

- (c) From and after the effective date of this Appendix, neither party nor personnel acting on either party's behalf shall discharge or release hazardous substances onto or from the site of any SWBT pole, duct, conduit, or right-of-way. Neither IP Communications Corporation nor SWBT nor personnel acting on either party's behalf shall discharge water or any other substance from any SWBT manhole or other conduit facility onto public or private property, including but not limited to any storm water drainage system, without first determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person.

6.15 Compliance with Other Governmental Requirements (Including Aeronautical Navigation Safeguards). IP Communications Corporation and SWBT agree that their facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter (including but not limited to any valid ordinances, rules, and regulations requiring permits, certificates, licenses or the like). IP Communications Corporation and SWBT shall comply with all statutes, ordinances, rules, regulations, and other laws requiring the marking and lighting of aerial wires, cables, and other structures to ensure that such wires, cables, and structures are not a hazard to aeronautical navigation.

6.16 Responsibility for Condition of Facilities. Each party will be responsible at all times for the condition of its facilities (including but not limited to those extending from SWBT's poles, ducts, conduits, or rights-of-way directly to any other location) and for its compliance with the requirements and specifications of this article and all applicable laws, rules, regulations, and ordinances.

## **ARTICLE 7: PRIMARY POINTS OF CONTACT, ACCESS TO RECORDS, AND PRE-OCCUPANCY INSPECTIONS**

7.01 Designation of Primary Points of Contact. Each party will, at the request of the other party, designate a primary point of contact to facilitate communications between the parties and the timely processing of IP Communications Corporation's applications for access to SWBT's poles, ducts, conduits, and rights-of-way located within this State. Designations of primary points of contact will be made by written notices including the name, title, address, phone number, and fax number of the person designated as the primary point of contact; provided, however, that unless and until a different designation is made, SWBT's primary point of contact shall be the Utility Liaison Supervisor identified in EXHIBIT VIII. Designation of primary points of contact pursuant to this section shall not affect notice requirements or other legal requirements set forth in other provisions of this Appendix or the parties' interconnection agreement.

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7.02 Determinations by IP Communications Corporation of Suitability and Availability. IP Communications Corporation shall make its own, independent assessment of the suitability of SWBT's poles, ducts, conduits, and rights-of-way for IP Communications Corporation's intended purposes.

7.03 Access to Records Relating to SWBT's Poles, Ducts, Conduits, and Rights-of-Way. This section establishes procedures through which certain records and information relating to SWBT's poles, ducts, conduits, and rights-of-way will be made available to IP Communications Corporation. Access to such records and information shall be conditioned on IP Communications Corporation's execution of a nondisclosure agreement equivalent in substance to the Nondisclosure Agreement attached to this Appendix as Exhibit V or such other nondisclosure agreement as shall be mutually acceptable to the parties, and no person acting on IP Communications Corporation's behalf shall be granted access to such records and information without first signing such a nondisclosure agreement. IP Communications Corporation shall reimburse SWBT for all reasonable costs incurred by SWBT in granting IP Communications Corporation's requests for access to records and information under this section.

- (a) IP Communications Corporation shall, after the effective date of this Appendix, have reasonable access to (1) SWBT's pole and conduit maps and records, (2) SWBT's cable plat maps, and, (3) in addition, other SWBT plant location records recording or logging assignments of pole, duct, and conduit space. IP Communications Corporation shall be permitted to examine these records during regular business hours at a location where copies of such records are maintained or at such other location as may be mutually agreed upon by the parties. Access to such maps and records shall be by appointment only, and SWBT shall make such maps and records available for inspection by IP Communications Corporation on two business days notice; provided, however, that IP Communications Corporation shall, as a courtesy, whenever feasible, provide SWBT with additional advance notice (e.g., 10 business days) of its intent to examine such records.
- (b) The access described in subsection (a) shall include the right to make copies, at IP Communications Corporation's expense, except for cable plat maps, which shall be made available for inspection only. In all instances, such access shall include the ability to take notes and make drawings with references to those maps and records. No references to cable counts or circuit information may be included in any such copies, notes, or drawings. With respect to other cable-specific or customer-specific information, IP Communications Corporation's copies, notes, or drawings may include only such information as needed for engineering purposes

(e.g., proposing cable consolidations and identifying plant discrepancies) and not for sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities. IP Communications Corporation's copies, notes, and drawings may include estimates regarding the physical characteristics (such as size and weight) of cables when necessary to make engineering determinations regarding the capacity, safety, reliability, or suitability of SWBT's poles, ducts, conduits, and rights-of-way for IP Communications Corporation's intended uses.

- (c) SWBT shall provide IP Communications Corporation the best information available from SWBT's current pole and conduit maps and records, cable plat maps, and other outside plant and construction records. SWBT represents that such records reflect approximate geographical locations of the facilities depicted and may not accurately reflect information such as:
- (1) the exact location of the facilities depicted;
  - (2) the physical size, characteristics, or condition of the facilities depicted;
  - (3) the ducts or inner ducts presently occupied, assigned, or available within any particular conduit segment or manhole;
  - (4) the arrangement of facilities attached to a pole, the position of facilities suspended between poles or their relationship to each other and to the ground, or the positioning of cables and other facilities housed within ducts, conduits, manholes or other portions of SWBT's conduit system; and
  - (5) other information which must be assessed before it can be determined that space is available on or in a pole, duct, or conduit for the attachment or occupancy of IP Communications Corporation's facilities or that the pole, duct, or conduit depicted is suitable for IP Communications Corporation's intended use.

7.04 Pre-Occupancy Inspection of Poles, Ducts, Conduits, and Rights-of-Way. IP Communications Corporation shall be permitted to view and inspect specified poles, ducts, conduits, and rights-of-way on a pre-occupancy basis as provided in this section.

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- (a) After the effective date of this Appendix, SWBT shall permit IP Communications Corporation to view specified poles, ducts, conduits, and rights-of-way on a pre-occupancy basis. Nothing contained in this section shall preclude IP Communications Corporation from visually inspecting SWBT's poles, ducts, conduits, or rights-of-way from any vantage point lawfully accessible to IP Communications Corporation without SWBT's permission.
- (b) IP Communications Corporation shall not enter any SWBT manhole for the purpose of performing a pre-occupancy inspection without complying with all applicable requirements set forth in Article 6 of this Appendix, including but not limited to the provisions of Section 6.11 relating to the opening of manholes.

#### **ARTICLE 8: POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS**

**8.01 Selection of Space.** SWBT must allow IP Communications Corporation to select the space IP Communications Corporation will occupy on poles or in conduit systems based upon the same criteria SWBT applies to itself and must provide IP Communications Corporation information about the network guidelines and engineering protocols used by SWBT in determining the placement of facilities on poles and in conduits. In conduit systems owned or controlled by SWBT, maintenance ducts (as defined in Section 3.26) shall not be considered available for IP Communications Corporation's use except as specifically provided elsewhere in this Appendix. All other ducts, inner ducts, sub-ducts, and partitioned conduits which are not assigned or occupied shall be deemed available for use by SWBT, IP Communications Corporation, and third parties entitled to access under the Pole Attachment Act.

**8.02 Pole, Duct, and Conduit Space Assignments.** Pole, duct, and conduit space selected by IP Communications Corporation will be assigned to IP Communications Corporation as provided in this section. Information received by SWBT in connection with this section shall be subject to the provisions of Article 28 of this Appendix (Confidentiality of Information).

- (a) On receipt of IP Communications Corporation's application for a pole attachment or conduit occupancy license by SWBT, the pole, duct, and conduit space selected by IP Communications Corporation shall be assigned to IP Communications Corporation for a pre-occupancy period not to exceed 12 months, beginning with the date of such assignment. The assignment (and date and time) of assignment shall be logged and recorded in the appropriate SWBT records. If such space has been provisionally assigned to IP Communications Corporation as authorized below in subsection (b),

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the 12-month pre-occupancy assignment period will begin on the date the provisional assignment is recorded in SWBT's records or the date of SWBT's receipt of IP Communications Corporation's notice of intent to occupy under subsection (b), whichever date first occurs.

- (b) SWBT shall, within 60 days after the effective date of this Appendix, adopt interim procedures which will enable pole, duct, and conduit space to be provisionally assigned to IP Communications Corporation and other applicants prior to the submission of formal applications required pursuant to Section 9.02 of this Appendix. Where indicated below, the interim procedures shall apply, on a nondiscriminatory basis, to the assignment of space to SWBT as well as to IP Communications Corporation and other applicants. SWBT may, on 60 days advance notice to IP Communications Corporation, revise such interim procedures if such procedures prove to be unworkable, in which event IP Communications Corporation may challenge SWBT's decision to revise or terminate such interim procedures in accordance with procedures available to IP Communications Corporation under applicable federal and state laws and regulations. The procedures shall enable IP Communications Corporation and other applicants, by written notice, to advise SWBT of their intent to occupy unassigned space which appears, from SWBT's records, to be available for assignment. Upon receipt of such notice, SWBT shall date- and time-stamp the notice and provisionally assign the space selected by IP Communications Corporation or such other applicant by logging and recording the assignment (and date and time of assignment) in the appropriate SWBT records, which records will be available for inspection as provided in Section 7.03 of this Appendix. Space provisionally assigned to IP Communications Corporation or such other applicant shall not be available for assignment to any other person or entity, including SWBT. Notwithstanding such provisional assignment, IP Communications Corporation shall not occupy such provisionally assigned space without first obtaining a license except as provided in Section 8.03. The following additional requirements shall apply.

- (1) Before giving SWBT a notice of its intent to occupy unassigned space, IP Communications Corporation shall make a good faith determination that it actually plans to occupy such space. The assignment process shall not be used by either party for the purpose of holding or reserving space which such party does not

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plan to use or for the purpose of precluding SWBT or any other person or entity from utilizing or having access to SWBT's poles, ducts, conduits, or rights-of-way.

- (2) With respect to unassigned conduit occupancy space, the notice must include all information required to enable SWBT and joint users, including other persons or entities which may from time to time seek space in the same ducts and conduits, to determine the specific space which IP Communications Corporation desires to occupy. The notice must, therefore, include, at a minimum, the following information:
  - (i) identification of the conduit sections, and each manhole, to be occupied unless specific information by which IP Communications Corporation would identify or designate the space to be occupied is not discernible from SWBT's records available for inspection under Section 7.03 in which case IP Communications Corporation will cooperatively work with SWBT to develop an acceptable description;
  - (ii) the number of ducts, and number of inner ducts, to be occupied by IP Communications Corporation within each conduit section;
  - (iii) the physical size (diameter) of the cables to be placed in such duct, if known, or the maximum and minimum sizes of the cables which may be placed if more than one size cable is being considered for the space to be occupied;
  - (iv) the anticipated use by IP Communications Corporation of any infrequent construction techniques and connectivity solutions under Section 6.03 to avoid high or unusual expenditures;
  - (v) IP Communications Corporation's best estimates of the dates when IP Communications Corporation plans to begin and complete construction at the sites specified in the notice;

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- (vi) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital letters) or indication that IP Communications Corporation intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix;
  - (vii) if applicable, a conspicuous statement that the notice pertains to a building entrance or building distribution duct or conduit or other space within a building.
- (3) With respect to unassigned pole space, such notice must include all information required to enable SWBT and other joint users, including other persons or entities seeking space on the same poles, to determine the specific space which IP Communications Corporation desires to occupy. The notice must, therefore, include, at a minimum, the following information:
- (i) identification of the poles to be occupied, unless specific information by which IP Communications Corporation would identify or designate the space to be occupied is not discernible from SWBT's records available for inspection under Section 7.03 in which case IP Communications Corporation will cooperatively work with SWBT to develop an acceptable description;
  - (ii) the specific space on each pole to be occupied, including the height (distance from the ground) of the attachment and the side (road or field) where the attachment is to be made;
  - (iii) the anticipated number and types of cables to be attached, together with the anticipated physical size (diameter) and weight (weight per foot) of such cables and the anticipated number and types of strands, if any, to be used to support the cables, such information to be sufficient to give notice to SWBT and other joint users of the

remaining space on the pole available and what make-ready work may be required of subsequent applicants as a result of the provisional assignment of space to IP Communications Corporation;

- (iv) the anticipated use by IP Communications Corporation of any infrequent construction techniques and connectivity solutions under Section 6.03 to avoid high or unusual expenditures; and
  - (v) IP Communications Corporation's best estimates of the dates when IP Communications Corporation plans to begin and complete construction at the sites specified in the notice.
  - (vi) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital letters) or indication that IP Communications Corporation intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix.
- (4) No later than 30 days after giving such notice, IP Communications Corporation shall file an application under Section 9.02 or the provisional assignment shall lapse.
  - (5) As stated in Section 7.03(c), SWBT does not represent that its records accurately reflect the information necessary to enable IP Communications Corporation to rely upon a records-based assignment process. SWBT shall have no duty to verify that space provisionally assigned pursuant to this subsection is actually available.
- (c) Assignments made prior to the issuance of a license shall be provisional assignments and shall be subject to modification if it is subsequently determined that the space selected by or assigned to IP Communications Corporation is already occupied or that a different assignment is required to comply with SWBT's standards for assigning pole, duct, and conduit occupancy space.

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- (d) IP Communications Corporation's obligation to pay semi-annual pole attachment or conduit occupancy fees shall commence from the date the assignment or provisional assignment is logged and recorded in the appropriate SWBT records.
- (e) During the 12-month assignment period following the date space is assigned to IP Communications Corporation and entered into the appropriate SWBT record, SWBT shall not occupy or use such space without IP Communications Corporation's permission, shall not assign such space to any party other than IP Communications Corporation, and shall not knowingly permit any party other than IP Communications Corporation to occupy or use such space without IP Communications Corporation's permission except as otherwise specifically provided in this Appendix. The assignment to IP Communications Corporation shall automatically lapse 12 months after the date the assignment has been entered into the appropriate SWBT record if IP Communications Corporation has not occupied such assigned space within such 12-month period; provided, however, that if IP Communications Corporation's failure to occupy the space within such 12-month period results from SWBT's failure to perform make-ready work on schedule, the parties shall negotiate a single extension of the assignment period, which extension shall not extend the assignment period beyond three months from the date of completion of SWBT's make-ready work; and, provided further, that if IP Communications Corporation can demonstrate that its failure to occupy the space within such 12-month period results from the actions of SWBT or third parties other than persons acting on IP Communications Corporation's behalf, or from acts of God, the assignment may be extended for a period no longer than three months from the date IP Communications Corporation is first able to commence construction activities at the site involved. Assignments to third parties shall be subject to the same rules applicable to IP Communications Corporation under this subsection. Extensions permitted under this subsection must be requested in writing before expiration of the original 12-month period and shall be recorded on the appropriate SWBT records available for inspection under Section 7.03.
- (f) SWBT may assign space to itself by making appropriate entries in the same records used to log assignments to IP Communications Corporation and third parties. If SWBT assigns pole, duct, or conduit space to itself, such assignment shall automatically lapse 12 months after the date the assignment has been entered into the appropriate SWBT record if SWBT has not occupied such assigned

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space within such 12-month period; provided, however, that if SWBT's failure to occupy the space within such 12-month period results from the actions of IP Communications Corporation or third parties other than persons acting on SWBT's behalf, or from acts of God, SWBT's assignment may be extended for a period no longer than three months from the date SWBT is able to commence construction at the site involved. Extensions permitted under this subsection must be recorded before expiration of the original 12-month period on the appropriate SWBT records available for inspection under Section 7.03.

- (g) If facilities modifications, capacity expansions, or other make-ready work are required due to the assignment of space to IP Communications Corporation or SWBT under this section, the party to whom such space has been assigned shall reimburse the person or entity incurring the costs for such facilities modifications, capacity expansions, or make-ready work if the party to whom such space has been assigned fails to occupy the assigned space within the 12-month assignment period or any extension thereof.
- (h) Except as provided in subsection (e)-(f) above, assignments shall not be extended, renewed, or sequentially repeated in any manner (other than by actual occupancy) that enables IP Communications Corporation, SWBT, or any third party to preclude access by others to unused pole attachment or conduit occupancy space for any period greater than 12 months after the date of initial assignment.
- (i) At IP Communications Corporation's election, IP Communications Corporation may file an application for access which specifically requests that the space sought by IP Communications Corporation not be assigned to IP Communications Corporation immediately and not be recorded immediately in the SWBT records available for inspection by other telecommunications carriers, cable television systems, or other providers of telecommunications services under Section 7.03 of this Appendix. In that event, the space sought by IP Communications Corporation will not be assigned to IP Communications Corporation and will remain available for assignment to others without restriction until such time as such space is formally assigned to IP Communications Corporation in accordance with IP Communications Corporation's written instructions and the assignment is recorded in the records available for inspection under Section 7.03. The assignment shall be made no later than the date of issuance to IP Communications Corporation of a license confirming that IP Communications Corporation has the

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right to occupy the space described in the license. In the event that IP Communications Corporation elects to proceed under this subsection, IP Communications Corporation's obligation to pay pole attachment and conduit occupancy fees shall not commence until the date the assignment is recorded in the appropriate SWBT records and IP Communications Corporation shall bear the risks that (1) the space sought by IP Communications Corporation will be assigned to and occupied by another person or entity or (2) circumstances will occur which may require that SWBT reevaluate IP Communications Corporation's application and repeat the field inspection portion of the pre-license survey at IP Communications Corporation's expense.

- (j) Notices and applications including assignment requests will be date- and time-stamped on receipt. Because space will be selected and further assignments made based on entries logged and recorded in the appropriate SWBT records, the date and time of assignment will be the date and time when the assignment is recorded rather than the date and time of receipt of the application or notice requesting such assignment. IP Communications Corporation acknowledges that, to maximize the probability that IP Communications Corporation will be assigned the space IP Communications Corporation desires, IP Communications Corporation should, when possible, submit applications and notices including assignment requests in person to SWBT at the site where the applicable records are maintained and should countersign the entry reflecting the assignment and time of assignment.

**8.03 Immediate Occupancy.** SWBT shall, within 60 days after the effective date of this Appendix, adopt interim procedures which will provide IP Communications Corporation the ability to attach or place facilities on or in SWBT's poles, ducts, conduits, and rights-of-way on an immediate basis when such space is available for IP Communications Corporation's use and no make-ready work or infrequent construction techniques or connectivity solutions are required. SWBT may, on 60 days advance notice to IP Communications Corporation, revise such interim procedures if they prove to be unworkable, in which event IP Communications Corporation may seek renegotiation of this Appendix or challenge SWBT's decision in accordance with procedures available to IP Communications Corporation under applicable federal and state laws, regulations, and commission orders. The special procedures established under this section shall supplement, rather than replace, the regular assignment and licensing procedures set forth in Articles 8-10 of this Appendix, are intended to be used only under special circumstances (e.g., when the regular procedures allow insufficient time to meet customer service commitments or resolve non-routine construction or network contingencies), shall not be used on a routine basis, and shall be consistent with subsections (a)-(f) below.

