Section 7.5 shall not apply to new or additional lines and services purchased by the End User from multiple CLECs or from AT&T-13STATE.
- 7.5.1 If AT&T-13STATE receives an order from another local service provider to convert services for an End User for whom CLEC is the current local service provider of record, and if CLEC already subscribes to the Local Disconnect Report ("LDR"), covered in Section 7.5.2, then AT&T-13STATE shall notify CLEC of such order coincident with or following processing such order. It shall be the responsibility of CLEC and the other local service provider to resolve any issues related to the End User. This Section 7.5.1 shall not apply to new or additional lines and services purchased by an End User from multiple CLECs or from AT&T-13STATE.
- 7.5.2 On no less than sixty (60) calendar days advance written notice, CLEC may, at its option, subscribe to the LDR. AT&T-13STATE will furnish the following information via the LDR: the Billing Telephone Number ("BTN"), Working Telephone Number ("WTN"), and terminal number of all End Users who have disconnected CLEC's service. Information furnished electronically will be provided daily on a per WTN basis and priced on a per WTN basis. CLEC shall pay AT&T-13STATE for the LDR per WTN plus any applicable transmission charges for the LDR; current WTN prices are as set forth in Appendix Pricing in the "OTHER (Resale)" category, listed as "Local Disconnect Report." CLEC

agrees that AT&T-13STATE may change the per WTN charge, at AT&T-13STATE's sole discretion, so long as AT&T-13STATE provides CLEC no less than thirty (30) calendar days notice prior to any change in the per WTN charge. AT&T-13STATE grants to CLEC a non-exclusive right to use the LDR information provided by AT&T-13STATE. CLEC will not permit anyone but its duly authorized employees or agents to inspect or use this information.

- 7.6 CLEC is solely responsible for the payment of all charges for all services furnished under this Appendix, including but not limited to, calls originated or accepted at CLEC's location and its End Users' service locations; provided, however, CLEC shall not be responsible for payment of charges for any retail services furnished by AT&T-13STATE directly to End Users and billed by AT&T-13STATE directly to End Users.
- 7.6.1 Interexchange carried traffic (for example, sent-paid, information services and alternate operator services messages) received by AT&T-13STATE for billing to resold End User accounts will be returned as unbillable and will not be passed to CLEC for billing. An unbillable code will be returned with those messages to the carrier indicating that the messages originated from a resold account and will not be billed by AT&T-13STATE.
- 7.7 AT&T-13STATE shall not be responsible for the manner in which utilization of resold services or the associated charges are allocated to End Users or others by CLEC. All applicable rates and charges for services provided to CLEC under this Appendix will be billed directly to CLEC and shall be the responsibility of CLEC; provided, however, that CLEC shall not be responsible for payment of charges for any retail services furnished by AT&T-13STATE directly to End Users and billed by AT&T-13STATE directly to End Users.
- 7.7.1 Charges billed to CLEC for all services provided under this Appendix shall be paid by CLEC regardless of CLEC's ability or inability to collect from its End Users for such services.
- 7.8 If CLEC does not wish to be responsible for payment of charges for collect, third number billed, toll and information services (for example, 900) calls, it must order the appropriate blocking for lines provided under this Appendix and pay any applicable charges. It is the responsibility of CLEC to order the appropriate toll restriction or blocking on lines resold to End Users. CLEC acknowledges that blocking is not available for certain types of calls, including 800, 888, 411 and Directory Assistance Express Call Completion. Depending on the origination point, for example, calls originating from correctional facilities, some calls may bypass blocking systems. CLEC acknowledges all such limitations and accepts all responsibility for any charges associated with calls for which blocking is not available and any charges associated with calls that bypass blocking systems. Charges for Alternatively Billed Calls shall be paid by CLEC at the rated value of the call less the appropriate State discount.
- 7.9 CLEC shall be responsible for modifying and connecting any of its systems with AT&T-13STATE-provided interfaces as described in this Appendix and Appendix OSS.
- 7.10 CLEC shall be responsible for providing to its End Users and to AT&T-13STATE a telephone number or numbers that CLEC's End Users may use to contact CLEC in the event that the End User desires a repair/service call.
- 7.10.1 In the event that CLEC's End Users contact AT&T-13STATE with regard to repair requests, AT&T-13STATE shall inform such End Users to call CLEC and may provide CLEC's contact number.
- 7.11 CLEC acknowledges and agrees that, in the event CLEC makes any "CLEC Change" as that term is defined in Section 4.10 of the General Terms and Conditions of the Agreement to which this Appendix is attached, CLEC shall comply with the provisions set forth in Section 4.10 of the General Terms and Conditions of the Agreement to which this Appendix is attached as though set forth herein.
- 7.12 CLEC will provide forecasts to AT&T-13STATE every January and July using the AT&T-13STATE network information form, or a format mutually agreed to by the Parties. These written forecasts will be based on CLEC's best estimates and will include all resale products CLEC will be ordering within the forecast period.