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- (a) Upon giving SWBT the notice required by this subsection, IP Communications Corporation may immediately occupy space assigned or provisionally assigned to IP Communications Corporation pursuant to Section 8.02 of this Appendix. The notice shall be contained in either a notice of intent to occupy as provided in Section 8.02(b) or a license application under Section 9.02. IP Communications Corporation shall not give such notice or occupy such space without first reviewing SWBT's records and determining that the records reflect that the space sought is available.
- (b) IP Communications Corporation shall not occupy space which has not been assigned or provisionally assigned to IP Communications Corporation. The assignment must be recorded on the appropriate SWBT records, as provided in Section 8.02, prior to IP Communications Corporation's occupancy. If IP Communications Corporation subsequently determines that the records are inaccurate and that the space assigned to IP Communications Corporation is not available, or that the space assigned is not suitable for IP Communications Corporation's intended use, IP Communications Corporation shall, within one business day, notify SWBT in writing that it no longer intends to occupy the space earlier assigned and is releasing the assignment. Except as otherwise provided in this subsection, IP Communications Corporation shall not occupy other space on the pole or in the duct or conduit without first obtaining an assignment or provisional assignment of the space which IP Communications Corporation will occupy. To avoid high or unusual expenditures resulting from unanticipated conditions at the site, IP Communications Corporation may occupy space not assigned to IP Communications Corporation subject to the following terms and conditions.
  - (1) IP Communications Corporation may occupy the next available space shown on SWBT's records as available at the time of IP Communications Corporation's last review of the records. IP Communications Corporation shall not knowingly occupy space occupied by or assigned to SWBT or any third party without consent of the party to whom the space has been assigned.
  - (2) Within one business day after occupying such space, IP Communications Corporation shall submit to

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SWBT a written notice of intent to occupy or an application for the space occupied showing the reason for IP Communications Corporation's use of the space occupied.

- (3) IP Communications Corporation shall bear the risk that space occupied by IP Communications Corporation pursuant to this section was assigned to SWBT or a third party during the period between IP Communications Corporation's last review of the records and IP Communications Corporation's occupancy of such space. After occupying space not previously assigned to IP Communications Corporation, IP Communications Corporation shall review the records and promptly notify the affected party if IP Communications Corporation determines that it has occupied space assigned to such party. At the request of the party to whom such space has been assigned, IP Communications Corporation shall, within 24 hours, or within such other period of time mutually agreed to by the parties affected, remove its facilities from the space in question if the parties affected cannot reach an acceptable alternative solution. SWBT and IP Communications Corporation anticipate that all parties affected will act in good faith to work out acceptable solutions and that the parties affected will not insist on strict adherence to the 24-hour removal requirement unless there is a legitimate business need for compelling removal within such time period.
- (4) SWBT shall be entitled to recover from IP Communications Corporation actual costs, if any, directly incurred by SWBT as a result of IP Communications Corporation's decision under this subsection to occupy space subject to a valid prior assignment to SWBT. IP Communications Corporation shall indemnify, on request defend, and save SWBT harmless from any injury, loss, damage, liability, or claim asserted against SWBT by any third party resulting from IP Communications Corporation's decision under this subsection to occupy space assigned to such third party.

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- (c) Nothing in this section authorizes IP Communications Corporation to place its facilities on or in any pole, duct, or conduit space already occupied by the facilities of SWBT or a third party, even if the presence of such facilities is not reflected on SWBT's records.
- (d) Nothing in this section authorizes IP Communications Corporation, without first obtaining SWBT's written authorization, to (1) place its facilities on any pole or in any duct or conduit that requires make-ready work (other than third-party make-ready work arranged directly by IP Communications Corporation) or (2) utilize any infrequent construction technique or connectivity solution described in Section 6.03.
- (e) If IP Communications Corporation has not done so already, within 24 hours after occupying space pursuant to this section, IP Communications Corporation will submit to SWBT an application for the space occupied as provided in Section 9.02 of this Appendix. The application may be submitted by fax.
- (f) IP Communications Corporation will bear all risks resulting from the possibility that assigned space which appears from the records to be available is not available or in suitable condition to be used by IP Communications Corporation and shall indemnify, on request defend, and hold SWBT harmless from any injury, loss, damage, claim, or liability (including but not limited to third-party claims) resulting from IP Communications Corporation's occupancy of space in violation of this section.

## **ARTICLE 9: APPLICATIONS AND PRE-LICENSE SURVEYS**

**9.01 Licenses Required.** Except as otherwise specifically permitted in this Appendix, IP Communications Corporation shall apply in writing for and receive a license before attaching facilities to specified SWBT poles or placing facilities within specified SWBT ducts or conduits. License applications and information received by SWBT in connection with such applications shall be subject to the provisions of Article 30 of this Appendix (Confidentiality of Information).

**9.02 Application Form.** To apply for a pole attachment or conduit occupancy license under this Appendix, IP Communications Corporation shall submit to SWBT two signed copies of the appropriate application forms. SWBT represents that the forms specified in subsections (a) and (b) are forms in use prior to the effective date of this Appendix and that SWBT plans to revise such forms to conform to the provisions of this Appendix and to streamline the application process. The parties therefore agree that the forms specified in subsections (a) and (b) shall be interim forms only. SWBT reserves

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the right to change the format and content of these forms upon 60 days written notice to IP Communications Corporation; provided however, that changes to the forms shall not be made to amend the terms of this Appendix.

- (a) To apply for a pole attachment license, IP Communications Corporation shall submit to SWBT two signed copies of SWBT's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9433 ("Pole Attachments"). An application for a pole attachment license shall not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that such forms shall be deemed to be substantially complete if they contain the information specified in subsections (c)-(g) below, as applicable. Copies of Forms SW-9433 and SW-9434 are attached to this Appendix as parts of Exhibit III.
- (b) To apply for a conduit occupancy license, IP Communications Corporation shall submit to SWBT two signed copies of SWBT's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9435 ("Conduit Occupancy"). An application for a conduit occupancy license shall not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that such forms shall be deemed to be substantially complete if they contain the information specified in subsections (c)-(g) below, as applicable. Copies of Forms SW-9434 and SW-9435 are attached to this Appendix as parts of Exhibit III.
- (c) Each application for a license under this Appendix shall include, at a minimum, the following information:
  - (1) the poles, ducts, and conduits (including all manholes) along IP Communications Corporation's proposed route to or within which IP Communications Corporation desires to attach or place its facilities;
  - (2) a description of the facilities to be attached to SWBT's poles and a description of the facilities to be placed within each component of SWBT's conduit system (including but not limited to ducts, conduits, manholes, and handholes) along the proposed route; and

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- (3) for poles, the proposed points of attachment;
  - (4) for building entrance or building distribution ducts or conduits or other space within a building, a conspicuous statement that the application pertains to a building entrance of building distribution duct or conduit or other space within a building;
  - (5) if applicable, a conspicuous notation that the space requested is not to be assigned (or billed) to IP Communications Corporation until SWBT has received IP Communications Corporation's written instruction to make such assignment or issued a license authorizing IP Communications Corporation to occupy the space requested; and
  - (6) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital letters) or indication that IP Communications Corporation intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix.
- (d) Facilities descriptions which apply to multiple pole attachments or conduit occupancies need only be described once on any form. Facilities descriptions shall include, at a minimum, the following information:
- (1) the number and types of cables, including the physical size (diameter) and weight (weight per foot);
  - (2) the number and types of strands, if any, which will be used to support the cables, including the rated holding capacity expressed in thousand pound increments (e.g., 2.2M) of such strands; and,
  - (3) sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to SWBT's poles or placed in SWBT's conduit system.
- (e) When it appears to IP Communications Corporation that facilities modification, capacity expansion, or make-ready work may be required to accommodate IP Communications Corporation's access

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requests, IP Communications Corporation shall describe the facilities modification, capacity expansion or make-ready work which IP Communications Corporation proposes. IP Communications Corporation shall also describe its intent to use any infrequent construction techniques or connectivity solutions under Section 6.03 to avoid high or unusual expenditures and its reasons for the utilization of such techniques or solutions.

- (f) IP Communications Corporation acknowledges that the poles along a particular pole line or route may include poles owned by firms (such as electric utilities) other than SWBT, that it may be necessary for SWBT to rearrange its facilities or perform other make-ready work on poles other than poles it owns or controls in order to accommodate IP Communications Corporation's request for access to SWBT's poles and that, at the time an application is submitted, it may be difficult for IP Communications Corporation to determine with certainty whether a particular pole is owned or controlled by SWBT or by another entity. Accordingly, the application shall, to the extent feasible, identify all poles utilized by SWBT (without regard to ownership) along IP Communications Corporation's proposed route.
- (g) Each application for a license under this Appendix shall be accompanied by a construction schedule showing IP Communications Corporation's projected dates for beginning and completing construction at the sites specified in the application. Information on this schedule may be used by SWBT's engineering and outside plant construction personnel in scheduling work required to process IP Communications Corporation's applications and scheduling such capacity expansions, make-ready work, and facilities modifications, if any, as may be necessary to accommodate IP Communications Corporation's facilities.

9.03 Cooperation in the Application Process. The orderly processing of applications submitted by IP Communications Corporation and other firms seeking access to SWBT's poles, ducts, conduits, and rights-of-way requires good faith cooperation and coordination between SWBT's personnel and personnel acting on behalf of IP Communications Corporation and other firms seeking access. The parties therefore agree to the following transitional procedures which shall remain in effect during the term of this Appendix unless earlier modified by mutual agreement of the parties.

- (a) Before submitting a formal written application for access to SWBT's poles, ducts, conduits, and rights-of-way, the firm submitting the application shall make a good faith determination

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that it actually plans to attach facilities to or place facilities within the poles, ducts, conduits, or rights-of-way specified in the application. Applications shall not be submitted for the purpose of holding or reserving space which the applicant does not plan to use or for the purpose of precluding SWBT or any other provider of telecommunications services from using such poles, ducts, conduits, or rights-of-way.

- (b) IP Communications Corporation shall only submit applications for access to poles, ducts, conduits, and rights-of-way which it plans to use within one year following the date access is granted and will use its best efforts to submit applications in an orderly manner in accordance with IP Communications Corporation's needs. If IP Communications Corporation contemplates the need to submit more than 10 applications within any 45-day period with respect to poles, ducts, conduits, and rights-of-way within the territory of any single SWBT construction district, IP Communications Corporation shall give SWBT advance notice as promptly as is reasonably practicable.
- (c) No more than 300 poles shall be the subject of any single pole attachment license application.
- (d) No more than 20 manholes shall be the subject of any single conduit occupancy license application.

9.04 IP Communications Corporation's Priorities. When IP Communications Corporation has multiple applications on file within a single SWBT plant construction district, IP Communications Corporation shall, at SWBT's request, designate its desired priority of completion of pre-license surveys, capacity expansions, make-ready work, and facilities modifications with respect to all such applications.

9.05 Pre-license Survey. A pre-license survey (including a review of records and field inspection, if necessary) will be completed by SWBT after IP Communications Corporation has submitted its written license application as specified in Section 9.02 of this Appendix. SWBT will not, without due cause and justification, repeat pre-occupancy survey work performed by IP Communications Corporation.

- (a) The field inspection portion of the pre-license survey, which includes the visual inspection of existing pole and conduit facilities, shall be performed by SWBT or its authorized representative. Primary purposes of the field inspection will be to enable SWBT to (1) confirm or determine the facilities modification, capacity expansion, and make-ready work, if any, necessary to accommodate

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IP Communications Corporation's facilities; (2) plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare SWBT's poles, ducts, conduits, rights-of-way, and associated facilities for IP Communications Corporation's proposed attachments or occupancy; and (3) estimate the costs associated with such facilities modification, capacity expansion, or make-ready work. SWBT may dispense with the field inspection if it appears that the information necessary to process IP Communications Corporation's license application is already available from existing sources, including the application forms and such other information as may be available to SWBT. If IP Communications Corporation has occupied the space requested before the issuance of a license, a post-installation inspection of IP Communications Corporation's facilities may be performed, in place of the field inspection portion of the pre-license survey, to determine whether such facilities are in compliance with the specifications of Article 6 and other provisions of this Appendix. In performing such inspection, SWBT will not, without due cause and justification, repeat pre-occupancy survey work performed by IP Communications Corporation. SWBT may charge IP Communications Corporation for post installation inspection expenses only if the inspection reflects that IP Communications Corporation is in substantial noncompliance with the terms of this Appendix.

- (b) The administrative processing portion of the pre-license survey (which includes processing the application and reviewing records) will be performed by SWBT.
- (c) Before performing any portion of the pre-license survey, SWBT shall obtain IP Communications Corporation's written authorization to perform such work. Authorization may be given, when possible, when the application is submitted. No authorization shall be required for post-installation inspections of IP Communications Corporation's facilities when installation has occurred, pursuant to Section 8.03, before the issuance of a license.

**ARTICLE 10: ISSUANCE AND DENIAL OF LICENSES  
(INCLUDING FACILITIES MODIFICATIONS, CAPACITY EXPANSIONS, AND  
MAKE-READY WORK)**

**10.01 Response Within 45 Days.** Within 45 days of IP Communications Corporation's submission of a license application pursuant to Section 9.02 of this Appendix, or within such other period of time as may be mutually agreed upon in writing

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by the parties, SWBT shall respond to the application. The response shall state whether the application is being granted or denied. If denial is anticipated, or if SWBT personnel involved in the processing of IP Communications Corporation's request for access become aware of hazardous substances at the site requested by IP Communications Corporation, SWBT shall promptly advise IP Communications Corporation and shall, at IP Communications Corporation's request, discuss alternatives to denial and issues associated with the presence of such hazardous substances.

- (a) If access is granted, SWBT shall, no later than 45 days after IP Communications Corporation's submission of the license application, further advise IP Communications Corporation in writing (1) what capacity expansions, make-ready work, or facilities modifications, if any, will be required to prepare SWBT's pole or conduit facilities (2) provide IP Communications Corporation an estimate of charges for such capacity expansions, make-ready work, or facilities modifications, and (3) disclose to IP Communications Corporation any hazardous substances known by SWBT to be present at the site.
- (b) If access is denied, SWBT will confirm the denial in writing by the 45th day after the receipt by SWBT of IP Communications Corporation's completed application. The denial of access shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how such evidence and information relates to a denial of access for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. If IP Communications Corporation in its completed application sets forth in writing specific proposals for expanding capacity, the denial statement shall specifically address such proposals.
- (c) IP Communications Corporation agrees that if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific poles, ducts, or conduit facilities, IP Communications Corporation shall promptly withdraw or amend its application.
- (d) Notwithstanding the 45-day deadline, SWBT will, pursuant to Section 8.03 of this Appendix, make available to IP Communications Corporation for immediate occupancy any pole, duct, or conduit space which is not currently assigned, not designated as a maintenance duct, and not subject to applicable make-ready requirements. Availability determinations will be based on the appropriate SWBT records to be maintained by SWBT and made available for viewing by IP Communications Corporation

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on two business days notice as provided in Section 7.03 of this Appendix.

10.02 Obligation to Construct or Modify Facilities; Capacity Expansions. The parties agree that SWBT may grant access subject to IP Communications Corporation's approval of such make-ready work or facilities modifications as may be required to expand capacity to accommodate IP Communications Corporation's request, in which event IP Communications Corporation shall either accept such conditions, initiate good faith negotiations to explore other potential accommodations, or withdraw its request for access. If SWBT does not offer to expand capacity and denies IP Communications Corporation's request for access, SWBT shall promptly notify IP Communications Corporation of such determination as provided in Section 10.01(b). SWBT shall not deny IP Communications Corporation's request for access on lack of capacity grounds when capacity can be expanded as provided in this section and in Section 6.03 of this Appendix dealing with infrequent construction techniques and connectivity solutions:

- (a) SWBT agrees to modify its outside plant facilities to the extent that IP Communications Corporation agrees to pay for the modification at cost as long as such modifications are consistent with capacity, safety, reliability, and engineering considerations which SWBT would apply to itself if the work were performed for SWBT's own benefit. SWBT may recover from IP Communications Corporation the costs of modifying its outside plant facilities for IP Communications Corporation's space. Except as otherwise specifically provided in this subsection, IP Communications Corporation will pay half of SWBT's charges for such modifications at 50 percent job completion and the remainder at 100 percent completion. If the estimated out-of-pocket costs with respect to any project authorized by IP Communications Corporation under this section will exceed \$250,000, SWBT may request that IP Communications Corporation reimburse SWBT for materials and outside contractor costs as such costs are incurred, and IP Communications Corporation shall not refuse such request without due cause and justification. As provided in Section 10.08 of this Appendix, IP Communications Corporation shall be entitled to partial reimbursement for capacity expansion costs incurred pursuant to this section in accordance with the Pole Attachment Act and applicable rules, regulations, and Commission orders.
- (b) SWBT will, at its own expense, install inner duct in a timely manner to accommodate IP Communications Corporation's space needs in accordance with the same time interval SWBT provides to itself. If SWBT's interval for beginning or completing make-ready work does not meet IP Communications Corporation's needs, IP

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Communications Corporation, as an authorized contractor, may perform the inner-duct installation itself or arrange for the work to be performed by an authorized contractor selected by IP Communications Corporation from a list, jointly developed by IP Communications Corporation and SWBT, of mutually agreed contractors qualified to perform such work. When inner duct is installed in SWBT's conduit system by IP Communications Corporation or an authorized contractor selected by IP Communications Corporation, SWBT shall provide the inner-ducting materials to be installed and IP Communications Corporation shall bear all other installation expenses. IP Communications Corporation shall give SWBT sufficient advance notice of the materials needed to enable SWBT to provide such materials to IP Communications Corporation on a timely basis. IP Communications Corporation shall return all unused materials, including unused inner duct and reels, to SWBT or purchase them from SWBT. Inner duct installed by IP Communications Corporation or an authorized contractor selected by IP Communications Corporation shall be installed in accordance with the same standards and practices which would be followed if the inner duct were being installed by SWBT or SWBT's contractors. Neither IP Communications Corporation nor persons acting on IP Communications Corporation's behalf shall arrange for inner duct installation to be performed under this section by subcontractors who are not authorized contractors.