**APPENDIX FOR ACCESS**  
**TO AT&T INC.'S STRUCTURE**  
**(POLES, CONDUITS, AND RIGHTS-OF-WAYS)**

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## APPENDIX FOR ACCESS TO AT&T INC.'S STRUCTURE (POLES, CONDUITS, AND RIGHTS-OF-WAYS)

### 1. INTRODUCTION

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

### 2. DEFINITIONS

- 2.1 **Definitions in General.** As used in this Agreement, the terms defined in this article shall have the meanings set forth below in Sections 2.1 to 2.17 except as the context otherwise requires.
- 2.2 **Authorized Contractor.** As used in this Agreement the term "Authorized Contractor" is used when referring to any contractor which is included on a list of contractors mutually approved by Attaching

Party and AT&T-13STATE and who subject to Attaching Party's direction and control, and subject to the requirements and policies in each state, perform facilities modification or make-ready work which would ordinarily be performed by AT&T-13STATE or persons acting on AT&T-13STATE's behalf as more specifically detailed in Section 21.2.

- 2.3 Conduit. The term "conduit" refers to tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. As used in this Agreement, the term "conduit" refers only to conduit structures (including ducts, manholes and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other AT&T-13STATE structures (such as huts and cabinets) which branch off from or are connected to AT&T-13STATE's conduit.
- 2.4 Conduit System. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Agreement, the term "conduit system" does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other AT&T-13STATE structures (such as huts and cabinets) which branch off from or are connected to AT&T-13STATE's conduit.
- 2.5 Duct. The term "duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Agreement, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels, but does not include cables and other telecommunications equipment located within such ducts.
- 2.6 Handhole. The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Agreement, the term "handhole" refers only to handholes which are part of AT&T-13STATE's conduit system and does not refer to handholes which provide access to buried cables not housed within AT&T-13STATE ducts or conduits. As used in this Agreement, the term "handhole" refers only to handhole structures owned or controlled by AT&T-13STATE and does not include cables and other telecommunications equipment located within handhole structures.
- 2.7 Occupancy Permit. The term "occupancy permit" refers to a written instrument confirming that AT&T-13STATE has granted the structure access request of Attaching Party or a third party for access to pole, duct, conduit, or rights-of-way space.
- 2.8 Maintenance Duct. The term "maintenance duct" generally refers to a full-sized duct (typically three inches in diameter or larger) for use, on a short-term basis, for maintenance, repair, or emergency restoration activities. The term "maintenance duct" does not include ducts and conduits extending from an AT&T-13STATE manhole to customer premises. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.
- 2.9 Make-ready Work. The term "make-ready work" refers to all work performed or to be performed to prepare AT&T-13STATE's poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Attaching Party's facilities.
- 2.10 Manhole. The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in ducts or conduits which are parts of AT&T-13STATE's conduit system. As used in this Agreement, the term "manhole" does not include cables and other telecommunications equipment located within manhole structures.
- 2.11 Other User. The term "Other User" refers to entities, other than the Attaching Party, with facilities on an AT&T-13STATE pole, duct, conduit or rights-of-way to which the Attaching Party has obtained access. Other Users may include AT&T-13STATE, other attaching parties, municipalities or other governmental entities, and electric utilities (which may own interests in AT&T-13STATE's poles, ducts, conduits or rights-of-ways).

- 2.12 Overlashing. The term "Overlashing" refers to the practice of placing an additional cable by lashing such cable with spinning wire over an existing cable and strand.
- 2.13 Periodic Inspections. The term "periodic inspections" refers to inspections that are planned and scheduled by AT&T-13STATE, for the purpose of inspecting the facilities of CLEC's attached to AT&T-13STATE structure, (poles, conduits, and rights-of-way).
- 2.14 Pole. The term "pole" refers to poles (and associated anchors) which are owned or controlled by AT&T-13STATE and does not include cables and other telecommunications equipment attached to pole structures.
- 2.15 Rights-of-way. The term "rights-of-way" refers to AT&T-13STATE owned or controlled legal rights to pass over or through property of another party and used by AT&T-13STATE for its telecommunications distribution system. For purposes of this Agreement, "rights-of-way" includes property owned by AT&T-13STATE and used by AT&T-13STATE for its telecommunications distribution facilities. Rights-of-way does not include:
- 2.15.1 cables and other telecommunications equipment buried or located on such rights-of-way,
  - 2.15.2 public rights-of-way (which are owned by and subject to the control of governmental entities), or
  - 2.15.3 any space which is owned and controlled by a third-party property owner and occupied by AT&T-13STATE with permission from such owner rather than as a matter of legal right.
- 2.16 Spot Inspections. The term "spot inspections" refers to spontaneous inspections done by AT&T-13STATE, which may be initiated, at AT&T-13STATE's discretion for the purpose of ensuring safety and compliance with AT&T-13STATE standards.
- 2.17 Structure. The term "Structure" refers collectively to poles, ducts, conduits and rights-of-way.

### 3. SCOPE OF AGREEMENT

- 3.1 This Agreement establishes the rates, terms, conditions, and procedures by which AT&T-13STATE shall provide non-discriminatory access to AT&T-13STATE's Structure. Separate tariffs, appendix, or agreements shall govern Attaching Party's access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Agreement:
- 3.1.1 AT&T-13STATE's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from AT&T-13STATE's central offices;
  - 3.1.2 controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
  - 3.1.3 ducts and conduits located within buildings owned by AT&T-13STATE; and
  - 3.1.4 ducts, conduits, equipment rooms, and similar spaces located in space leased by AT&T-13STATE from third-party property owners for purposes other than to house cables and other equipment in active service as part of AT&T-13STATE's network distribution operations.
- 3.2 No Transfer of Property Rights to Attaching Party. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other.
- 3.3 No Effect on AT&T-13STATE's Right to Abandon, Convey or Transfer Structure. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall in any way affect AT&T-13STATE's right to abandon, convey, or transfer to any other person or entity AT&T-13STATE's interest in any of AT&T-13STATE's Structure. AT&T-13STATE shall give Attaching Party at least 60 days written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been

assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or rights-of-way is to be conveyed or transferred.

#### 4. INTENTIONALLY LEFT BLANK

#### 5. GENERAL PROVISIONS

- 5.1 Entire Agreement. This Agreement, together with the interconnection agreement, if any, of which this Agreement is a part, and the Guidelines for Access to AT&T-13STATE Structure, attached hereto and incorporated herein by reference, sets forth the entire understanding and agreement of the parties.
- 5.2 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Attaching Party and AT&T-13STATE relating to the placement and maintenance of Attaching Party's facilities on and within AT&T-13STATE's poles, ducts, and conduits within this State.
- 5.3 Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.
- 5.4 Survival of Obligations. Any liabilities or obligations of either party for acts or omissions prior to the termination of this Agreement, any obligations of either party under provisions of this Agreement relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, will survive the termination of this Agreement.
- 5.5 Effect on Licenses or Occupancy Permits Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy permits granted to Attaching Party shall, on the effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.
- 5.6 The parties shall at all times observe and comply with, and the provisions of this Agreement are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties.

#### 6. DISCLAIMER OF WARRANTIES

AT&T-13STATE MAKES NO REPRESENTATIONS AND DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, THAT AT&T-13STATE'S POLES, DUCTS, CONDUITS AND WARRANTIES ARE SUITABLE FOR THE ATTACHING PARTY'S INTENDED USES OR ARE FREE FROM DEFECTS. THE ATTACHING PARTY SHALL IN EVERY INSTANCE BE RESPONSIBLE TO DETERMINE THE ADEQUACY OF AT&T-13STATE'S POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY FOR THE ATTACHING PARTY'S INTENDED USE.

#### 7. DISPUTE RESOLUTION

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

#### 8. INDEMNIFICATION

- 8.1 The parties agree that the indemnity provisions of the General Terms and Conditions of the Interconnection Agreement shall apply in addition to the additional indemnity language below: in Section 8.2-8.5.
- 8.2 Indemnification for Environmental Claims.
  - 8.2.1 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the violation or

breach, by any employee of the indemnifying party or other person acting on the indemnifying party's behalf, of

8.2.1.1 any federal, state, or local environmental statute, rule, regulation, ordinance, or other law or

8.2.1.2 any provision or requirement of this Agreement dealing with hazardous substances or protection of the environment.