- (c) SWBT shall, at its expense, remove cables that are retired or inactive (dead) to free-up requested duct and pole space, provided that such removal is reasonably feasible (i.e. cable pulls easily without incident). If a section of cable is "frozen" in a duct and would require excavation to remove, IP Communications Corporation, at its option, may request that SWBT excavate the obstruction. In the alternative, IP Communications Corporation may (as an authorized contractor) excavate the obstruction itself or arrange for the work to be performed by an authorized contractor selected by IP Communications Corporation from a list, jointly developed and maintained by IP Communications Corporation and SWBT, of mutually agreed contractors qualified to do such work. Such excavations will be at IP Communications Corporation's expense; removal of the remainder of the cable will be at SWBT's expense. Excavation work performed by IP Communications Corporation or an authorized contractor selected by IP Communications Corporation shall be performed in accordance with the same standards and practices which would be followed if

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such excavation work were being performed by SWBT or SWBT's contractors. IP Communications Corporation shall not conduct conduit excavation activities in any manner which jeopardizes or degrades the integrity of SWBT's structures. Neither IP Communications Corporation nor persons acting on IP Communications Corporation's behalf shall arrange for excavation work to be performed under this subsection by subcontractors who are not authorized contractors.

10.03 Issuance of Licenses and Immediate Access When No Make-ready Work is Required. If the parties agree that no make-ready work is necessary to accommodate IP Communications Corporation's facilities, SWBT will issue a license without performing make-ready work and pole attachment or conduit occupancy space will be made available to IP Communications Corporation for immediate occupancy. Immediate occupancy prior to the issuance of a license shall be governed by Section 8.03.

10.04 Performance of Make-ready Work. Except as otherwise specifically provided in Section 10.02, in Section 10.05, and in this section, make-ready work shall be performed by SWBT or by contractors, subcontractors, or other persons acting on SWBT's behalf and shall be performed by SWBT in accordance with the same time intervals which would be applicable if SWBT were performing the work for itself.

- (a) IP Communications Corporation and SWBT will mutually establish and maintain for each construction district a list of authorized contractors who may be selected by IP Communications Corporation to perform make-ready work when SWBT's interval for beginning or completing such make ready work does not meet IP Communications Corporation's needs.
- (b) If SWBT's interval for beginning or completing make-ready work does not meet IP Communications Corporation's needs, IP Communications Corporation may, as an authorized contractor, perform the make-ready work itself or arrange for the work to be performed by an authorized contractor selected by IP Communications Corporation from the applicable list of authorized contractors. Subject to the availability of personnel, IP Communications Corporation may also request that SWBT perform the work on an expedited basis; provided, however, that make-ready work will not be performed on an expedited basis unless IP Communications Corporation first approves any overtime or premium rates or charges associated with performance of the work on an expedited basis.

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- (c) From time to time, additional contractors, subcontractors or other vendors may be approved by IP Communications Corporation and SWBT to perform make-ready work in the event that the workload exceeds the capacity of the authorized contractors on the approved list to perform the make-ready work in a timely manner.
- (d) Make-ready work performed by IP Communications Corporation, by an authorized contractor selected by IP Communications Corporation, or by a contractor, subcontractor, or other vendor jointly approved by the parties under subsection (c) shall be performed in accordance with SWBT's specifications, which shall be consistent with the same standards and practices which would be followed if such make-ready work were being performed by SWBT or SWBT's contractors. Neither IP Communications Corporation nor authorized contractors selected by IP Communications Corporation to perform make-ready work under this section shall conduct such work in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of SWBT's facilities.
- (e) Nothing contained in this section authorizes IP Communications Corporation, any authorized contractor selected by IP Communications Corporation, or any other person acting on IP Communications Corporation's behalf to consolidate SWBT's cables.

10.05 Make-ready Work. If SWBT determines that make-ready work will be necessary to accommodate IP Communications Corporation's facilities, SWBT shall promptly notify IP Communications Corporation of the make-ready work proposed to enable the accommodation of IP Communications Corporation's facilities.

- (a) The notice shall be given in writing no later than 45 days after the receipt by SWBT of IP Communications Corporation's completed application pursuant to Section 9.02 of this Appendix or within such other period of time as may be mutually agreed upon in writing by the parties.
- (b) The notice will include SWBT's estimate of make-ready charges, which estimate shall be stated on SWBT Form SW-9434 ("Access Application and Make-Ready Authorization"), a copy of which is attached hereto as part of EXHIBIT III.
- (c) IP Communications Corporation shall have 20 days (the "acceptance period") after receiving SWBT's estimate of make-

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ready charges to authorize completion of the make-ready work proposed by SWBT or to advise SWBT of its willingness to perform the proposed make-ready work itself. If IP Communications Corporation advises SWBT that it is willing to perform the make-ready work proposed by SWBT in accordance with a design approved by SWBT and SWBT's specifications, SWBT will not, without due cause and justification, refuse to accept IP Communications Corporation's offer to perform the work. Authorization shall be accomplished by IP Communications Corporation's signing the estimate and returning it to SWBT within the 20-day acceptance period.

- (d) Within the 20-day acceptance period, the parties may negotiate modifications of the make-ready work to be performed. If the parties reach agreement through negotiation, a new estimate shall be prepared and authorization shall be accomplished by IP Communications Corporation's signing the revised estimate and returning it to SWBT within the original 20-day acceptance period, or within such period of time as may be mutually agreed upon by the parties.
- (e) If IP Communications Corporation does not sign and return the estimate within the 20-day acceptance period, or within such other period of time as may be mutually agreed upon in writing by the parties, IP Communications Corporation shall notify SWBT in writing by the 20th day whether IP Communications Corporation is withdrawing its application, electing to perform the make-ready work itself as provided in subsection (c), or electing to treat SWBT's make-ready requirements as a denial of access.
  - (1) If no such notice is given by the 20th day, or such later date as may be mutually agreed upon by the parties, SWBT shall contact IP Communications Corporation to determine whether IP Communications Corporation intends to withdraw its application. IP Communications Corporation shall be deemed to have withdrawn its application if, in response to SWBT's inquiry, IP Communications Corporation does not immediately sign and return the estimate to SWBT.
  - (2) If IP Communications Corporation timely notifies SWBT that it is electing to treat SWBT's make-ready requirements as a denial of access, SWBT shall,

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within 20 days after receiving the notice, provide IP Communications Corporation with a written statement explaining its decision to grant access only if the specified make-ready work is performed. The statement shall be specific, shall include all relevant evidence and information supporting SWBT's decision to grant access only if the specified make-ready work is performed, and shall explain how such evidence and information relates to SWBT's decision for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. The statement shall also set forth the basis for SWBT's make-ready proposals and specifically address SWBT's rationale for rejecting IP Communications Corporation's alternative written proposals, if any.

10.06 Multiple Applications. Applications shall be processed on a first-come, first-served basis. Applications filed on the same date shall be treated as having been filed simultaneously and shall be processed accordingly.

10.07 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. IP Communications Corporation shall make arrangements with the owners of other facilities attached to SWBT's poles or occupying space in SWBT's conduit system regarding reimbursement for any expenses incurred by them in transferring or rearranging their facilities to accommodate the attachment or placement of IP Communications Corporation's facilities to or in SWBT's poles, ducts, and conduits.

10.08 Reimbursement for the Creation or Use of Additional Capacity. IP Communications Corporation acknowledges that as a result of make-ready work performed to accommodate IP Communications Corporation's facilities, additional capacity may become available on SWBT's poles or in its conduit system. In such event, IP Communications Corporation shall not have any preferential right to utilize such additional capacity in the future and shall not be entitled to any pole attachment or conduit occupancy fees which may subsequently be paid to SWBT for the use of such additional capacity. SWBT shall, however, give IP Communications Corporation notice of the subsequent use by SWBT or third parties of additional space or capacity created at IP Communications Corporation's expense. If SWBT utilizes additional space or capacity created at IP Communications Corporation's expense, SWBT will reimburse IP Communications Corporation on a pro-rata basis for SWBT's share, if any, of IP Communications Corporation's capacity expansion costs, to the extent reimbursement is required by the Pole Attachment Act and applicable rules, regulations, and commission orders. If any third party later utilizes any such additional space or capacity, SWBT shall, at the request of IP Communications Corporation or such third party, provide such information as may be available to SWBT to assist IP Communications Corporation and

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such third party in determining the amount, if any, which such third party may owe IP Communications Corporation as its pro-rata share of IP Communications Corporation's capacity expansion costs. SWBT, IP Communications Corporation, and such third parties shall work together to determine the amounts owing to IP Communications Corporation under this section.

**10.09 License and Attachment.** After all required make-ready work is completed, SWBT will issue a license confirming that IP Communications Corporation may attach specified facilities to SWBT's poles or place specified facilities in SWBT's conduit system. IP Communications Corporation shall have access to attach or place only those facilities specifically described in licenses subject to this Appendix, and no others, except as otherwise specifically provided in (a) Sections 8.03 and 12.03 or other provisions of this Appendix, (b) any other written agreement between the parties providing for such access, or (c) the provisions of any applicable tariffs or commission orders.

## **ARTICLE 11: CONSTRUCTION OF IP Communications Corporation'S FACILITIES**

**11.01 Responsibility for Attaching and Placing Facilities.** Each party shall be responsible for the actual attachment of its facilities to SWBT's poles and the actual placement of its facilities in SWBT's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities. In this regard, each party shall be solely responsible for (a) paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and attachment of its facilities and (b) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

**11.02 Construction Schedule.** After the issuance of a license, IP Communications Corporation shall provide SWBT with an updated construction schedule and shall thereafter keep SWBT informed of anticipated changes in the construction schedule. Construction schedules received by SWBT shall be subject to the provisions of Article 30 of this Appendix (Confidentiality of Information). Construction schedules required by this section shall include, at a minimum, the following information:

- (a) the name, title, business address, and business telephone number of the manager responsible for construction of the facilities;
- (b) the names of each contractor and subcontractor that will be involved in the construction activities;
- (c) the estimated dates when construction will begin and end; and

- (d) the approximate dates when IP Communications Corporation or personnel working on IP Communications Corporation's behalf will be performing construction work in connection with the attachment of IP Communications Corporation's facilities to SWBT's poles or the placement of IP Communications Corporation's facilities in any part of SWBT's conduit system.

**ARTICLE 12: USE AND ROUTINE MAINTENANCE  
OF IP Communications Corporation'S FACILITIES**

**12.01**Use of IP Communications Corporation's Facilities. Each license granted under this Appendix authorizes IP Communications Corporation to have access to IP Communications Corporation's facilities on or within SWBT's poles, ducts, and conduits as needed for the purpose of serving IP Communications Corporation's customers.

**12.02**Routine Maintenance of IP Communications Corporation's Facilities. Each license granted under this Appendix authorizes IP Communications Corporation to engage in routine maintenance of facilities located on or within SWBT's poles, ducts, and conduits pursuant to such license. Routine maintenance does not include the replacement or modification of IP Communications Corporation's facilities in any manner which results in IP Communications Corporation's attachments differing substantially in size, weight, or physical characteristics from the attachments described in IP Communications Corporation's license.

**12.03**Installation of Drive Rings and J-Hooks. IP Communications Corporation may install drive rings and J-hooks on SWBT's poles for the attachment of drop wires as specified in this section.

- (a) Drive rings and J-hooks may be installed as specified in pole attachment licenses issued to IP Communications Corporation.
- (b) If attachment space has already been licensed to IP Communications Corporation on a given SWBT pole, IP Communications Corporation may install drive rings and J-hooks within the space assigned to IP Communications Corporation (e.g., typically six inches above and six inches below IP Communications Corporation's point of attachment on the pole if the point of attachment is in the center of the space assigned to IP Communications Corporation) without applying for or obtaining a new or amended license. No additional attachment charges shall apply with respect to drive rings and J-hooks installed in IP Communications Corporation's licensed attachment space.
- (c) IP Communications Corporation's first choice for placement of

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drive rings and J-hooks shall be the licensed attachment space assigned to IP Communications Corporation as provided in subsections (a) and (b) above; provided, however, that if attachment space already licensed to IP Communications Corporation on a given SWBT pole is not adequate for IP Communications Corporation's drive rings or J-hooks, IP Communications Corporation may, when necessary, and without applying for or obtaining a new or amended license, install such drive rings and J-hooks above or below IP Communications Corporation's licensed attachment space as described in subsection (b) above. No additional attachment charges shall apply with respect to drive rings and J-hooks installed outside IP Communications Corporation's licensed attachment space as provided in this subsection.

- (d) If IP Communications Corporation has not already been licensed attachment space on a given pole, IP Communications Corporation may, when necessary, install drive rings and J-hooks on unassigned space on such pole without first obtaining a license for such attachment and shall, promptly following such installation, notify SWBT of the attachment. Such notification shall be made on a form to be developed by SWBT for this purpose and shall constitute an application for a license. Such application may be conditionally granted without a prelicense survey or other inquiry by SWBT, and SWBT shall not be required to process the application, log the attachment as an assignment in its outside plant records, or issue a permanent license unless its specifically requested by IP Communications Corporation to do so; provided, however, that a conditionally granted application under this subsection shall be subject to revocation if it is subsequently determined that such attachment has been made in violation of subsection (e) of this section or other provisions of this Appendix. Drive-rings and J-hooks installed pursuant to this subsection are pole attachments and charges for such attachments shall be determined in accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders.
- (e) Notwithstanding the provisions of subsections (c) and (d) above, IP Communications Corporation may not install drive rings and J-hooks in space assigned to SWBT or another joint user without the approval of SWBT or such other joint user and may not install drive rings and J-hooks in unassigned space in any manner which will block or preclude the subsequent occupancy or use of such space by SWBT or other joint users. If the presence of such IP Communications Corporation facilities will block or preclude the

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use of assigned or otherwise assignable space by SWBT or other joint users, IP Communications Corporation shall, on SWBT's request, promptly relocate the facilities in order to accommodate the facilities of other users and shall bear all expenses associated with such relocation.

- (f) SWBT may not install drive rings and J-hooks in space assigned to IP Communications Corporation without IP Communications Corporation's approval and shall, at IP Communications Corporation's request, promptly relocate the facilities in order to accommodate IP Communications Corporation's facilities and bear all expenses associated with such relocation. If SWBT drive rings or J-hooks have been installed in space subsequently assigned to IP Communications Corporation, or if the presence of SWBT drive rings or J-hooks blocks or precludes the use of otherwise assignable space on SWBT's poles, SWBT shall, at IP Communications Corporation's request, relocate such facilities, if it is feasible to do so, as make-ready work.
- (g) IP Communications Corporation shall, at the request of SWBT or another joint user, at IP Communications Corporation's expense, promptly relocate or, if necessary, remove any drive rings and J-hooks placed on SWBT's poles other than as permitted in this section.

12.04 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed 30 days) non-emergency maintenance or repair activities by any person or entity (including but not limited to SWBT, IP Communications Corporation, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by SWBT. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify SWBT of such use and must either vacate the maintenance duct within 30 days or, with SWBT's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if a designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within 30 days after such party occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies which may occur while the maintenance duct is occupied.

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12.05 Responsibility for Maintenance of Facilities. Each party shall be solely responsible for maintaining its own facilities and (a) paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the maintenance of such party's facilities and (b) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

12.06 Information Concerning the Maintenance of IP Communications Corporation's Facilities. Promptly after the issuance of a license, IP Communications Corporation shall provide SWBT with the name, title, business address, and business telephone number of the manager responsible for routine maintenance of IP Communications Corporation's facilities and shall thereafter notify SWBT of changes to such information. The manager responsible for routine maintenance of IP Communications Corporation's facilities shall, on SWBT's request, identify any contractor, subcontractor, or other person performing maintenance activities on IP Communications Corporation's behalf at a specified site.

12.07 Inspection of Facilities and Facilities Work by IP Communications Corporation. Subject to the notice requirements of Section 6.11(a), IP Communications Corporation may enter SWBT's conduit system at any time to inspect IP Communications Corporation's own facilities. Subject to the notice requirements of Section 6.11(a), IP Communications Corporation may also enter SWBT's conduit system to review facilities work performed by SWBT or any joint user; provided, however, that IP Communications Corporation's review of facilities work performed by SWBT or joint users shall be for the sole purpose of ensuring the integrity of IP Communications Corporation's facilities and shall be conducted by IP Communications Corporation at IP Communications Corporation's expense. IP Communications Corporation shall limit its review of facilities work performed by SWBT and joint users to those work operations whose size or scope would lead IP Communications Corporation to a reasonable expectation that damage to its facilities may have occurred or may be imminent.

### **ARTICLE 13: MODIFICATION OF IP Communications Corporation'S FACILITIES**

13.01 Notification of Planned Modifications. IP Communications Corporation shall notify SWBT in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities attached to a pole or located in any SWBT duct or conduit. The notice shall contain sufficient information to enable SWBT to determine whether the proposed addition, relocation, replacement, or modification is permitted under IP Communications Corporation's present license or requires a new or amended license. No notice shall be required for such routine modifications as the installation or

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placement of drive rings or J-hooks, terminals, and other ancillary apparatus routinely used in providing service to customers, having no effect on the structural integrity of SWBT's poles, ducts, or conduits, and having no effect on the ability of SWBT or joint users to use or have access to SWBT's poles, ducts, conduits, or rights-of-way.

13.02 New or Amended License Required. A new or amended license will be required if the proposed addition, relocation, replacement, or modification:

- (a) requires that IP Communications Corporation occupy additional space on SWBT's poles except on a temporary basis in the event of an emergency;
- (b) requires that IP Communications Corporation occupy additional space (other than space in the maintenance duct in accordance with Sections 12.04, 13.03, and 15.02 of this Appendix) in any SWBT duct or conduit except on a temporary basis in the event of an emergency;
- (c) results in the facilities attached being different from those described as authorized attachments in IP Communications Corporation's current license, notice of intent to occupy, or license application and supplemental documentation submitted to SWBT (e.g., different duct or size increase causing a need to recalculate storm loadings, guying, or pole class); or
- (d) requires additional holding capacity on a permanent basis.

13.03 Use of Maintenance Duct in Connection with Facility Modifications and Replacements. Non-emergency access to the maintenance duct in connection with facilities modifications and replacements shall be subject to the provisions of Section 12.04 of this Appendix.

13.04 Replacement of Facilities and Spinning/Overlashing Additional Cables. IP Communications Corporation may replace existing facilities with new facilities occupying the same pole, duct, or conduit space, and may spin or overlash additional cables to its own existing facilities; provided, however, that such activities shall not be considered to be routine maintenance and shall be subject to the requirements of this article.

13.05 Streamlined Procedures for the Issuance of Amended Licenses. SWBT may streamline procedures for the issuance of amended licenses with respect to proposed additions, relocations, replacements, or modifications of IP Communications Corporation's facilities when it appears to SWBT that the proposed additions, relocations, replacements, or modifications will not require make-ready work by SWBT, will not



interfere with SWBT's use of its poles, conduit systems, or facilities attached or connected thereto or contained therein, and will not interfere with the use of existing facilities attached or connected thereto or contained therein by joint users.