8.2.2 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of the indemnifying party, or by any person acting on the indemnifying party's behalf, while present on, within, or in the vicinity of any **AT&T-13STATE** pole, duct, conduit, or rights-of-way.

8.2.3 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the removal or disposal of any hazardous substances by the indemnifying party or by any person acting on the indemnifying party's behalf, or arising out of or in connection with the subsequent storage, processing or other handling of such hazardous substances by any person or entity after they have been removed by the indemnifying party or persons acting on the indemnifying party's behalf from the site of any **AT&T-13STATE** pole, duct, conduit, or rights-of-way.

8.2.4 Except as otherwise specifically provided in this section, neither party shall be required to indemnify or defend the other party against, or hold the other party harmless from any Claims for which the other party may be liable under any federal, state, or local environmental statute, rule, regulation, ordinance, or other law.

8.3 Miscellaneous Claims. Attaching Party shall indemnify, on request defend, and hold **AT&T-13STATE** harmless from any and all Claims, of every kind and character, made, brought, or sought against **AT&T-13STATE** by any person or entity, arising out of or in connection with the subject matter of this Agreement and based on either:

8.3.1 claims for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on **AT&T-13STATE** due to the placement or presence of Attaching Party's facilities on or within **AT&T-13STATE**'s poles, ducts, conduits, or rights-of-way; or

8.3.2 claims based on the violation by Attaching Party of any third party's intellectual property rights, including but not limited to claims for copyright infringement, patent infringement, or unauthorized use or transmission of television or radio broadcast programs or other program material.

8.4 Attaching Party's General Indemnity Obligations to **AT&T-13STATE**. This section applies only in those situations not expressly covered by Sections 8.3-8.10 and does not apply to any Claims resulting from Attaching Party's enforcement of its rights against **AT&T-13STATE** pursuant to this Agreement or other provisions in the parties' interconnection agreement, if any. Except as otherwise expressly provided in this Agreement to the contrary, and subject to the exclusions set forth in Section 8.2, Attaching Party shall indemnify, on request defend, and hold **AT&T-13STATE** harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with Attaching Party's access to or use of **AT&T-13STATE**'s poles, ducts, conduits, or rights-of-way, Attaching Party's performance of any acts authorized under this Agreement, or the presence or activities of Attaching Party's employees or other personnel acting on Attaching Party's behalf on, within, or in the vicinity of **AT&T-13STATE**'s poles, ducts, conduits, or rights-of-way.

8.5 **AT&T-13STATE**'s General Indemnity Obligations to Attaching Party. This section applies only in those situations not expressly covered by Sections 8.3-8.9 and does not apply to any Claims resulting from

AT&T-13STATE's enforcement of its rights against Attaching Party pursuant to this Agreement or other provisions in the parties' interconnection agreement, if any. Except as otherwise expressly provided in this Agreement to the contrary, AT&T-13STATE shall indemnify, on request defend, and hold Attaching Party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with AT&T-13STATE's access to or use of AT&T-13STATE's poles, ducts, conduits, or rights-of-way, AT&T-13STATE's performance of any acts authorized under this Agreement, or the presence or activities of AT&T-13STATE's employees or other personnel acting on AT&T-13STATE's behalf on, within, or in the vicinity of AT&T-13STATE's poles, ducts, conduits, or rights-of-way.

## 9. LIABILITIES AND LIMITATIONS OF LIABILITY

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

## 10. INSURANCE

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

## 11. ASSIGNMENT OF RIGHTS

- 11.1 Assignment Permitted. Neither party may assign, or otherwise transfer its rights or obligations, under this Agreement except as provided in this section.

11.1.1 AT&T-13STATE may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with AT&T-13STATE or which acquires or succeeds to ownership of substantially all of AT&T-13STATE's assets.

11.1.2 Overlapping of Attaching Party's facilities on AT&T-13STATE poles by a third party will be allowed under the following conditions:

11.1.2.1 The Overlapping entity must enter into an agreement with AT&T-13STATE for access to AT&T-13STATE Structures and abide by the terms and conditions of such an Occupancy Permit.