#### **ARTICLE 14: REARRANGEMENT OF IP COMMUNICATIONS CORPORATION'S FACILITIES**

**14.01 Notice of Planned Modifications.** The parties acknowledge that the Pole Attachment Act recites in part that "Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment." The parties further acknowledge that the FCC, in its First Report and Order in CC Docket No. 96-98, recites that "... absent a private agreement establishing notification procedures, written notification of a modification must be provided to parties holding attachments on the facility to be modified at least 60 days prior to the commencement of the physical modification itself." This article is intended by the parties to alter the above-described notification requirements only as provided in Section 14.02(b) below.

**14.02 Rearrangement of IP Communications Corporation's Facilities at SWBT's Request.** IP Communications Corporation acknowledges that, from time to time, it may be necessary or desirable for SWBT to rearrange facilities on or within its poles or conduit systems, change out poles, add poles to a pole line, relocate or reconstruct poles, pole lines, conduit segments, or conduit runs, enlarge manholes, reinforce conduit, or otherwise modify poles, pole lines, or portions of its conduit system and that such changes may be necessitated by SWBT's own business needs or by factors outside of SWBT's control, such as the decision by a municipality to widen streets or the decision by another person or entity to seek access to SWBT's poles, ducts, conduits, or rights-of-way.

- (a) IP Communications Corporation agrees that IP Communications Corporation will cooperate with SWBT and joint users in making such rearrangements as may be necessary to enable such changes to be made and that costs incurred by IP Communications Corporation in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the parties in accordance with then-applicable statutes, rules, regulations, and commission orders, including the Pole Attachment Act and the Telecommunications Act of 1996 and rules, regulations, and commission orders thereunder.
- (b) IP Communications Corporation shall make all rearrangements of its facilities 60 days after receiving written notification by SWBT of

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the required rearrangements, provided, however, that the 60-day period may be extended upon request by IP Communications Corporation, which request will not be unreasonably refused by SWBT, if IP Communications Corporation advises SWBT of the reason for the need for the extension and proposes an appropriate completion date. SWBT may request that such modification be made within a shorter period of time, in which event IP Communications Corporation shall not reject such request without due cause and justification. In determining due cause and justification, the following factors, among others, may be considered:

- (1) the circumstances under which the rearrangements are sought (e.g., street-widening project, request by a competing provider for access);
  - (2) the timeliness of SWBT's request to IP Communications Corporation;
  - (3) the nature and number of rearrangements sought;
  - (4) the impact on the ability of the parties and joint users to meet customer service needs; and
  - (5) risks of service interruption to customers of the parties and joint users.
- (c) Nothing contained in this article shall preclude IP Communications Corporation from advising SWBT, within 60 days from the date of the notice, of its desire to add to or modify its existing attachments.

#### **ARTICLE 15: EMERGENCY REPAIRS AND POLE REPLACEMENTS**

**15.01 Applicability.** The parties acknowledge that in the event of an emergency, services provided by the parties and joint users to their respective customers may be interrupted, that it may not be possible for all service providers with facilities attached to SWBT's poles to restore service to all customers at the same time, that disputes may arise between the parties concerning the manner in which emergency repairs shall be made, that it is essential that decisions be made quickly and that it is highly desirable that all service providers utilizing SWBT's poles, ducts, and conduits enter into appropriate arrangements relating to emergency repairs and service restoration. In the absence of prearranged agreements it is expected that disputes will be immediately resolved at the

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site among the affected parties based upon the criteria set forth in Section 15.05 of this Appendix. The parties further agree that the provisions of this article shall apply in the absence of more comprehensive agreements relating to emergency repairs.

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

- (a) Nothing contained in this Appendix shall be construed as requiring either party to perform any repair or service restoration work of any kind with respect to the other party's facilities or the facilities of joint users.
- (b) Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any person or entity (including but not limited to SWBT, IP Communications Corporation, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located; provided, however, that a party using the maintenance duct for emergency repair activities shall immediately notify SWBT of such use and must either vacate the maintenance duct within 30 days or, with SWBT's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if a designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within 30 days after such party occupies the maintenance duct. The parties agree not to exceed 30 days' use except in unusual emergencies that may require longer than 30 days to rectify.
- (c) If necessary, other unoccupied ducts may be used on a short-term basis when the maintenance duct is unavailable. Any such use shall be subject to the same rules applicable to the maintenance duct and shall be subject to the rights of any party or joint user to whom such duct has been assigned.

15.03 Designation of Emergency Repair Coordinators and Other Information. For each SWBT construction district, IP Communications Corporation shall provide SWBT with the emergency contact number of IP Communications Corporation's designated point of contact for coordinating the handling of emergency repairs of IP Communications Corporation's facilities and shall thereafter notify SWBT of changes to such information.

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**15.04**Reporting of Conditions Requiring Emergency Repairs. IP Communications Corporation shall notify SWBT at the earliest practicable opportunity after discovering any condition on or in any of SWBT's poles, ducts, conduits, or rights-of-way requiring emergency repairs to SWBT's facilities and SWBT shall notify

IP Communications Corporation at the earliest practicable opportunity after discovering any condition on or in any of SWBT's poles, ducts, conduits, or rights-of-way requiring emergency repairs to IP Communications Corporation's facilities.

**15.05**Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, SWBT, IP Communications Corporation, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties in accordance with the following principles:

- (a) Emergency service restoration work requirements shall take precedence over other work operations.
- (b) Except as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The parties shall exercise good faith in assigning priorities and shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.
- (c) SWBT shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected parties are unable to reach prompt agreement; provided, however, that these decisions shall be made by SWBT on a nondiscriminatory basis in accordance with the principles set forth in this section.

**15.06**Unilateral Corrective Action. When either party reasonably believes that, due to the condition of the other party's facilities placed on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, there is an immediate or imminent

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threat to the safety or health of employees or any other person, to the physical integrity or functioning of SWBT's or IP Communications Corporation's facilities, or SWBT's or IP Communications Corporation's ability to meet its service obligations, SWBT or IP Communications Corporation may unilaterally perform such limited corrective work as may be necessary to prevent or mitigate against the injury threatened. For example, if facilities have become detached or partially detached from a pole, or detached or partially detached from supporting racks or wall supports within a manhole, SWBT or IP Communications Corporation may reattach them as provided in this section but shall not be obligated to do so.

- (a) Before performing any corrective work involving facilities of the other party, SWBT or IP Communications Corporation shall first attempt to notify the other party and coordinate corrective work. After such notice has been given, SWBT and IP Communications Corporation shall coordinate corrective work.
- (b) When an emergency situation exists such that advance notice and coordination are not practicable, either party may perform corrective work without first giving notice to the other party, and shall promptly notify the other party of the corrective work performed and the reason why notice was not given.

15.07 Emergency Pole Replacements. IP Communications Corporation agrees to cooperate fully with SWBT when emergency pole replacements are required.

- (a) When emergency pole replacements are required, SWBT shall promptly make a good faith effort to contact IP Communications Corporation to notify IP Communications Corporation of the emergency and to determine whether IP Communications Corporation will respond to the emergency in a timely manner.
- (b) If notified by SWBT that an emergency exists which will require the replacement of a pole, IP Communications Corporation shall transfer its facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to a SWBT replacement pole, the transfer shall be in accordance with SWBT's placement instructions.
- (c) If IP Communications Corporation is unable to respond to the emergency situation immediately, IP Communications Corporation shall so advise SWBT and thereby authorize SWBT (or any joint user sharing the pole with SWBT) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on IP Communications Corporation's behalf.

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

- (a) Each party shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such party's facilities.
- (b) IP Communications Corporation agrees to reimburse SWBT for the costs incurred by SWBT for work performed by SWBT on IP Communications Corporation's behalf in accordance with the provisions of this article; provided, however, that when the costs incurred by SWBT are for work performed in part for IP Communications Corporation and in part for SWBT and third parties, IP Communications Corporation shall only reimburse SWBT for IP Communications Corporation's share of the costs.

#### **ARTICLE 16: INSPECTION BY SWBT OF IP COMMUNICATIONS CORPORATION'S FACILITIES**

**16.01**SWBT's Right to Make Periodic or Spot Inspections. SWBT shall have the right, but not the duty, to make periodic or spot inspections at any time of IP Communications Corporation's facilities attached to SWBT's poles or placed within SWBT's ducts, conduits, or rights-of-way. Such inspections may be conducted for the purpose of determining whether facilities attached to SWBT's poles or placed in SWBT's conduit system are in compliance with the terms of this Appendix and licenses subject to this Appendix. SWBT may charge IP Communications Corporation for inspection expenses only if the inspection reflects that IP Communications Corporation is in substantial noncompliance with the terms of this Appendix. If the inspection reflects that IP Communications Corporation's facilities are not in compliance with the terms of this Appendix, IP Communications Corporation shall bring its facilities into compliance promptly after being notified of such noncompliance and shall notify SWBT in writing when the facilities have been brought into compliance.

**16.02**Report of Inspection Results. SWBT will provide IP Communications Corporation the results of any inspection of IP Communications Corporation's facilities performed under Section 16.01 of this Appendix.

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## ARTICLE 17: TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

**17.01 Facilities to Be Marked.** IP Communications Corporation shall tag or otherwise mark all of IP Communications Corporation's facilities placed on or in SWBT's poles, ducts, conduits, and rights-of-way in a manner sufficient to identify the facilities as IP Communications Corporation's facilities.

**17.02 Removal of Untagged or Unauthorized Facilities.** Subject to the provisions of subsections (a)-(d) of this section, SWBT may, without notice to any person or entity, remove from SWBT's poles or any part of SWBT's conduit system any untagged or unmarked facilities, including any such facilities owned or used by IP Communications Corporation, if SWBT determines that such facilities are not the subject of any current license authorizing their continued attachment to SWBT's poles or occupancy of SWBT's conduit system and are not otherwise lawfully present on SWBT's poles or in SWBT's conduit system.

- (a) Before removing any such untagged or unmarked facilities, SWBT shall first attempt to determine whether the facilities are being used by IP Communications Corporation or any other firm, are authorized by any license subject to this Appendix, or are otherwise lawfully present on SWBT's poles or in SWBT's conduit system.
- (b) SWBT shall not remove untagged or unmarked facilities which are thought to be operational without first making reasonable efforts to (1) determine the identity of the owner or other person or entity thought to be responsible for the facilities and (2) give advance written notice to such person or entity.
- (c) If the facilities appear to be facilities which are subject to a current license granted to IP Communications Corporation under this Appendix, or if the facilities are IP Communications Corporation facilities otherwise lawfully present on SWBT's poles or in SWBT's conduit system, SWBT shall give written notice to IP Communications Corporation requesting IP Communications Corporation to tag or mark the facilities within 60 days and IP Communications Corporation shall either tag the facilities within the 60-day period, advise SWBT in writing of its schedule for tagging the facilities, or notify SWBT in writing that it disclaims ownership of or responsibility for the facilities. If IP Communications Corporation disclaims ownership of or responsibility for the facilities, IP Communications Corporation shall disclose to SWBT the identity of the owner or other person or

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entity thought by IP Communications Corporation to be responsible for the facilities.

- (d) If the facilities appear to be local facilities used by IP Communications Corporation but not authorized under a current license subject to this Appendix (or any other current agreement between the parties), the provisions of Sections 17.05-17.12 shall apply.

17.03 Report of Unlicensed Facilities. If IP Communications Corporation determines that facilities presently owned or used by IP Communications Corporation and attached to SWBT's poles are occupying space within any SWBT duct or conduit in this state or not the subject of current licenses, IP Communications Corporation shall promptly notify SWBT and either apply for licenses for such facilities or remove the facilities from SWBT's poles, ducts or conduits. Nothing contained in this section shall be construed as requiring IP Communications Corporation to make a field audit of its existing facilities.

17.04 Updating of Plant Location Records. IP Communications Corporation shall furnish SWBT, upon request, with such information as may from time to time be necessary for SWBT to correct and update SWBT's pole and conduit maps and records, cable plat maps, and other plant location records, if any, recording or logging assignments of pole, duct, and conduit space.

17.05 Notice to IP Communications Corporation. If any of IP Communications Corporation's local facilities for which no license is presently in effect are found attached to SWBT's poles or anchors or within any part of SWBT's conduit system, SWBT, without prejudice to other rights or remedies available to SWBT under this Appendix, and without prejudice to any rights or remedies which may exist independent of this Appendix, shall send a written notice to IP Communications Corporation advising IP Communications Corporation that no license is presently in effect with respect to the facilities and that IP Communications Corporation must, within 60 days, respond to the notice as provided in Section 17.06 of this Appendix. The notice shall include a statement by SWBT of the factual basis for its belief that the facilities in questioned may be IP Communications Corporation's facilities. If it is determined that the facilities are not IP Communications Corporation's facilities, IP Communications Corporation is entitled to reasonable reimbursement for costs incurred in responding to the notice.

17.06 IP Communications Corporation's Response. Within 60 days after receiving a notice under Section 17.05 of this Appendix, IP Communications Corporation shall acknowledge receipt of the notice and submit to SWBT, in writing, either:

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- (a) a denial or disclaimer of ownership or other interest in the facilities, together with an explanation of the basis for such denial or disclaimer;
- (b) a statement that the facilities are the subject of a current license, together with an explanation of the basis for IP Communications Corporation's assertion that the facilities are currently licensed, or a statement that no license is required, and an explanation of the basis for that assertion; or
- (c) an application for a new or amended license with respect to such facilities, together with a full and complete explanation of the circumstances under which such facilities were attached to, placed within, or allowed to remain on or in SWBT's poles or any part of SWBT's conduit system. Such explanation shall include, at a minimum, the following:
  - (1) the date (or estimated date) when such facilities were attached to SWBT's poles or placed in SWBT's conduit system, and the basis supporting IP Communications Corporation's selection of such date (or estimated date); and
  - (2) the basis for IP Communications Corporation's assertion, if any, that decisions to attach, place or allow the facilities to remain on or in SWBT's poles or conduit system were made in good faith and without intent to circumvent SWBT's pole attachment or conduit occupancy licensing requirements.

17.07 Denial or Disclaimer of Ownership or Other Interest. IP Communications Corporation's submission to SWBT of a denial or disclaimer of ownership or other interest in the facilities shall constitute IP Communications Corporation's waiver of any objection IP Communications Corporation may have to SWBT's removal of the facilities. Submission of such a denial or disclaimer shall not be construed as an agreement by IP Communications Corporation to pay any charges associated with removal of the facilities and shall be deemed to be a denial of any such responsibility.

17.08 Review by SWBT of Licensing Status. Within 15 business days after receiving IP Communications Corporation's statement that the facilities are the subject of a current license or that no license is required, SWBT shall review IP Communications Corporation's explanation of the basis for IP Communications Corporation's assertions and shall advise IP Communications Corporation, in writing, whether it agrees or disagrees with IP Communications Corporation's assertions. If SWBT agrees with IP

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Communications Corporation's assertions, the parties may amend the applicable license and no further action shall be required of IP Communications Corporation. If SWBT does not accept IP Communications Corporation's position, IP Communications Corporation shall, within 60 business days, apply for a new or amended license as provided by Section 17.06(c) of this Appendix. Except that, if IP Communications Corporation determines that the facility in question is the property of IP Communications Corporation's long distance operations, IP Communications Corporation will so notify SWBT and provide a contact within IP Communications Corporation's long distance operations. SWBT shall thereafter deal with IP Communications Corporation's long distance operations.

17.09 Approval of License and Retroactive Charges. If SWBT approves IP Communications Corporation's application for a new or amended license, IP Communications Corporation shall be liable to SWBT for all fees and charges associated with the unauthorized attachments as specified in Section 17.10 of this Appendix. The issuance of a new or amended license as provided by this article shall not operate retroactively or constitute a waiver by SWBT of any of its rights or privileges under this Appendix or otherwise.

17.10 Fees and Charges. This section applies to fees and charges with respect to IP Communications Corporation's facilities placed on or in SWBT pole, duct, or conduit space which has not been assigned to IP Communications Corporation. IP Communications Corporation shall be liable to SWBT for all fees and charges associated with any such unauthorized pole attachments or conduit occupancy for which it is responsible. Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from SWBT's poles or conduit system and shall include, but not be limited to, all fees and charges which would have been due and payable if IP Communications Corporation and its predecessors had continuously complied with all applicable SWBT licensing requirements. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. The parties shall engage in good faith discussions to reach a mutually agreed determination as to the amount due and owing. In some cases, it may be impractical, unduly difficult, or uneconomical to determine the actual amount of fees which would have been due and payable if all licensing requirements had been met. Therefore, if the parties, through good faith discussions fail to reach agreement on the amount due and owing, and if the amount due and owing cannot be determined due to IP Communications Corporation's inability to provide the information required to determine the correct amount, the amount owing with respect to each unauthorized attachment or occupancy shall be equal to three times the annual attachment and occupancy fees in effect on the date IP Communications Corporation is notified by SWBT of the unauthorized attachment or occupancy. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, IP Communications Corporation shall rearrange or remove its unauthorized facilities at SWBT's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to SWBT, or

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another joint user, and shall pay SWBT for all costs incurred by SWBT in connection with any facilities rearrangements, modifications, or replacements necessitated as a result of the presence of IP Communications Corporation's unauthorized facilities.

**17.11 Removal of Unauthorized Attachments.** If IP Communications Corporation does not apply for a new or amended license with respect to unauthorized facilities within the specified period of time, or if such application is received and specifically disapproved, SWBT shall by written notice request IP Communications Corporation to remove its unauthorized facilities not less than 60 days from the date of notice and IP Communications Corporation shall remove the facilities within the time specified in the notice; provided, however, that SWBT may request IP Communications Corporation to remove such facilities at an earlier date if such earlier removal is necessary for reasons beyond SWBT's control. If the facilities have not been removed within the time specified in the notice, SWBT may, at SWBT's option, remove IP Communications Corporation's facilities at IP Communications Corporation's expense.

**17.12 No Ratification of Unlicensed Attachments or Unauthorized Use of SWBT's Facilities.** No act or failure to act by SWBT with regard to any unlicensed attachment or occupancy or unauthorized use of SWBT's facilities shall be deemed to constitute a ratification by SWBT of the unlicensed attachment or occupancy or unauthorized use, nor shall the payment by IP Communications Corporation of fees and charges for unauthorized pole attachments or conduit occupancy exonerate IP Communications Corporation from civil or criminal liability for any deliberate trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities.

## **ARTICLE 18: REMOVAL OF IP COMMUNICATIONS CORPORATION'S FACILITIES**

**18.01 Responsibility for Removing Facilities.** IP Communications Corporation shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from SWBT's poles, ducts, conduits, and rights-of-way. Such removals shall be performed in accordance with the provisions of this article.