11.1.2.2 The Overlapping entity must obtain written approval from the Attaching Party and provide a copy to AT&T-13STATE prior to submitting a request for access to structure.

11.1.2.3 The Overlapping party must submit a written request for access to structure, and indicate on the request that the request is for Overlapping of an existing attachment of the Attaching Party in order to ensure that pole loadings are not exceeded.

11.1.2.4 The Overlapping entity is responsible for paying the fees for Overlapping in Appendix I and/or Appendix Pricing which are separate and in addition to the fees paid by the Attaching Party (e.g. the application fees and all make ready fees, etc.).

11.1.3 Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without AT&T-13STATE's consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Agreement, subject to the express terms of this Agreement. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire Attaching Party's assets through public or private sale or through an Agreement with Attaching Party, Attaching Party's lender or the third party acquiring Attaching Party's rights under this Agreement shall assume all outstanding obligations of Attaching Party under the agreement and provide proof satisfactory to AT&T-13STATE that such lender or third party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the

contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Attaching Party under the Agreement, including liability to AT&T-13STATE for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third party succeeds to the rights of Attaching Party under the Agreement, as applicable.

- 11.1.4 No assignment or transfer by Attaching Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this article, secured AT&T-13STATE's prior written consent to the assignment or transfer, if necessary, and given AT&T-13STATE notice of the assignment or transfer pursuant to Section 11.3.
- 11.2 Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article.
- 11.3 Assignment Shall Not Relieve Attaching Party of Prior Obligations. Except as otherwise expressly agreed by AT&T-13STATE in writing, no assignment permitted by AT&T-13STATE under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 8 of this Agreement or the interconnection agreement, if any.
- 11.4 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. AT&T-13STATE may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Attaching Party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement.
- 11.5 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting Attaching Party the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or occupancy permits subject to this Agreement to any third party. Except as otherwise expressly permitted in this Agreement, Attaching Party shall not allow third party to attach or place facilities to or in pole or conduit space occupied by or assigned to Attaching Party or to utilize such space.

## 12. TERMINATION OF AGREEMENT OR OCCUPANCY PERMITS; REMEDIES FOR BREACHES

- 12.1 Termination Due to Non-Use of Facilities or Loss of Required Authority. This Agreement and all occupancy permits subject to this Agreement shall terminate if Attaching Party ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if Attaching Party is cable television system having access to AT&T-13STATE's poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in this State (if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in this State), or ceases to make active use of AT&T-13STATE's poles, ducts, conduits, and rights-of-way.
- 12.2 Individual occupancy permits subject to this Agreement shall terminate if (a) Attaching Party ceases to utilize the pole attachment or conduit or rights-of-way space subject to such occupancy permit or (b) Attaching Party's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated, or local governmental authority or third-party property owner having authority to revoke, deny, or terminate such use or access.

- 12.3 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Attaching Party's access to AT&T-13STATE's Structure shall not materially interfere with or impair service over any facilities of AT&T-13STATE or any Other User, cause material damage to AT&T-13STATE's plant or the plant of any Other User, impair the privacy of communications carried over the facilities of AT&T-13STATE or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of AT&T-13STATE's poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, AT&T-13STATE may limit, terminate or refuse access if Attaching Party violates this provision.
- 12.4 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either party, the aggrieved party may give written notice of such claimed breach.
- 12.5 The complaining party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given, and
- 12.5.1 the breaching party fails to cure the breach within 30 days of such notice, if the breach is one which can be cured within 30 days, or
- 12.5.2 the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure.
- 12.6 Remedies for Breach. Subject to the provisions of this article, either party may terminate this Agreement in the event of a material breach by the other party or exercise any other legal or equitable right which such party may have to enforce the provisions of this Agreement. In any action based on an alleged breach of this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred by such party, including but not limited to reasonable attorneys' fees.

### 13. FAILURE TO ENFORCE

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

### 14. CONFIDENTIALITY OF INFORMATION

- 14.1 Information Provided by Attaching Party to AT&T-13STATE. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Attaching Party to AT&T-13STATE in connection with this Agreement (including but not limited to information submitted in connection with Attaching Party's applications for occupancy permit shall be deemed to be "confidential" or "proprietary" information of Attaching Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for or review of records or its inquiry about AT&T-13STATE facilities. This article does not limit the use by AT&T-13STATE of aggregate information relating to the occupancy and use of AT&T-13STATE's Structure by firms other than AT&T-13STATE (that is, information submitted by Attaching Party and aggregated by AT&T-13STATE in a manner that does not directly or indirectly identify Attaching Party).
- 14.2 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Attaching Party to AT&T-13STATE in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons other than those who have a need to know such information for the limited purposes set forth in Sections 14.3-14.6.

- 14.3 Permitted Uses of Attaching Party's Confidential Information. Notwithstanding the provisions of Sections 14.1 and 14.2 above, **AT&T-13STATE** and persons acting on **AT&T-13STATE**'s behalf may utilize Attaching Party's confidential or proprietary information for the following purposes:
- 14.3.1 posting information, as necessary, to **AT&T-13STATE**'s outside plant records;
  - 14.3.2 placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing **AT&T-13STATE**'s Structure and any **AT&T-13STATE** facilities located on, within, or in the vicinity of such Structure;
  - 14.3.3 performing **AT&T-13STATE**'s obligations under this Agreement and similar agreements with third parties;
  - 14.3.4 determining which of **AT&T-13STATE**'s Structure are (or may in the future be) available for **AT&T-13STATE**'s own use, and making planning, engineering, construction, and budgeting decisions relating to **AT&T-13STATE**'s Structure;
  - 14.3.5 preparing cost studies;
  - 14.3.6 responding to regulatory requests for information;
  - 14.3.7 maintaining **AT&T-13STATE**'s financial accounting records; and
  - 14.3.8 complying with other legal requirements relating to Structure.
- 14.4 Defense of Claims. In the event of a dispute between **AT&T-13STATE** and any person or entity, including Attaching Party, concerning **AT&T-13STATE**'s performance of this Agreement, satisfaction of obligations under similar agreements with third parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, **AT&T-13STATE** may utilize confidential or proprietary information submitted by Attaching Party in connection with this Agreement as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that **AT&T-13STATE** shall not disclose Attaching Party's proprietary or confidential information without first, at **AT&T-13STATE**'s option:
- 14.4.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
  - 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
  - 14.4.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.
- 14.5 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding **AT&T-13STATE** from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that **AT&T-13STATE** shall not disclose Attaching Party's proprietary or confidential information without first, at **AT&T-13STATE**'s option:
- 14.5.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
  - 14.5.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
  - 14.5.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

## 15. ACCESS TO RIGHTS-OF-WAY

- 15.1 To the extent AT&T-13STATE has the authority to do so, AT&T-13STATE grants Attaching Party a right to use any rights-of-way for AT&T-13STATE poles, ducts, or conduits to which Attaching Party may attach its facilities for the purposes of constructing, operating and maintaining such Attaching Party's facilities on AT&T-13STATE's poles, ducts or conduits. Notwithstanding the foregoing, Attaching Party shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, rights-of-way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the AT&T-13STATE pole, duct or conduit to which Attaching Party seeks to attach its facilities. Attaching Party shall furnish proof of any such easement, rights-of-way, license, permit, permission, certification, or franchise within thirty (30) days of request by AT&T-13STATE. AT&T-13STATE does not warrant the validity or apportionability of any rights it may hold to place facilities on private property.
- 15.2 Private Rights-of-Way Not Owned or Controlled by Either Party. Neither party shall restrict or interfere with the other party's access to or right to occupy property owned by third-parties which is not subject to the other party's control, including property as to which either party has access subject to non-exclusive rights-of-way. Each party shall make its own, independent legal assessment of its right to enter upon or use the property of third-party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.
- 15.3 Access to Rights-of-Way Generally. At locations where AT&T-13STATE has access to third-party property pursuant to non-exclusive rights-of-way, AT&T-13STATE shall not interfere with Attaching Party's negotiations with third-party property owners for similar access or with Attaching Party's access to such property pursuant to easements or other rights-of-ways obtained by Attaching Party from the property owner. At locations where AT&T-13STATE has obtained exclusive rights-of-way from third-party property owners or otherwise controls the rights-of-way, AT&T-13STATE shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Attaching Party on a nondiscriminatory basis, provided that the underlying agreement with the property owner permits AT&T-13STATE to provide such access, and provided further that AT&T-13STATE's charges for such access shall include Attaching Party's pro rata portion of the charges, if any, paid by AT&T-13STATE to obtain the rights-of-way, plus any other documented legal, administrative, and engineering costs incurred by AT&T-13STATE in obtaining the rights-of-way and processing Attaching Party's request for access.