- (a) IP Communications Corporation shall give SWBT, when practicable, at least 30 days' advance notice in writing of its intent to remove facilities from any part of SWBT's conduit system and the proposed method of removal. The notice shall include the locations of the facilities to be removed, the name and telephone number of the manager responsible for the removal of the facilities, and the estimated dates when removal of the facilities will begin and end.

- (b) IP Communications Corporation shall, if requested by SWBT to do so, place a pull mandrel (slug) through all or any specified part of the duct which was occupied by IP Communications Corporation.
- (c) Except as otherwise agreed upon in writing by the parties, IP Communications Corporation must, after removing its facilities, plug all previously occupied ducts at the entrances to SWBT's manholes (if SWBT would itself plug the ducts under the same circumstances) in accordance with the standards set by SWBT for its operations, provided that such standards have been communicated in writing to IP Communications Corporation at least 60 days in advance of the removal of IP Communications Corporation's facilities.
- (d) IP Communications Corporation shall be solely responsible for the removal of its own facilities and for (1) paying all persons and entities which provide materials, labor, access to real or personal property, or other goods or services in connection with the removal of IP Communications Corporation's facilities from SWBT's poles, ducts, conduits, or rights-of-way and (2) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.
- (e) When IP Communications Corporation no longer intends to occupy space on a pole or in a conduit IP Communications Corporation will provide written notification to SWBT that it wishes to terminate the license with respect to such space and will remove its facilities from the space described in the notice. Upon removal of IP Communications Corporation's facilities, the license shall terminate and the space shall be available for reassignment.

18.02 Removal of Facilities Not in Active Use. At SWBT's request, IP Communications Corporation shall remove from SWBT's poles, ducts, conduits, and rights-of-way any of IP Communications Corporation's facilities which are no longer in active use; provided, however, that IP Communications Corporation shall not be required to remove such facilities when due cause and justification exists for allowing them to remain in place. IP Communications Corporation shall not be required to remove retired or inactive (dead) cables that have been overlashed by other facilities which remain in active use unless removal expenses are paid by the person or entity requesting removal of such facility. IP Communications Corporation shall not be required to remove cables that would require excavation to remove unless the person or entity requesting removal of such cables bears the expenses of excavation in a manner analogous to the provisions of Section 10.02(c) of this Appendix. IP Communications Corporation shall not abandon any of its facilities by leaving them on SWBT's poles, in SWBT's ducts, conduits, or

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rights-of-way, at any location where they may block access to or obstruct SWBT's poles, ducts, conduits, or rights-of-way, or on any public or private property (other than property owned or controlled by IP Communications Corporation) in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

18.03 Removal Following Termination of License. IP Communications Corporation shall remove its facilities from SWBT's poles, ducts, conduits, or rights-of-way within 60 days, or within such other period of time as shall be mutually agreeable to the parties, after termination of the license authorizing the attachment of such facilities to SWBT's poles or the placement of such facilities in SWBT's ducts, conduits, or rights-of-way.

18.04 Removal Following Replacement of Facilities. Each party shall remove facilities no longer in service from SWBT's poles or conduit system within 60 days, or within such other period of time as shall be mutually agreeable to the parties, after the date such party replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit; provided, however, that removal of facilities from the maintenance ducts shall be governed by Section 12.04, 13.03, and 15.02 of this Appendix; provided further that this section applies only to the removal of facilities which have been replaced after the effective date of this Appendix; and provided that neither party shall be required to remove such facilities when due cause and justification exists for allowing them to remain in place. Neither party shall be required by this section to remove retired or inactive (dead) cables that have been overlashed by other facilities which remain in active use unless the other party requests such removal and removal expenses are paid by the person or entity requesting removal. Neither party shall be required to remove cables that would require excavation to remove unless the other party requests such removal and removal expenses are paid by the person or entity requesting removal.

18.05 Removal to Avoid Forfeiture. If the presence of IP Communications Corporation's facilities on SWBT's poles or in SWBT's ducts, conduits, or rights-of-way would cause a forfeiture of the rights of SWBT to occupy the property where such pole, duct, conduit, or right-of-way is located, SWBT will promptly notify IP Communications Corporation in writing and IP Communications Corporation shall not, without due cause and justification, refuse to remove its facilities within such time as may be required to prevent such forfeiture. SWBT will give IP Communications Corporation not less than 60 days from the date of notice to remove IP Communications Corporation's facilities unless prior removal is required to prevent the forfeiture of SWBT's rights. At IP Communications Corporation's request, the parties will engage in good faith negotiations with each other, with joint users, and with third-party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of IP Communications Corporation's facilities in the face of a threatened forfeiture.

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18.06 Notice of Completion of Removal Activities. IP Communications Corporation shall give written notice to SWBT stating the date on which the removal of its facilities from SWBT's poles, ducts, conduits, and rights-of-way has been completed. Charges shall continue to accrue with respect to such facilities until IP Communications Corporation's facilities have been removed, pull mandrels (slugs) have been pulled if required by Section 18.01(b) of this Appendix, IP Communications Corporation has plugged all previously occupied ducts at the entrances to SWBT's manholes as required by Section 18.01(c) of this Appendix, and the notice required by this section has been given.

18.07 Notice of SWBT's Intent to Remove Facilities. If IP Communications Corporation fails to remove its facilities from SWBT's poles, ducts, or conduits in accordance with the provisions of Sections 18.01-18.06 of this Appendix, SWBT may remove such facilities and store them at IP Communications Corporation's expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to IP Communications Corporation for any injury, loss, or damage resulting from such actions. SWBT shall give IP Communications Corporation not less than 60 days prior written notice of its intent to remove IP Communications Corporation's facilities pursuant to this section and shall not remove the facilities, without first obtaining a court order authorizing such removal, pending the resolution of any dispute resolution procedures or legal proceedings initiated by either party to resolve questions relating to SWBT's right to remove the facilities. The notice shall state:

- (a) the date when SWBT plans to commence removal of IP Communications Corporation's facilities, and that IP Communications Corporation may remove the facilities at IP Communications Corporation's sole cost and expense at any time before the date specified;
- (b) SWBT's plans with respect to disposition of the facilities removed; and
- (c) that IP Communications Corporation's failure to remove the facilities or make alternative arrangements with SWBT for removal and disposition of the facilities shall constitute an abandonment of the facilities and of any interest therein.

18.08 Removal of Facilities by SWBT. If SWBT removes any of IP Communications Corporation's facilities pursuant to this article, IP Communications Corporation shall reimburse SWBT for SWBT's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.

18.09 Reattachment or Subsequent Attachment Following Removal. After IP Communications Corporation's facilities have been properly removed pursuant to the

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provisions of this article, neither the removed facilities nor replacement facilities shall be attached to SWBT's poles or placed in SWBT's conduit system until IP Communications Corporation has first submitted new applications for the facilities and complied with the provisions of this Appendix.

#### **ARTICLE 19: FEES, CHARGES, AND BILLING**

**19.01 Rates and Administrative Fees.** The following rates and administrative fees shall apply during the terms of the parties' Interconnection Agreement and shall not be increased or decreased except as provided herein or by the Commission order.

- (a) **Rates for Pole Attachments and Conduit Occupancy.** In accordance with the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, IP Communications Corporation shall pay SWBT rates of \$2.35 per year per pole attachment and \$0.40 per duct foot per year for conduit occupancy, until such time as the Federal Communications Commission promulgates amended rules governing pole attachment and conduit occupancy rates. Conduit occupancy rates apply to manhole occupancy, calculated to the center point of the manhole. Pole attachment and conduit occupancy rates charged by SWBT to IP Communications Corporation under this Appendix will then be adjusted in accordance with the FCC's rules on a going-forward basis.
- (b) **Administrative Fees.** As provided by the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, SWBT shall be allowed to charge administrative fees to IP Communications Corporation. The amount charged by SWBT to IP Communications Corporation for administrative fees shall be identical to the amount charged by SWBT to CATV providers. Further, in accordance with the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, if the FCC promulgates rules governing the assessment of administrative fees, those rules shall apply to administrative fees charged by SWBT to IP Communications Corporation on a going-forward basis.
- (c) **Partial Duct and Inner Duct Occupancy Rates.** SWBT's rates for partial duct and inner duct occupancy shall be determined in accordance with the Pole Attachment Act and applicable rules, regulations, and Commission orders thereunder. Partial duct and inner duct rates shall be standardized rather than determined on a case-by-case basis which requires individual analysis of conduit sections occupied. If two or more cable facilities occupy a duct that has not been subdivided by inner duct, a half-duct occupancy rate

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will apply for each cable facility placed in the duct. A half-duct occupancy rate will apply to the first facility placed by IP Communications Corporation in a previously unoccupied duct that has not been subdivided by inner duct if the presence of IP Communications Corporation's cable facility does not render the other half of the duct unusable by others. A half-duct rate shall apply to each inner duct occupied. If the FCC promulgates rules governing rates for partial duct and inner duct occupancy, those rules shall apply, on a going forward basis, to partial duct and inner duct occupancy rates charged to IP Communications Corporation by SWBT under this Appendix.

19.02 Billing for Attachment and Occupancy Fees. Semiannual attachment and occupancy fees under this Appendix and licenses subject to this Appendix shall be due and payable in advance. Fees for pole attachments shall be based on the number of IP Communications Corporation's pole attachments as of the date of billing by SWBT, and shall be payable semiannually in advance. For billing purposes, a single pole attachment includes the point of attachment and all facilities located in the usable space on the pole six inches above and six inches below the point of attachment, together with routine ancillary apparatus such as anchors, dead-end clamps, strands, drop-wire, drive rings, J-hooks, and other ancillary apparatus that does not interfere with the ability of SWBT and others to occupy usable space on the pole other than usable space assigned to IP Communications Corporation. Fees for conduit occupancy shall be based on the number of duct feet occupied by or assigned to IP Communications Corporation as of the date of billing by SWBT, and shall be payable semiannually in advance. Pole attachment and conduit occupancy space occupied by or assigned to IP Communications Corporation shall be subject to billing whether or not a current license for such space is in effect.

- (a) Bills shall be submitted to IP Communications Corporation for two semiannual billing periods, the first period including charges for the months of January through June and the second including charges for the months of July through December.
- (b) Charges associated with new pole attachments and conduit occupancy shall be prorated on a daily basis and billed with the next semi-annual bill.
- (c) Charges shall be prorated on a daily basis following the removal of IP Communications Corporation's facilities and shall be retroactively adjusted as a credit on the next semiannual bill.

19.03 Make-Ready Charges. Except as provided in Section 10.02(a), IP Communications Corporation will pay half of SWBT's make-ready charges after 50%

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completion of work, and the remainder at completion. Bills and invoices submitted by SWBT to IP Communications Corporation for make-ready charges shall be due and payable 30 days after the date of the bill or invoice.

19.04 Due Date for Payment, Interest on Past Due Invoices, Remedies for Non-payment, and Procedures for Disputing Charges. For fees and charges other than charges for facilities modification, capacity expansion, and make-ready work, each bill or invoice submitted by SWBT to IP Communications Corporation for any fees or charges under this Appendix shall state the date that payment is due, which date shall be not less than 60 days after the date of the bill or invoice. IP Communications Corporation agrees to pay each such bill or invoice on or before the stated due date. For facilities modification, capacity expansion, and make-ready work, the payment due date shall be not less than 60 days after the date of the bill or invoice.

- (a) Interest on past due bills and invoices shall accrue at the rate of 12% per annum, or the maximum rate allowed by law, whichever is less.
- (b) If IP Communications Corporation fails to pay, when due, any fees or charges billed to IP Communications Corporation under this Appendix, and any portion of such fees or charges remains unpaid more than 15 calendar days after the due date, SWBT may send IP Communications Corporation a written notice advising IP Communications Corporation that this Appendix, or specified licenses subject to this Appendix, may be terminated if such fees or charges are not paid within 15 calendar days after the date of the notice. IP Communications Corporation must remit to SWBT all such unpaid fees or charges, whether disputed or undisputed, within 15 days after the date of the notice. If IP Communications Corporation pays disputed fees under protest, and it is later determined that such fees or any portion thereof should be refunded, the portion of fees to be refunded shall be refunded with interest at the rate of 12% per annum or the maximum rate allowed by law, whichever is less.
- (c) IP Communications Corporation may dispute any fees or charges billed by SWBT to IP Communications Corporation under this Appendix by invoking the dispute resolution procedures available to IP Communications Corporation under the parties' Interconnection Agreement or otherwise agreed to by the parties.
- (d) If IP Communications Corporation does not dispute such fees or charges and any portion of such undisputed fees or charges remains unpaid 30 calendar days after the date of the notice, SWBT may, to the extent permitted by the Pole Attachment Act and applicable

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rules, regulations, and commission orders, terminate this Appendix and licenses subject to this Appendix, suspend the processing of pending applications for access to SWBT's poles, ducts, conduits, and rights-of-way located in this State, and refuse to accept further applications for access until such undisputed fees or charges, together with accrued interest thereon, have been paid in full. SWBT shall not terminate this Appendix for licenses subject to this Appendix for minor monetary amounts.

19.05 Charges for Work Performed by SWBT Employees. Except as otherwise specifically required by applicable commission orders, SWBT's charges to IP Communications Corporation for work performed by SWBT employees pursuant to this Appendix shall be computed by multiplying the fully loaded hourly rates for such employees times the number of hours required to perform the work. Disputes over SWBT's charges for work performed by SWBT employees, including disputes between the parties concerning the number of hours required to perform the work, shall be subject to the dispute resolution procedures applicable to this Appendix. Notwithstanding the execution of this Appendix, IP Communications Corporation shall have the right to challenge the methodology utilized by SWBT to determine hourly rates for SWBT employees at any time in any forum having jurisdiction over the subject matter.

## **ARTICLE 20: PERFORMANCE AND PAYMENT BONDS**

20.01 Bond May Be Required. SWBT may require IP Communications Corporation, authorized contractors and other persons acting on IP Communications Corporation's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of their respective obligations arising out of or in connection with this Appendix only as provided in subsections (a)-(b) of this section. Bonds shall not be required for entities meeting all self-insurance requirements of Section 23.02 of this Appendix.

- (a) If IP Communications Corporation elects to perform make-ready or facilities modification work under Section 6.08(c) or Sections 10.02 - 10.05 of this Appendix, SWBT may require IP Communications Corporation, authorized contractors, and other persons acting on IP Communications Corporation's behalf to execute bonds equivalent to those which would be required by SWBT if the work had been performed by contractors, subcontractors, or other persons selected directly by SWBT. No bonds shall be required of IP Communications Corporation, authorized contractors, or other persons acting on IP Communications Corporation's behalf except in those situations where a bond would be required if the work were being performed on SWBT's behalf.

- (b) No other bond shall be required of IP Communications Corporation to secure obligations arising under this Appendix in the absence of due cause and justification.
- (c) If a bond or similar form of assurance is required of IP Communications Corporation, an authorized contractor, or other person acting on IP Communications Corporation's behalf, IP Communications Corporation shall promptly submit to SWBT, upon request, adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be canceled, changed or materially altered without first providing SWBT 60 days written notice.
- (d) SWBT may communicate directly with the issuer of any bond required by SWBT pursuant to this section to verify the terms of the bond, to confirm that the bond remains in force, and to make demand on the issuer for payment or performance of any obligations secured by the bond.

**ARTICLE 21  
RESERVED FOR FUTURE USE**

**ARTICLE 22  
RESERVED FOR FUTURE USE**

**ARTICLE 23: INSURANCE**

**23.01 Insurance Required.** IP Communications Corporation shall comply, and cause its contractors and subcontractors acting on its behalf to comply, with the insurance requirements specified in this section:

- (a) Unless IP Communications Corporation has provided proof of self-insurance as permitted in Section 23.02 below, IP Communications Corporation shall obtain and maintain in full force and effect, for so long as this Appendix remains in effect, insurance policies specified in Exhibit IV of this Appendix. Each policy shall name SWBT as an additional insured and shall include provisions requiring the insurer to give SWBT notice of any lapse, cancellation, or termination of the policy or any modification to the policy affecting SWBT's rights under the policy, including but not limited to any decrease in coverage or increase in deductibles.
- (b) Exclusions from coverage or deductibles, other than those expressly permitted in Exhibit IV, must be approved in writing by SWBT.

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- (c) Authorized contractors and other contractors performing work on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way on IP Communications Corporation's behalf shall be required to meet the same insurance (or self-insurance) requirements applicable to contractors performing similar work on SWBT's behalf.
- (d) Self-insurance shall be permitted for persons and entities (including but not limited to IP Communications Corporation and authorized contractors) meeting the self-insurance requirements set forth in Section 23.02 of this Appendix.

23.02 Proof of Insurance or Self-Insurance. Proof of insurance or self-insurance shall be made pursuant to the provisions of this section.

- (a) IP Communications Corporation shall submit to SWBT adequate proof (as determined by SWBT) that the companies insuring IP Communications Corporation are providing all coverages required by this Appendix. IP Communications Corporation's insurers shall provide SWBT with certifications that the required coverages will not be canceled, changed, or materially altered (e.g., by increasing deductibles or altering exclusions from coverages) except after 30 days written notice to SWBT.
- (b) SWBT will accept certified proof of a person or entity's qualification as a self-insurer for Workers' Compensation and Employers Liability, where self-insurance is permitted, upon receipt of a current copy of a Certificate of Authority to Self-insure issued by the Workers' Compensation Commission of this State. SWBT will accept self-insurance by a person or entity in lieu of other Commercial General Liability and Automobile Liability Coverage if such person or entity warrants that its net worth, as shown by its most recent audited financial statement with no negative notes, is a least 10 times the minimum liability limits set forth in Exhibit IV and SWBT is satisfied that such person or entity will be able to meet its liability obligations under this Appendix.

23.03 Licensing Contingent on Proof of Insurance. All insurance required in accordance with Exhibit IV, or self-insurance as permitted in Section 23.02, must be in effect before SWBT will issue pole attachment or conduit occupancy licenses under this Appendix and shall remain in force until all of IP Communications Corporation's facilities have been removed from SWBT's poles, ducts, conduits, and rights-of-way.

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23.04 Failure to Obtain or Maintain Coverage. IP Communications Corporation's failure to obtain and maintain the required levels and types of insurance coverage required under this Appendix may be grounds for termination of licenses subject to this Appendix. If an insurance carrier shall at any time notify IP Communications Corporation or SWBT that any policy or policies of insurance required under this Appendix will be canceled or changed in any manner which will result in IP Communications Corporation's failure to meet the requirements of this Appendix, SWBT may terminate this Appendix and all licenses subject to this Appendix not less than 60 days after giving IP Communications Corporation written notice of its intention to do so, and such termination shall be effective on the termination date specified in the notice unless IP Communications Corporation has obtained (or made arrangements satisfactory to SWBT to obtain) the required coverage from another source. In the alternative, SWBT may, in its sole discretion, elect to take such action as may be necessary to keep any such policy in effect with the required coverages.