## 16. SPECIFICATIONS

- 16.1 Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities attached to AT&T-13STATE's poles or occupying space in AT&T-13STATE's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Agreement and the Administrative Guide.
- 16.2 Published Standards. Attaching Party's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:
- 16.2.1 the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book";
- 16.2.2 the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE");
- 16.2.3 the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA");

16.2.4 California Public Utility Commission's General Orders 95 and 128 for attachments to Pacific Bell Telephone Company poles, ducts, conduits and rights of way; and,

16.2.5 the AT&T-13STATE Structure Access Guidelines.

16.3 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of AT&T-13STATE's manholes and access to AT&T-13STATE's conduit system.

16.3.1 Attaching Party will notify AT&T-13STATE not less than 5 business days in advance before entering AT&T-13STATE's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the parties. The notice shall state the general nature of the work to be performed.

16.3.2 An authorized employee or representative of AT&T-13STATE may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within AT&T-13STATE's conduit system. Attaching party must notify AT&T-13STATE when Attaching Party has completed such work in the conduit system. If AT&T-13STATE has not had the opportunity to complete the review, AT&T-13STATE will attempt to meet with Attaching Party's contractors to finalize the review. If AT&T-13STATE is not available when Attaching Party notifies AT&T-13STATE of their notice of completion then AT&T-13STATE will perform a post-construction inspection as described in section 26.1. Attaching Party shall reimburse AT&T-13STATE for costs associated with the presence of AT&T-13STATE's authorized employee or representative.

16.3.3 Each party must obtain any necessary authorization from appropriate authorities to open manholes.

## 17. ACCESS TO RECORDS

17.1 AT&T-13STATE will, upon request and at the expense of the Attaching Party, provide Attaching Party access to and copies of redacted maps, records and additional information relating to the location, capacity and utilization of AT&T-13STATE's Structure. Upon request, AT&T-13STATE will meet with the Attaching Party to clarify matters relating to maps, records or additional information. AT&T-13STATE does not warrant the accuracy or completeness of information on any maps or records.

17.2 Maps, records or information are and remain the proprietary property of AT&T-13STATE, are provided to the Attaching Party solely for the pursue of enabling the Attaching Party to obtain access to AT&T-13STATE's Structure, and may not be resold, reproduced or disseminated by the Attaching Party.

17.3 AT&T-13STATE will provide information currently available on the AT&T-13STATE's maps and/or records regarding:

17.3.1 the location of Structure and street addresses for manholes and poles as shown on AT&T-13STATE's maps;

17.3.2 the footage between manholes or lateral ducts lengths, as shown on AT&T-13STATE's maps;

17.3.3 the footage between poles, if shown on AT&T-13STATE's maps;

17.3.4 the total capacity of the Structure

17.3.5 the existing utilization of the Structure.

17.4 AT&T-13STATE will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by AT&T-13STATE.

17.5 AT&T-13STATE will expunge any confidential or proprietary information from its maps and records prior to providing access to the Attaching Party.

17.6 AT&T-13STATE will:

17.6.1 Within five (5) business days after attaching party submits Billing Authorization to AT&T-13STATE, AT&T-13STATE will notify attaching party of the place and time that attaching party may view the Structure Records.

17.6.2 The viewing room must be reserved for a minimum of two (2) hours. Attaching Party may request additional time prior to the viewing date. AT&T-13STATE may not be able to provide attaching party with unscheduled additional time for viewing AT&T-13STATE Structure Records on the viewing date, but if unable will immediately make alternative arrangements that are mutually acceptable for the viewing of records as soon thereafter as possible.

17.6.3 AT&T-13STATE may make available at the Attaching Party's expense, an AT&T-13STATE representative with sufficient knowledge about AT&T-13STATE Structure Records to clarify matters relating to such Structure Records and to assist Attaching Party during their viewing.

17.7 Charges associated with map preparation, viewing and assistance will be on a Time and Material basis as set forth in the following Applicable Tariffs:

17.7.1 AT&T MIDWEST REGION 5-STATE - FCC No. 2 Access Services Tariff, Section 13.1.1

17.7.2 AT&T SOUTHWEST REGION 5-STATE - FCC No. 73, Access Services Tariff, Section 13.4.2(B)

17.7.3 AT&T-2STATE - FCC No. 1 Access Services Tariff, Section 13.1.1

17.7.4 AT&T CONNECTICUT - FCC No. 2 Access Services Tariff, Section 13.1.1

18. **APPLICATIONS AND PRE-OCCUPANCY PERMIT SURVEYS**

18.1 Occupancy Permits Required. Attaching Party shall apply in writing for and receive an occupancy permit before attaching facilities to specified AT&T-13STATE poles or placing facilities within specified AT&T-13STATE ducts, conduits, or rights-of-way.