#### **ARTICLE 24: ASSIGNMENT OF RIGHTS**

24.01 Assignment Permitted. Neither party may assign or otherwise transfer its rights or obligations under this Appendix except as provided in this section.

- (a) Either party may assign or transfer rights or obligations under this Appendix, on such terms and conditions as are mutually acceptable to the other party and with such other party's prior written consent which consent may be withheld only for due cause and justification.
- (b) The parties shall provide each other with 60 days advanced notice in writing of any assignment subject to the provisions of this Article.
- (c) Either party may assign or transfer rights or obligations under this Appendix on such terms and conditions as are mutually acceptable to the other party and with such other party's prior written consent, which consent may be withheld only for due cause and justification.

24.02 Sublicenses Prohibited. Nothing contained in this Appendix shall be construed as granting IP Communications Corporation the right to sublicense any rights under this Appendix or licenses subject to this Appendix to any third party. Except as otherwise expressly permitted in this Appendix, IP Communications Corporation shall not allow third party to attach or place facilities to or in pole or conduit space occupied by or assigned to IP Communications Corporation or to utilize such space.

#### **ARTICLE 25: TERMINATION**

25.01 Termination of Appendix Due to Non-Use of Facilities. Termination Due to Non-Use of Facilities. IP Communications Corporation shall, by written notice to

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SWBT, terminate this Appendix and all licenses subject to this Appendix if IP Communications Corporation ceases to be a party entitled to access to SWBT's poles, ducts, conduits and rights-of-way under the Pole Attachment Act, ceases to do business in this State, or ceases to make active use of SWBT's poles, ducts, conduits, and rights-of-way in this State.

25.02 Limitation, Termination, or Refusal of Access for Certain Material Breaches. IP Communications Corporation's access to SWBT's poles, ducts, conduits, and rights-of-way shall not materially interfere with or impair service over any facilities of SWBT or any joint user, cause material damage to SWBT's plant or the plant of any joint user, impair the privacy of communications carried over the facilities of SWBT or any joint user, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of SWBT's poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, SWBT may limit, terminate or refuse access if IP Communications Corporation violates this provision; provided, however, that such limitation, termination or refusal will be limited to IP Communications Corporation's access to poles, ducts, conduits, and rights-of-way located in the SWBT construction district in which the violation occurs, shall be as narrowly limited in time and geographic scope as may be necessary to enable IP Communications Corporation to adopt suitable controls to prevent further violations, and shall be subject to review, at IP Communications Corporation's request, pursuant to the dispute resolution procedures applicable to this Appendix or, as permitted by law, before any court, agency, or other tribunal having jurisdiction over the subject matter. In the event IP Communications Corporation invokes dispute resolution procedures or seeks review before a court, agency, or other tribunal having jurisdiction over the subject matter, the limitation, termination, or refusal of access may be stayed or suspended by agreement of the parties or by order of the tribunal having jurisdiction over the parties' dispute.

25.03 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Appendix by either party, the aggrieved party may give written notice of such claimed breach as provided in this section.

(a) The notice shall set forth in reasonable detail:

- (1) the conduct or circumstances complained of, together with the complaining party's legal basis for asserting that a breach has occurred;
- (2) the action believed necessary to cure the alleged breach; and
- (3) any other matter the complaining party desires to include in the notice.

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- (b) Except as provided in Section 25.02 and subsection (c) of this section, the complaining party shall not be entitled to pursue any remedies available under this Appendix or relevant law unless such notice is given and (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 (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; provided, however, that nothing contained in this section shall preclude either party from invoking the dispute resolution procedures applicable to this Appendix or any dispute resolution procedures offered by the FCC or Missouri Public Service Commission, at any time.
- (c) Nothing contained in this section shall preclude either party from filing a complaint or bringing suit in any court, agency, or other tribunal of competent jurisdiction to restrain or enjoin any conduct of the other party which threatens the complaining party with irreparable injury, loss, or damage without first giving the notice otherwise required by subsection (b).

**ARTICLE 26  
RESERVED FOR FUTURE USE**

**ARTICLE 27  
RESERVED FOR FUTURE USE**

**ARTICLE 28  
RESERVED FOR FUTURE USE**

**ARTICLE 29: NOTICES**

**29.00 Scope of Article.** This Article applies only to operational notices regarding poles, ducts, conduits, and rights-of-way. For all other notices, please refer to the terms and conditions section of the Interconnection Agreement.

**29.01 Notices to IP Communications Corporation.** All written notices required to be given to IP Communications Corporation shall be delivered or mailed to IP Communications Corporation's duly authorized agent or attorney, as designated in this section. IP Communications Corporation may add special instructions by submitting to SWBT such instructions under an exhibit to be named Exhibit VI.

- (a) Such notice may be delivered to IP Communications Corporation's

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duly authorized agent or attorney in person or by agent or courier receipted delivery.

- (b) Such notice may be mailed to IP Communications Corporation's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.
- (c) IP Communications Corporation may authorize delivery of the notice by telephonic document transfer to the IP Communications Corporation's duly authorized agent or attorney. Notice by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed given on the following day.
- (d) Notices to IP Communications Corporation shall be sent to the authorized agent or attorney designated below:

Sean Minter  
President & Chief Operating Officer  
IP Communications Corporation  
17300 Preston Road, Suite 300  
Dallas, TX 75252  
(972) 248-8210

29.02 Notices to SWBT. Except as otherwise provided in EXHIBIT VII ("Notices to SWBT"), all written notices required to be given to SWBT shall be delivered or mailed to SWBT's duly authorized agent or attorney, as designated in this section.

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

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- (c) SWBT may authorize delivery of the notice by telephonic document transfer to SWBT's duly authorized agent or attorney. Notice by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed given on the following day.
- (d) On the effective date of this Appendix, and until further notice to IP Communications Corporation, SWBT's duly authorized agent shall be the Utility Liaison Supervisor ("ULS") designated in EXHIBIT VIII.

29.03 Changes in Notice Requirements. Either party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other party. Such notice shall state, at a minimum, the name, title, firm, and full address of the new addressee.

EXHIBIT VI: None at this time

EXHIBIT VII: Notices to Southwestern Bell

EXHIBIT VIII: Identification of Utility Liaison Supervisor

### **ARTICLE 30: CONFIDENTIALITY OF INFORMATION**

30.01 Information Provided by IP Communications Corporation to SWBT. Except as otherwise specifically provided in this Appendix, all company-specific and customer-specific information submitted by IP Communications Corporation to SWBT in connection with this Appendix (including but not limited to information submitted in connection with IP Communications Corporation's applications for the assignment of pole attachment and occupancy space and for pole attachment and conduit occupancy licenses) shall be deemed to be "Confidential" or "Proprietary" information of IP Communications Corporation and shall be subject to the terms set forth in this article. Confidential or Proprietary information specifically includes information or knowledge related to IP Communications Corporation's review of records regarding a particular market area, or relating to assignment of space to IP Communications Corporation in a particular market area, and further includes knowledge or information about the timing of IP Communications Corporation's request for or review of records or its inquiry about SWBT facilities. This article does not limit the use by SWBT of aggregate information relating to the occupancy and use of SWBT's poles, ducts, conduits, and rights-of-way by firms other than SWBT (that is, information submitted by IP Communications Corporation and aggregated by SWBT in a manner that does not directly or indirectly identify IP Communications Corporation).

30.02 Access Limited to Persons with a Need to Know. Confidential or Proprietary information provided by IP Communications Corporation to SWBT in

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connection with this Appendix shall not be disclosed to, shared with, or accessed by any person or persons (including but not limited to personnel involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities) other than those who have a need to know such information for the limited purposes set forth in Sections 30.03 to 30.06.

30.03 Permitted Uses of IP Communications Corporation's Confidential or Proprietary Information. SWBT and persons acting on SWBT's behalf, except for personnel involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities, may utilize IP Communications Corporation's Confidential or Proprietary information for the following purposes, and no others: (a) posting information, as necessary, to SWBT's outside plant records; (b) placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SWBT's poles, ducts, conduits, and rights-of-way and any SWBT facilities located on, within, or in the vicinity of such poles, ducts, conduits, and rights-of-way; (c) performing SWBT's obligations under this Appendix and similar agreements with third parties; (d) performing SWBT's general obligations to afford nondiscriminatory access to telecommunications carriers and cable television systems under the Pole Attachment Act; (e) determining which of SWBT's poles, ducts, conduits, and rights-of-way are (or may in the future be) available for SWBT's own use, and making planning, engineering, construction, and budgeting decisions relating to SWBT's poles, ducts, conduits, and rights-of-way; (f) preparing cost studies; (g) responding to regulatory requests for information; (h) maintaining SWBT's financial accounting records; and (i) complying with other legal requirements relating to poles, ducts, conduits, and rights-of-way.

30.04 Access by Third Parties. Information reflecting the assignment of pole attachment and conduit occupancy space to IP Communications Corporation may be made available to personnel of third parties seeking access to SWBT's records pursuant under provisions equivalent to those contained in Section 7.03 of this Appendix.

30.05 Defense of Claims. In the event of a dispute between SWBT and any person or entity, including IP Communications Corporation, concerning SWBT's performance of this Appendix, 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, SWBT may utilize Confidential or Proprietary information submitted by IP Communications Corporation in connection with this Appendix 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 SWBT shall not disclose IP Communications Corporation's Proprietary or Confidential Information without first, at SWBT's option, (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of the information; (b) seeking such a protective order as provided by

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law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing IP Communications Corporation notice of the subpoena or order and the opportunity to protect the Proprietary or Confidential Information.

30.06 Response to Subpoenas, Investigative Demands, Court Orders, and Agency Orders. Nothing contained in this Article shall be construed as precluding SWBT from complying with any subpoena, civil or criminal investigative demand, or order issued or entered by a court or agency of competent jurisdiction; provided, however, that SWBT shall not disclose IP Communications Corporation's Proprietary or Confidential Information without first, at SWBT's option, (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of the information; (b) seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing IP Communications Corporation notice of the subpoena, demand, or order and the opportunity to protect the Proprietary or Confidential Information.

30.07 Other Uses of Confidential Information. No other uses of Confidential or Proprietary information received from IP Communications Corporation pursuant to this Appendix are authorized or permitted without IP Communications Corporation's express written consent.

### **ARTICLE 31: APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS**

30.01 \*Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions; interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

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

SOUTHWESTERN BELL TELEPHONE COMPANY

By: \_\_\_\_\_  
Signature of SWBT's Authorized Officer/Employee:

\_\_\_\_\_  
Name of SWBT's Authorized Officer/Employee (Printed or Typed)

\_\_\_\_\_  
Position/Title of SWBT's Authorized Officer/Employee

\_\_\_\_\_  
Date

IP COMMUNICATIONS CORPORATION:

By: \_\_\_\_\_  
Signature of IP Communications Corporation's Authorized Officer/Employee

\_\_\_\_\_  
Name of IP Communications Corporation's Authorized Officer/Employee (Printed or Typed)

\_\_\_\_\_  
Title of IP Communications Corporation's Authorized Officer/Employee

\_\_\_\_\_  
Date

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**EXHIBIT I  
(MISSOURI)**

Reserved for Future Use

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**EXHIBIT II**  
**IDENTIFICATION OF APPLICANT (MISSOURI)**

This Exhibit is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached.

Applicant's legal name is: IP Communications Corporation.

Applicant's principal place of business is located in the State of \_\_\_\_\_.

Applicant does business under the following assumed names: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Applicant is:

☐ a corporation organized under the laws of the State of Texas, charter no. \_\_\_\_\_

☐ a partnership organized under the laws of the State of \_\_\_\_\_; or

☐ another entity, as follows: \_\_\_\_\_

\_\_\_\_\_

Applicant represents that Applicant is:

☐ (1) a cable system (as defined in 47 U.S.C. §§ 153(37) and 522(7)) seeking a pole attachment or conduit occupancy license solely to provide cable service (as defined in 47 U.S.C. § 522(6);

☐ (2) a telecommunications carrier, as defined in 47 U.S.C. § 153(49), as modified by 47 U.S.C. § 224; or

☐ (3) a person or entity which is neither (1) nor (2) above, as follows:

\_\_\_\_\_

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**EXHIBIT III**  
**ADMINISTRATIVE FORMS AND NOTICES (MISSOURI)**

This Exhibit is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached and contains administrative forms referred to in the Master Agreement or used in connection with the provision of access to SWBT's poles, ducts, conduits, and rights-of-way. The forms are forms presently in use and have not been conformed to the Master Agreement. The forms may be further revised by SWBT to conform to the Master Agreement and revised from time to time to reflect changes in the applicable law, changes in the Master Agreement, and changes in the procedures through which access to poles, ducts, conduits, and rights-of-way is afforded by SWBT to Applicant and others.

- SW-9433: Pole Attachments
- SW-9434: Access Application and Make-Ready Authorization
- SW-9435: Conduit Occupancy
- SW-9436A: Notification of Surrender or Modification of Pole Attachment License by Licensee
- SW-9436B: Notification of Surrender or Modification of Conduit Occupancy License by Applicant
- SW-9436C: Notification of Unauthorized Attachments by Applicant

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**EXHIBIT IV**  
**INSURANCE REQUIREMENTS (MISSOURI) -- PAGE 1 OF 5**

This Exhibit IV is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached.

1) Premises. As used in this Exhibit, the term "premises" refers to any site located on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way and any location where IP Communications Corporation or any person acting on IP Communications Corporation's behalf may be physically present while traveling to or departing from any such site.

2) Requirements Applicable to IP Communications Corporation and All Persons and Entities Acting on IP Communications Corporation's Behalf. IP Communications Corporation shall maintain, at all times during the term of this Master Agreement, all insurance and coverages set forth below. Such insurance and coverages shall not only cover IP Communications Corporation but all contractors, subcontractors, and other persons or entities acting on IP Communications Corporation's behalf at the premises described in 1) above. IP Communications Corporation should require that all contractors, subcontractors, and other persons or entities acting on IP Communications Corporation's behalf at premises described in 1) above obtain the same insurance and coverages.

3) Workers' Compensation Insurance. IP Communications Corporation shall maintain, at all times during the term of the Master Agreement, Workers' Compensation Insurance and Employer's Liability Insurance with minimum limits of \$100,000 for bodily injury-each accident, \$100,000 for bodily injury by disease-each employee, and \$500,000 for bodily injury by disease-policy limits, for all employees performing work or otherwise present on the premises described in 1) above. Such insurance must comply with the Workers' Compensation laws of this State and shall provide coverage, at a minimum, for all benefits required by such Worker's Compensation laws. IP Communications Corporation shall require any contractor, subcontractor, or other person or entity acting on IP Communications Corporation's behalf to provide Workers' Compensation Insurance and Employer's Liability Insurance for their respective employees unless such employees are covered by the protection afforded by IP Communications Corporation.

4) General Liability Insurance. To protect SWBT and any joint user from any liability for bodily injury or property damage, IP Communications Corporation shall maintain, at all times during the term of the Master Agreement, General Liability insurance satisfactory to SWBT. SWBT shall be added as an additional insured in the standard policy or an endorsement thereto. IP Communications Corporation shall also require any contractor, subcontractor, or

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**EXHIBIT IV**  
**INSURANCE REQUIREMENTS (MISSOURI) -- PAGE 2 OF 5**

other person or entity acting on IP Communications Corporation's behalf to provide General Liability coverage with the same limits and with SWBT added as an additional insured unless such contractor, subcontractor, or other person or entity is covered by the General Liability protection afforded by IP Communications Corporation.

- a) The following coverages must be included in (and may not be excluded from) the policy or policies obtained to satisfy the General Liability insurance requirements of IP Communications Corporation and any contractor, subcontractor, or other person or entity acting on IP Communications Corporation's behalf. The coverages may be provided by the standard policy or endorsements thereto. Exclusion endorsements deleting these coverages will not be accepted.
  - 1) Personal Injury and Advertising Injury coverage.
  - 2) Premises/Operations coverage, including also coverage for any newly acquired ownership or controlled premises or operations.
  - 3) Independent Contractors coverage to provide protection for IP Communications Corporation's contractors, subcontractors, and other persons or entities acting on IP Communications Corporation's behalf.
  - 4) Explosion, Collapse, and Underground Hazard (XCU) coverage.
  - 5) Completed Operations coverage providing for bodily injury and property damage liabilities which may occur once the operations have been completed or abandoned.
  - 6) Contractual Liability coverage to provide financial responsibility for the IP Communications Corporation to meet its indemnification obligations.
  - 7) Broad Form Property Damage (BFPD) coverage for damage to property in the care or custody of IP Communications Corporation and damage to work performed by or on behalf of the IP Communications Corporation.
- b) Minimum policy limits shall be as follows:

General Aggregate Limit: \$1,000,000.

Sublimit for all bodily injury, property damages, or medical expenses incurred

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**EXHIBIT IV**  
**INSURANCE REQUIREMENTS (MISSOURI) -- PAGE 3 OF 5**

in any one occurrence: \$1,000,000.

Sublimit for personal injury and advertising: \$1,000,000.

Products/Operations Aggregate Limit: \$1,000,000.

Each occurrence sublimit for Products/Operations: \$1,000,000.

- c) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- d) Policy language or endorsements adding SWBT as an additional insured shall not include exclusions or exceptions which defeat the purpose of protecting SWBT from any liability for bodily injury or property damage arising out of IP Communications Corporation's operations.

5) Automobile Liability insurance. The parties contemplate that IP Communications Corporation and personnel acting on IP Communications Corporation's behalf will utilize automobiles, trucks, and other motor vehicles on public and private property, including public rights of way, in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. Accordingly, IP Communications Corporation shall maintain, at all times during the term of the Master Agreement, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage which may arise out of the operation or use of motor vehicles of any type. Coverage shall extend to "any auto" -- that is, coverage shall be extended to all owned, non-owned, and hired vehicles used by IP Communications Corporation or by any person or entity acting on IP Communications Corporation's behalf in connection with any work performed, or to be performed, on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

6) Layering of General Liability and Automobile Liability coverages. IP Communications Corporation's insurance may be written via a primary policy with either an excess or umbrella form over the primary policy. If coverage is written in this manner, the total of the combined policy limits must meet or exceed the minimum limits specified in the Master Agreement.

7) Deductibles. No deductibles shall be allowed without the express written consent of SWBT.

8) Claims Made Policies. Claims Made Policies will not be accepted.