18.2 Structure Access Request Form. To apply for an occupancy permit under this Agreement, Attaching Party shall submit to AT&T-13STATE the appropriate AT&T-13STATE request forms. Attaching Party shall promptly withdraw or amend its request if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific AT&T-13STATE Structure. In addition, Attaching Party shall also:

18.2.1 submit payment for the estimate authorizing AT&T-13STATE or its contractor to complete the make-ready survey; or

18.2.2 advise AT&T-13STATE of its willingness to perform the proposed make-ready work itself or an Authorized Contractor if permissible in the application area.

18.2.3 confirm that Attaching Party has calculated storm loadings, guying, or pole class to ensure pole loadings are not exceeded and indicate if additional holding or loading capacity is required.

18.2.4 provide sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to AT&T-13STATE's poles or placed in AT&T-13STATE's conduit system.

18.3 Make-Ready Survey. A Make-Ready survey must be completed by AT&T-13STATE or, subject to the requirements and policies in each state, the Attaching Party before an occupancy permit is issued. The primary purposes of the make ready survey will be to enable AT&T-13STATE to:

18.3.1 confirm or determine the modifications, capacity expansion, and make-ready work, if any, necessary to accommodate Attaching Party's attachment of facilities to AT&T-13STATE structures;

18.3.2 plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare AT&T-13STATE's poles, ducts, conduits, rights-of-way, and associated facilities for Attaching Party's proposed attachments or occupancy;

18.3.3 estimate the costs associated with such facilities modification, capacity expansion, or make-ready work; and

18.3.4 identify the owner of the pole.

## 19. POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

19.1 Selection of Space. AT&T-13STATE will select or approve the Attaching Party's selection of the space Applicant will occupy on AT&T-13STATE's poles or in AT&T-13STATE's conduit systems. Maintenance ducts shall not be considered available for Attaching Party's use except as specifically provided elsewhere in this Agreement. Where required by law or franchise agreement, ducts and attachment space on poles reserved for municipal use shall not be considered available for the Attaching Party's use. All other ducts, inner ducts, space on poles or space in rights-of-ways which are not assigned or occupied shall be deemed available for use by AT&T-13STATE, Attaching Party, and other parties entitled to access under applicable law.

19.2 Pole, Duct, and Conduit Space Assignments.

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

19.2.2 AT&T CALIFORNIA: The pole, duct, and conduit space selected and/or approved by AT&T-CALIFORNIA in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed nine (9) months in AT&T CALIFORNIA only as detailed by the California Public Utility Commission.

19.2.3 AT&T-13STATE may assign space to itself by making appropriate entries in the same records used to log assignments to Attaching Party and third parties. If AT&T-13STATE assigns pole, duct, or conduit space to itself, such assignment will automatically lapse 12 months after the date the assignment has been entered into the appropriate AT&T-13STATE record if AT&T-13STATE has not occupied such assigned space within such 12 month period.

19.2.4 AT&T CONNECTICUT will make available on request municipal gain space in accordance with Connecticut State Statute 16-233.

19.2.5 AT&T CALIFORNIA: Space assignment is 9 months in California.

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

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

20.1 Response Within 45 Days. Within 45 days of Attaching Party's submission of a request for access to AT&T-13STATE Structure, AT&T-13STATE shall provide a written response to the application, except AT&T CONNECTICUT, which response time will be on a first come, first serve basis. The response shall state whether the request is being granted or denied, and if the request is denied, provide the reasons why the request is being denied. If denial of access is proposed, AT&T-13STATE will meet with the Attaching Party and explore in good faith reasonable alternatives to accommodate the proposed attachment. The Attaching Party must request such meeting within ten (10) business days of receipt of a notice of denial. AT&T-13STATE will schedule the meeting within ten (10) business days of receipt of the Attaching Party's written request for a meeting.

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

20.2.1 what modifications, capacity expansions, or make-ready work, if any, will be required to prepare AT&T-13STATE's Structure, and

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