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**EXHIBIT IV**  
**INSURANCE REQUIREMENTS (MISSOURI) -- PAGE 4 OF 5**

9) Proof of Insurance. Certificates of Insurance stating the types of insurance and policy limits provided the insured, or other proof of insurance satisfactory to SWBT, must be received by SWBT prior to the issuance of any licenses pursuant to the Master Agreement and before IP Communications Corporation or any person acting on IP Communications Corporation's behalf performs any work on the premises described in 1) above.

- a) Certificates of Insurance using the insurance industry standard ACORD form are preferred.
- b) Certificates provided with respect to General Liability policies and certificates provided with respect to Automobile Liability policies shall indicate SWBT as an Additional Insured.
- c) Deductibles, if permitted, shall be listed on the Certificate of Insurance.
- d) The cancellation clause on the certificate of insurance shall be amended to read as follows:

"SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED OR MATERIALLY CHANGED BEFORE THE EXPIRATION DATE, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT."

A certificate which does not include the phrase "or materially changed" does not meet SWBT's requirements. A certificate reciting that the issuing company will "endeavor to" mail 30 days written notice to the certificate holder does not meet SWBT's requirements. The language "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" or similar language must be deleted from the certificate.

- e) The certificate holder shall be:

Southwestern Bell Telephone Company  
12930 Olive Street Road, Floor 2  
Creve Couer, Missouri 63141

ATTENTION: Utility Liaison Supervisor

- f) Failure to object to any coverage described in a certificate shall not constitute

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**EXHIBIT IV**  
**INSURANCE REQUIREMENTS (MISSOURI) -- PAGE 5 OF 5**

written permission from SWBT to any variance from or alteration of any requirement set forth in this Exhibit and shall not be construed as a waiver by SWBT of any rights under the Master Agreement.

10) Rating of Insurers. SWBT requires that companies affording insurance coverage have a B+VII or better rating, as rated in the current A.M. Best Key Rating Guide for Property and Casualty Insurance Companies.

11) Self-insurance. If authorized in the Master Agreement, self-insurance shall be allowed in lieu of the above requirements upon IP Communications Corporation's submission of proof that it has met the self-insurance requirements stated in the Master Agreement.

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**EXHIBIT V**  
**NONDISCLOSURE AGREEMENT (MISSOURI) -- PAGE 1 OF 4**

Nondisclosure Agreement (SWBT Pole, Duct, Conduit, and Right-of-Way)

This Nondisclosure Agreement, effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has been entered into by and between Southwestern Bell Telephone Company ("SWBT"), a Missouri corporation, and the undersigned person or firm ("Recipient") as a condition of access to certain records and information maintained by SWBT. The parties stipulate and agree as follows:

1) SWBT maintains records and information, including but not limited to outside plant engineering and construction records, which relate to poles, ducts, conduits, and rights-of-way which SWBT owns or controls. SWBT represents that such records and information are not made generally available for inspection or copying by the public and include business, economic, and engineering information (including but not limited to plans, designs, maps, diagrams, cable counts and cable-specific information, circuit records, and other competitively sensitive information) which SWBT intends to keep secret and which has economic value by virtue of not being generally known to or readily ascertainable by the public, including SWBT's competitors.

2) SWBT has agreed to make certain of its records and information relating to poles, ducts, conduits, and rights-of-way available to cable television systems and telecommunications carriers who are presently entitled under federal law to have access to the poles, ducts, conduits, and rights-of-way owned or controlled by SWBT.

3) Recipient represents that Recipient is a cable television system or telecommunications carrier entitled under federal law to access to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT, or, if an individual, that he or she is acting on behalf of \_\_\_\_\_, which is such a cable television system or telecommunications carrier. Recipient further represents that Recipient is seeking access to SWBT's records and information relating to poles, ducts, conduits, and rights-of-way for the limited purpose of enabling engineering and construction personnel employed by or acting on behalf of such cable television system or telecommunications carrier to make engineering and construction decisions necessary to utilize SWBT's poles, ducts, conduits, and rights-of-way.

4) SWBT agrees that permitted uses of records and information concerning SWBT's poles, ducts, conduits, and rights-of-way are (a) determining which poles, ducts, conduits, and rights-of-way owned or controlled by SWBT are available for use by such cable television systems or telecommunications carriers as permitted by federal law, (b) designing, engineering, constructing, installing, maintaining, and removing equipment which is to be attached to or placed within such poles, ducts, conduits, and rights-of-way, and (c) contesting decisions, if any, by SWBT not to provide access to such poles, ducts, conduits, and rights-of-way as requested.

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**EXHIBIT V**  
**NONDISCLOSURE AGREEMENT (MISSOURI) -- PAGE 2 OF 4**

No other uses of such records or information are authorized or permitted under this Agreement.

5) Recipient agrees that Recipient will not use, or permit any other person or entity to use or have access to SWBT's records and information relating to poles, ducts, conduits, or rights-of-way or information for any purpose other than the limited purposes stated in 4) above and that such records and information shall not be disclosed or shared with any person or persons other than those who have a need to know such information for such limited purposes. Recipient specifically agrees that such records and information shall not be used or accessed by any person involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities. Recipient further agrees that Recipient shall not furnish copies of such records or disclose information contained in such records to any person or entity which has not executed and delivered to SWBT a counterpart of this Agreement prior to receipt of such copies or information.

6) Recipient agrees that Recipient will not without SWBT's express written authorization copy, duplicate, sketch, draw, photograph, download, photocopy, scan, replicate, transmit, deliver, send, mail, communicate, or convey any of SWBT's records relating to poles, ducts, conduits, or rights-of-way. Recipient further agrees that Recipient will not conceal, alter, or destroy any SWBT records furnished to Recipient pursuant to this Agreement.

7) Notwithstanding the provisions of 6) above, and except as provided in 8) below, Recipient may copy, take notes from, make, and use (for the limited purposes specified herein) drawings with reference to the following records provided by SWBT to Recipient for inspection: pole and conduit route maps, cable plat maps, and plant location records reflecting approximate locations of SWBT's existing poles, ducts, conduits, and rights-of-way. All such copies, notes, and drawings (whether in hardcopy or electronic form) shall be marked with the legend: **"PROPRIETARY INFORMATION: NOT FOR USE BY OR DISCLOSURE TO ANY PERSON WHO HAS NOT EXECUTED A NONDISCLOSURE AGREEMENT (SWBT POLE, DUCT, CONDUIT, AND RIGHT-OF-WAY)."**

8) No references to cable counts, cable designations or cable-specific information, circuit information, or customer-specific information of any kind may be included in any copies, notes, or drawings made pursuant to 7) above; provided, however, that Recipient may make estimates regarding the physical characteristics (such as size and weight) of the cables being surveyed when necessary to make engineering determinations regarding the capacity, safety, reliability, or suitability of SWBT's poles, ducts, conduits, or rights-of-way for Recipient/Applicant's intended uses.

9) All records and information relating to poles, ducts, conduits, and rights-of-way provided to Recipient/Applicant by SWBT (whether in writing, orally, or in electronic or other

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**EXHIBIT V**  
**NONDISCLOSURE AGREEMENT (MISSOURI) -- PAGE 3 OF 4**

formats) shall be deemed to be proprietary information subject to this Agreement without regard to whether such information, at the time of disclosure, has been marked with restrictive notations such as "Proprietary," "Restricted Proprietary," "Confidential," "Not to Be Copied or Reproduced," or the like.

10) This Agreement applies only to records and information provided to Recipient by SWBT and does not apply to records and information obtained by Recipient from other lawful sources.

11) This Agreement does not prohibit the disclosure of records or information in response to subpoenas and/or orders of a governmental agency or court of competent jurisdiction. In the event Recipient receives an agency or court subpoena requiring such disclosure, Recipient shall immediately, and in no event later than five calendar days after receipt, notify SWBT in writing.

12) The Parties agree that, in the event of a breach or threatened breach of this Agreement, SWBT may seek any and all relief available in law or in equity as a remedy for such breach, including but not limited to monetary damages, specific performance, and injunctive relief. The Parties acknowledge that SWBT's records and information relating to poles, ducts, conduits, and rights-of-way include valuable and unique information and that disclosure of such information (including circuit information) will result in irreparable injury to SWBT. In the event of any breach of this Agreement for which legal or equitable relief is sought, SWBT shall be entitled to recover from Recipient all reasonable attorney's fees and other reasonable costs (including but not limited to fees of expert witnesses) incurred by SWBT in connection with the prosecution of its claims against Recipient.

13) This Agreement shall be effective on the effective date shown above and shall remain in full force and effect until terminated by either party as provided herein. Either party may, at any time, with or without cause, terminate this Agreement by giving the other party 60 days' advance written notice of its decision to terminate. The parties further agree that termination of this Agreement shall have no effect on the duty of any person or entity, including Recipient, to abide by all terms of this Agreement with respect to records and information received by Recipient while this Agreement is in effect.

14) This Agreement shall benefit and be binding on the parties below and their respective heirs, successors, and assigns.

15) This Agreement will be governed by the laws of the State of Missouri.

16) This Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and none of the terms of this Agreement may be

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**EXHIBIT V**  
**NONDISCLOSURE AGREEMENT (MISSOURI) -- PAGE 4 OF 4**

amended or modified except by written instrument signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or caused this Agreement to be executed by their duly authorized representatives, in duplicate, as of the dates set forth below.

IP Communications Corporation

Southwestern Bell Telephone Company

By \_\_\_\_\_  
Signature of Recipient or Representative

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code

\_\_\_\_\_  
City, State, and Zip Code

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**EXHIBIT VI**  
**NOTICES TO IP COMMUNICATIONS CORPORATION (MISSOURI)**

Reserved for Future Notices to IP Communications Corporation

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**EXHIBIT VII**  
**NOTICES TO SWBT (MISSOURI) -- PAGE 1 OF 3**

This Exhibit is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached.

Utility Liaison Supervisor (ULS). Except as otherwise stated in this Exhibit, all notices to SWBT shall be given to the Utility Liaison Supervisor (ULS) designated in EXHIBIT VIII of the Master Agreement. The Utility Liaison Supervisor is generally responsible for coordinating applications for access to SWBT's poles, ducts, conduits, and rights-of-way and serving as IP Communications Corporation's initial point of contact for matters arising out of or in connection with the administration of the Master Agreement. Notices to the ULS shall be given in writing in the in Section 29.02. Notices to be sent to the ULS include, but are not limited to, notices under the following provisions of the Master Agreement.

- 7.01 Notification of Designation of Primary Point of Contact
- 7.03(a) Notification of intent to review records
- 8.XX All Notifications in Article 8
- 9.XX All Notifications in Article 9
- 10.05(e) Notification Regarding Make-Ready Work
- 12.03(d) Notification of placing J-hook on non-licensed pole
- 12.04 Notification of occupation of maintenance duct for short-term use
- 12.06 Notification of IP Communications Corporation's maintenance contact
- 13.01 Notification of planned modifications
- 14.02(c) Notification of IP Communications Corporation's desire to add to or modify its existing attachment
- 15.02(b) Notification of occupation of maintenance duct for short-term emergency use
- 15.03 Notification of emergency repair coordinators
- 16.01 Notification of Facilities Compliance (if required)

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**EXHIBIT VII**  
**NOTICES TO SWBT (MISSOURI) -- PAGE 2 OF 3**

- 17.02(c) Disclaimer of ownership or responsibility for untagged facilities
- 17.06 Notification of applicants response to ownership of facilities in question.
- 18.01(a) Notice of intent to remove facilities
- 18.01(e) Notice of intent to terminate license
- 18.05 Notification of completion of removal of facilities
- 20.01(c) Notification of change of bond
- 21.17 Reserved for Future Use
- 23.00 All notifications of insurance coverage in Article 23
- 24.02 Notification of assignment
- 25.01 Notification of Termination
- 27.04 Not Applicable
- 29.03 Notification of change in notice requirements.

Other notices. The following notices may be given orally or in writing (including fax) and shall be given to SWBT's Local Service Provider Center (LSPC) at 1-800-486-5598 instead of the ULS.

- 6.05(a) Notifications relating to electrical interference
- 6.09(d) Notifications of unsafe conditions
- 6.11(a) Notification of manhole entry
- 6.13(c) Notification of hazardous substances
- 10.02(b) Notification of materials required for self-provisioning of inner duct
- 15.04 Notification of conditions requiring emergency repair

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**EXHIBIT VII**  
**NOTICES TO SWBT (MISSOURI) -- PAGE 3 OF 3**

15.06(a) Notification of performing corrective work on emergency repair

15.06(b) Notification of performing corrective work on emergency repair.

Additional information and questions concerning notice requirements. The ULS, as IP Communications Corporation's initial point of contact, will provide additional information to IP Communications Corporation concerning notification procedures for notices to be given to LSPC. Questions to SWBT concerning notice requirements should be directed to the ULS. The ULS is not authorized to provide IP Communications Corporation legal advice with respect to notice requirements. Questions by IP Communications Corporation's personnel and other persons acting on IP Communications Corporation's behalf concerning IP Communications Corporation's legal obligations should be directed to IP Communications Corporation's legal counsel or such other personnel as IP Communications Corporation may direct.

Changes in notice requirements. Changes in the notice requirements set forth in this Exhibit may be made by SWBT from time to time in accordance with the provisions of Section 29.03 of the Master Agreement.

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**EXHIBIT VIII**  
**IDENTIFICATION OF UTILITY LIAISON SUPERVISOR (MISSOURI)**

This Exhibit is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached.

The Utility Liaison Supervisor for Missouri is named below. Notices to the Utility Liaison Supervisor for areas codes 417, 660, and 816 should be addressed as follows:

Name: Wayne White  
Title: Utility Liaison Supervisor  
Firm: Southwestern Bell Telephone Company  
Address: 500 E. 8<sup>th</sup>, Room 598  
City/State/Zip: Kansas City, Missouri 64106

Notices to the Utility Liaison Supervisor for the 314 and 573 area codes should be addressed as follows:

Name: Daniel Goodwin  
Title: Utility Liaison Supervisor  
Firm: Southwestern Bell Telephone Company  
Address: 12930 Olive Street Road, Floor 2  
City/State/Zip: Creve Couer, Missouri 63141

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## **ATTACHMENT 14: INTERIM NUMBER PORTABILITY**

### **1.0 Interim Number Portability**

- 1.1 SWBT and IP Communications Corporation will provide Interim Number Portability in accordance with requirements of the Act. Interim Number Portability (INP) will be provided by each Party to the other upon request. INP will be provided with minimum impairment of functionality, quality, reliability and convenience to subscribers of IP Communications Corporation or SWBT. The Parties will provide Permanent Number Portability (PNP) as soon as it is technically feasible, in conformance with FCC rules and the Act, and will participate in development of PNP in the state, in accordance with the FCC's First Report and Order and First Memorandum Opinion and Order on Reconsideration in Docket No. 95-116 (hereinafter called the LNP Order).

### **2.0 Non-Geographical Numbers**

- 2.1 Neither Party will be required to provide Interim Number Portability for non-geographic services (e.g., 500 and 900 NPAs) or on COPT lines under this Agreement, unless otherwise ordered by the FCC.

### **3.0 Availability**

- 3.1 INP will be made available to either Party by the other on a reciprocal basis. INP will be provided through INP-Remote (remote call forwarding or like service), INP-Direct (direct inward dialing trunks or like service) RI-PH (Route Index Portability Hub), or DN-RI (Directory Number Route Index). The requesting Party will specify the forgoing type of INP, on a per telephone number basis, and the providing Party will provide such method to the extent technically feasible.

### **4.0 INP-Remote**

- 4.1 INP-Remote is a service that uses existing remote call forwarding technology to provide INP by redirecting calls within the telephone network. When INP-Remote is used, calls to the ported number will first route to the original local service provider's switch to which the ported number was assigned. Such Party's switch will then forward the call to the assigned number of the new local service provider's end user customer. When more than a total of 3 paths are required to handle simultaneous calls to the same ported telephone number, the requesting Party will order from the providing Party additional paths.

**5.0 INP-Direct**

- 5.1 INP-Direct is an existing service which uses DID or like technology to provide for the delivery of the calling (dialed) number to the requesting Party's switch for subsequent routing and call completion.
- 5.2 INP-Direct is available either on a per voice grade channel basis or a per DS1 (24 equivalent voice grade channels) basis.
- 5.3 Where the location of the requesting Party's switch is outside the area served by the providing Party's switch, the requesting Party is responsible for providing appropriate transport facilities.
- 5.4 INP-Direct must be established with a minimum configuration of 2 voice grade channels and one unassigned telephone number per switch. INP-Direct may not be mixed with any other type of trunk group. Outgoing calls may not be placed over trunk groups arranged for INP-Direct service.

**6.0 Route Indexing**

- 6.1 SWBT will make available route index solutions, such as RI-PH and DN-RI, in addition to RCF, DID, and NXX migration. Route Index Portability Hub (RI-PH) is a call routing approach which uses existing switching capabilities to redirect calls, through an access tandem switch, to the new entrant switch..
- 6.2 The cost for the route index INP solutions will be based on TELRIC cost studies. All route indexing users, including IP Communications Corporation will pay the associated costs.

**7.0 Other Interim Portability Provisions**

- 7.1 Either Party will exchange with the other SS7 TCAP messages as required for the implementation of Customer Local Area Signaling Services (CLASS) or other features available.
- 7.2 Either Party will notify the other of any technical or capacity limitations that would prevent use of a requested INP implementation in a particular switching office.
- 7.3 SWBT will cooperate with IP Communications Corporation to ensure 911 service is fully available to ported end users consistent with state provisions. IP Communications Corporation will have the right to verify the accuracy of the information regarding the IP Communications Corporation customer in the ALI database.

- 7.4 Either Party will pass all Calling Party Number (CPN) or Automatic Number Identification (ANI) information to and from the ported number, whenever technically feasible.
- 7.5 SWBT agrees to populate its Line Information Database (LIDB) with information, such as TLN calling cards and Billing Number Screening (BNS), regarding ported numbers for billing. SWBT will provide access to LIDB database interfaces to accomplish this function, or make input on behalf of IP Communications Corporation pursuant to LIDB data storage and administrative contracts.
- 7.5.1 SWBT will provide IP Communications Corporation with interfaces that allow IP Communications Corporation to access SWBT's LIDB service management system (SMS). These interfaces will allow IP Communications Corporation to create, modify, and delete IP Communications Corporation line records for ported numbers. SWBT will provide interfaces to the LIDB SMS to accomplish this function as set forth in Section 7.4.4.3. If there is no change to the customer's existing LIDB functionality (e.g., collect/third-party call blocking) SWBT should not remove the existing customer data in LIDB. If IP Communications Corporation selects a non-SWBT LIDB or LIDB-like database, IP Communications Corporation will promptly delete records from SWBT's LIDB that are migrated to the new LIDB or LIDB-like database.
- 7.6 SWBT agrees not to issue Telephone Line Number (TLN) based calling card numbers when a customer ports their number to IP Communications Corporation.
- 7.7 SWBT and IP Communications Corporation will cooperate in all service cutovers involving the other Party's service, to avoid unnecessary service outages.
- 7.8 Each Party will provide competitively neutral cost recovery as defined by the Commission which reflects the FCC NP Order.

#### **8.0 Cutover Process**

- 8.1 For a Coordinated Cutover Environment (where the loop is being purchased by IP Communications Corporation as an unbundled Network Element at the time of INP implementation), SWBT will update switch translations where necessary as close to the requested time as possible, not to exceed 30 minutes after the physical cutover is completed.
- 8.2 For a Non-Coordinated Cutover Environment (where the loop is supplied by IP Communications Corporation) SWBT will schedule a mechanized update of switch translations at the IP Communications Corporation requested cutover time (frame due



time). SWBT will provide an operation contact whom IP Communications Corporation can reach in the event manual intervention is needed to complete the cutover. In the event of manual intervention, completion will be negotiated by the parties.

## **9.0 Testing**

- 9.1 SWBT and IP Communications Corporation will cooperate in conducting testing to ensure interconnectivity between systems. The Parties will inform each other of any system updates that may affect either Party's network and will perform tests to validate the operation of the network.

## **10.0 Recording and Billing**

- 10.1 The Parties will provide to each other the Exchange Message Records (EMR) for all alternately billed calls.
- 10.2 The Parties will supply each other with originating billing records which will enable them to bill each other or any other LSP for any local interconnection charge.

## **11.0 Line Status Verification/Busy Line Verify**

- 11.1 When a Line Status Verification or Busy Line Interrupt request for a ported number is directed to either Party's operator and the query is not successful if the operator is aware that the number is a ported number, then the operator will direct the caller to the appropriate operator.

## **12.0 Pricing**

- 12.1 The Parties agree to track the costs associated with the implementation of INP, and to "true-up" INP related accruals to reflect the final determination as to the costs to be utilized and the cost allocation methodology.

## **13.0 Applicability of Other Rates, Terms and Conditions**

- 13.1 \*Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions; interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing

and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

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**LOCATION ROUTING NUMBER – PERMANENT NUMBER PORTABILITY****1.0      Provision of Local Number Portability**

1.1      SWBT and IP Communications Corporation shall provide, number portability in accordance with requirements of the Act.

2.1      Location Routing Number - Permanent Number Portability (LRN-PNP)

2.1.1      SWBT and IP Communications Corporation shall work to implement the LRN-PNP solution in accordance with the relevant FCC rulings, NANC (North American Numbering Council) guidelines specified in Section 2.2 of this Attachment. SWBT and IP Communications Corporation shall also work to implement the guidelines of the Southwest Region Steering Committee and Network Operations Team agreed to in writing by SWBT and IP Communications Corporation.

2.1.2      SWBT and IP Communications Corporation shall implement number portability in an end office upon the written request of the other Party in accordance with FCC timelines.

**2.2      Requirements for LRN-PNP**

2.2.1      The parties shall adhere to the generic requirements for LRN-PNP as specified in the following publications and FCC Orders:

2.2.1.1      Generic Switching and Signaling Requirements for Number Portability, Issue 1.05, August 1, 1997 [Editor - Lucent Technologies, Inc.];

2.2.1.2      Generic Requirements for SCP Application and GTT Function for Number Portability, Issue 0.99, Final Draft, January 6, 1997 [Editor - Ameritech Inc.];

2.2.1.3      Generic Operator Services Switching Requirements for Number Portability, Issue 1.1, June 20, 1996 [Editor - Nortel];

2.2.1.4      FCC First Report and Order and Further Notice of Proposed Rulemaking; FCC 96-286; CC Docket 95-116, RM 8535; Adopted: June 27, 1996; Released: July 2, 1996;

2.2.1.5      FCC First Memorandum Opinion And Order On Reconsideration; FCC 97-74, CC Docket No. 95-116, RM-8535; Adopted: March 6, 1997; Released: March 11, 1997;

2.2.1.6      FCC Second Report and Order, FCC 97-298, CC Docket No. 95-116, RM 8535, Adopted August 14, 1997, Released August 18, 1997; and

- 2.2.1.7 North American Number Council Report from the LNP Administration Selection Working Group, April 25, 1997.
- 2.2.2 LRN-PNP employs an "N-1" Query Methodology.
- 2.2.2.1 For interLATA or intraLATA toll calls the originating carrier will pass the call to the appropriate toll carrier who will perform a query to an external routing database and efficiently route the call to the appropriate terminating local carrier either directly or through an access tandem office. Where one carrier is the originating local service provider (LSP) and the other is the designated toll carrier, the originating LSP will not query toll calls delivered to the toll carrier or charge the toll carrier for such queries.
- 2.2.2.2 For a local call to a ported number, the originating carrier is the "N-1" carrier. It will perform an external database query and pass the call to the appropriate terminating carrier.
- 2.2.3 For local calls to an NXX in which at least one number has been ported via LRN-PNP at the request of a CLEC, the Party that owns the originating switch shall query an LRN-PNP database as soon as the call reaches the first LRN-PNP-capable switch in the call path. The Party that owns the originating switch shall query on a local call to an NXX in which at least one number has been ported via LRN-PNP prior to any attempts to route the call to any other switch. Prior to the first number in an NXX being ported via LRN-PNP at the request of a CLEC, SWBT may query all calls directed to that NXX, subject to the billing provisions of Section 4.1, and provided that SWBT's queries shall not adversely affect the quality of service to IP Communications Corporation's customers or end-users as compared to the service SWBT provides its own customers and end-users.
- 2.2.4 A Party shall be charged for an LRN-PNP query by the other Party only if the Party to be charged is the N-1 carrier and it was obligated to perform the LRN-PNP query but failed to do so. The only exception will be if the FCC rules (Docket No. 95-116) that the terminating carrier may charge the N-1 carrier for queries initiated before the first number is ported in an NXX.
- 2.2.5 On calls originating from a Party's network, the Party will populate, if technically feasible, the Jurisdiction Information Parameter (JIP) with the first six digits of the originating LRN in the Initial Address Message.
- 2.3 **SMS Administration**
- SWBT and IP Communications Corporation shall cooperate to facilitate the expeditious deployment of LRN-PNP based LNP through the process prescribed in the documents referenced in Section 2.1.1 of this Attachment including, but not limited to development of SMS, as well as SMS testing for effective procedures, electronic

system interfaces, and overall readiness for use consistent with that specified for Provisioning in this Agreement.

## **2.4 Ordering**

- 2.4.1 Porting of numbers with PNP will be initiated via Local Service Requests (LSR) based on Ordering and Billing Forum (OBF) recommendations. SWBT and IP Communications Corporation will agree on all of the details of the interface, format and processing of LSRs no later than 180 days prior to the first implementation of PNP in the state shown on the face of this agreement or the date on which the transition window is considered to be opened pursuant to Section 3.2.2 of this Attachment, whichever date is earlier. If the Parties have not agreed on all of the details of the interface, format and processing of LSRs to both Parties' satisfaction within such time period, either Party may submit any disputed issues to the Alternative Dispute Resolution process set forth in Attachment 1 of this Agreement.
- 2.4.2 When an LSR is sent to one Party by the other Party to initiate porting via LRN-PNP, the receiving Party shall return, at the appropriate time, a Firm Order Confirmation (FOC).
- 2.4.3 For the purposes of this Attachment, the parties may use a project management approach for the implementation of LSRs for large quantities of ported numbers or for complex porting processes. With regard to such managed projects ("projects"), the parties may negotiate implementation details such as, but not limited to: Due Date, Cutover Intervals and Times, Coordination of Technical Resources, and Completion Notice.

## **3.0 Requirements for PNP**

### **3.1 Cut-Over Process**

- 3.1.1 SWBT and IP Communications Corporation shall cooperate in the process of porting numbers to minimize ported subscriber out-of-service time. For cutover to LRN-PNP, both SWBT and IP Communications Corporation agree to update their switch translations, where necessary, after notification that physical cut-over has been completed (or initiated), as close to the requested time as possible, not to exceed 59 minutes for non-coordinated orders or as otherwise agreed to by the parties for coordinated orders or on a project specific basis.
- 3.1.2 SWBT and IP Communications Corporation shall cooperate in the process of porting numbers from one carrier to another so as to limit service outage for the ported subscriber. SWBT and IP Communications Corporation will use their best efforts to update their respective Local Service Management Systems (LSMS) from the NPAC

SMS data within 15 minutes after receipt of a download from the NPAC SMS (the current North American Numbering Council goal for such updating).

- 3.1.3 At the time of porting a number via LRN-PNP, the Party from which the number is being ported shall insure that the LIDB entry for that number is deprovisioned.
- 3.1.4 The Parties will remove (as close to the requested time as possible, not to exceed 59 minutes for non-coordinated orders or as otherwise agreed to by the parties for coordinated orders or on a project specific basis.) a ported number from the end office from which the number is being ported, as coordinated by the Parties' respective technicians. The 59 minute period shall commence upon the Frame Due Time (FDT) shown on the receiving party's LSR, or as otherwise negotiated by the parties on a project basis, unless the unconditional PNP (10-digit) trigger is set. The parties recognize that it is in the best interest of the consumer for this removal to be completed in the most expedient manner possible. Therefore, SWBT and IP Communications Corporation agree that a 30 minute interval is a goal towards which both companies will work, however both IP Communications Corporation and SWBT recognize that there will be instances where the interval may be up to 59 minutes. If the unconditional PNP trigger is set, the ported number must be removed at the same time that the unconditional PNP trigger is removed.
- 3.1.5 The Party from whom a number is porting will set the unconditional LRN-PNP trigger at the other Party's request, either on an individual customer basis or for all customers, at the option of the requesting Party.

### **3.2 Transition from INP to LRN-PNP**

- 3.2.1 Transition from INP to LRN-PNP will be initiated for all ported telephone numbers by an LSR from the recipient (ported-to) service provider to the donor (ported-from) service provider. A single LSR shall be used to both disconnect INP and to effect LRN-PNP for any one customer.
- 3.2.2 The Party to which a number is being ported via LRN-PNP shall issue an LSR within 90 days following the opening of the transition window to complete transition. The transition window is considered to be opened when all of the following have been completed:
  - 3.2.2.1 the LRN-PNP capabilities in the end office from which the number has been ported from are active;
  - 3.2.2.2 the ported number NPA-NXX is open to portability in the NPAC SMS; and
  - 3.2.2.3 the LRN-PNP electronic or manual LSR interface between IP Communications Corporation and SWBT is agreed upon by the Parties and operational; and

3.2.2.4 LRN-PNP testing is complete.

3.2.3 The Parties will remove (as close to the requested time as possible, not to exceed 59 minutes for non-coordinated orders or as otherwise agreed to by the parties for coordinated orders or on a project specific basis) a ported number from the end office from which the number is being ported, as coordinated by the Parties' respective technicians. However, when the unconditional PNP (10-digit) trigger is not set (e.g., coordinated cuts), the Party from which the number is being ported will remove the ported number or INP translations per the porting Party's initially requested FDT unless the porting Party notifies the other Party of a database problem or request to change the FDT. The 59 minute period shall commence upon the Frame Due Time (FDT) shown on the receiving party's LSR, or as otherwise negotiated by the parties on a project basis, unless the unconditional PNP (10-digit) trigger is set. The parties recognize that it is in the best interest of the consumer for this removal to be completed in the most expedient manner possible. Therefore, SWBT and IP Communications Corporation agree that a 30 minute interval is a goal towards which both companies will work, however both IP Communications Corporation and SWBT recognize that there will be instances where the interval may be up to 59 minutes.

3.2.4 SWBT shall discontinue charges, if any, for INP as of the day on which the NPAC SMS download of the ported number was sent by the NPAC.

3.2.5 After a ported number transitions from INP to LRN-PNP, interexchange (toll) calls to a number ported to IP Communications Corporation will be routed to IP Communications Corporation as described in Attachment 11, Appendix ITR.

### **3.3 Testing**

3.3.1 If INP testing is in progress in an end office that has converted from INP to LRN-PNP, both SWBT and IP Communications Corporation shall complete INP testing if either Party requests that such testing be complete.

3.3.2 When transition from INP to LRN-PNP in an end office occurs, the Party from whom a number has been ported shall launch test calls to ensure correct LRN-PNP routing at the request of the other Party.

### **3.4 Excluded Numbers**

3.4.1 Neither Party shall be required to provide number portability for excluded numbers (e.g., 500 and 900 NPAs, 950 and 976 NXX number services, and others as excluded by FCC rulings issued from time to time) under this Agreement.

**3.5 Mass Calling**

- 3.5.1 Both SWBT and IP Communications Corporation are required to offer number portability of telephone numbers with "choke" (i.e., mass calling) NXXs in a manner that complies with the FCC's criteria.

**3.6 Operator Services, LIDB/LVAS and Directory Assistance**

- 3.6.1 The Provisions of this Agreement pertaining to Operator Services, LIDB/LVAS and Directory Assistance shall also apply when LRN-PNP is in place.
- 3.6.2 If Integrated Services Digital Network User Part (ISUP) signaling is used, SWBT shall provide, if technically feasible, the Jurisdiction Information Parameter (JIP) in the SS7 Initial Address Message (IAM). (See Generic Switching and Signaling Requirements for Number Portability, Issue 1.0, February 12, 1996 [Editor - Lucent Technologies, Inc.] )

**3.7 Porting of DID Block Numbers**

- 3.7.1 SWBT and IP Communications Corporation shall offer number portability to customers for any portion of an existing DID block without being required to port the entire block of DID numbers.
- 3.7.2 SWBT and IP Communications Corporation shall permit customers who port a portion of DID numbers to retain DID service on the remaining portion of the DID numbers, provided such is consistent with applicable tariffs; provided that the parties agree that nothing herein shall be deemed a waiver or estoppel of IP Communications Corporation's positions that: (1) SWBT should permit customers who port a portion of a DID block to retain DID service on the remaining portion of the DID block; and (2) that SWBT should offer customers who port a portion of a DID block a discount that is proportional to the amount of the DID block that has been ported, nor shall IP Communications Corporation be prejudiced in any present or future proceedings from asserting said positions.

**4.0 Pricing**

- 4.1 Prior to the FCC's ruling (Docket 95-116) on the applicability of SWBT's Tariff charges, the parties agree that IP Communications Corporation will not pay any charges billed by SWBT associated with queries, subject to true up, if any, as required by FCC rulings.



**5.0 Applicability of Rates, Terms and Conditions**

- 5.1 \*Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions; interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

**ATTACHMENT 15: 911/E911****TERMS AND CONDITIONS FOR PROVIDING CONNECTION  
TO 911/E911 UNIVERSAL EMERGENCY NUMBER SERVICE**

This Attachment 15: 911/E911 sets forth the terms and conditions under which SWBT will provide the connection between IP Communications Corporation's local switch and 911 Universal Emergency Number Service.

**1.0 Definitions**

As used herein and for the purposes of this Attachment the following terms will have the meanings set forth below:

- 1.1 911 Universal Emergency Number Service (also includes E911-Expanded 911) - A telephone exchange communication service whereby a public safety answering point (PSAP) designated by the 911 customer may receive and answer telephone calls placed by dialing number 911. 911 includes the service provided by the lines and equipment associated with the service arrangement for the answering, transferring, and dispatching of public emergency telephone calls dialed to 911.
- 1.2 911 Universal Emergency Number Service Customer - A municipality or other state or local governmental unit, or an authorized agent of one or more municipalities or other state or local government units to whom authority has been lawfully delegated to respond to public emergency telephone calls, at the minimum, for emergency police and fire service through the use of one telephone number, 911.
- 1.3 Public Safety Answering Point (PSAP) - An answering location for 911 calls originating in a given area. The 911 customer may designate a PSAP as primary or secondary, which refers to the order in which calls are directed for answering. Primary PSAPs respond first, secondary PSAPs receive calls on a transfer basis only. PSAPs are public safety agencies such as police, fire, emergency medical, etc., or a common bureau serving a group of such entities.
- 1.4 Centralized Automatic Message Accounting (CAMA) Trunk - A trunk capable of transmitting Automatic Number Identification (ANI) associated with 911 customer calls from a switch to the E911 Network where the ANI feature is included.
- 1.5 Automatic Number Identification (ANI) - A feature that automatically forwards the telephone number of the calling party to the E911 Control Office from which it is switched to the PSAP and is displayed at an attendant position console.

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- 1.6 Automatic Location Identification (ALI) - A feature that forwards the name, street address, class of service, and other pre-determined information associated with the calling party's telephone number (identified by ANI) to the PSAP for display.
- 1.7 Selective Routing (SR) - A feature that provides the capability to selectively route a 911 call to the designated primary PSAP based upon the identified number of the calling party.
- 1.8 Database Management System (DBMS) - A system of manual procedures and computer programs used to create, store and update the data required for the SR and ALI service features and database of E911 service.
- 1.9 ALI Database - A database which stores information associated with end user customers' telephone numbers.

## **2.0 Responsibilities**

- 2.1 SWBT will provide and maintain equipment at the E911 Control Office and the DBMS, as is necessary to perform the E911 services set forth herein. SWBT will also be responsible for the following:
  - 2.1.1 when requested by IP Communications Corporation, transporting the E911 calls from the interconnection point with IP Communications Corporation facilities connecting IP Communications Corporation's switches to the Control Offices of the E911 System. The IP Communications Corporation switches will be listed in the form attached hereto as Addendum I as the IP Communications Corporation switches are deployed;
  - 2.1.2 switching the E911 calls through the E911 Control Office to the designated primary PSAP or to designated alternate locations, according to routing criteria specified by the E911 customer;
  - 2.1.3 storing the names, addresses, and associated telephone numbers from IP Communications Corporation's exchanges in the electronic data processing database for the E911 DBMS. (IP Communications Corporation is responsible for downloading and updating this information);
  - 2.1.4 transmission of the ANI and ALI information associated with IP Communications Corporation's end users accessing E911 service to the PSAP for display at an attendant position console.
- 2.2 SWBT will provide and maintain sufficient dedicated E911 circuits, in accordance with the provisions of the E911 tariff and specifications of the E911 customer.

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- 2.3 SWBT will provide IP Communications Corporation with a description of the geographic area and PSAPs served by the E911 Control Office(s) according to industry standards for E911 information sharing.
- 2.4 SWBT will provide IP Communications Corporation with a file containing the Master Street Address Guide (MSAG) for the exchanges or communities specified in Addendum I, in accordance with the methods and procedures described in the document "Operating Methods for Downloading and Maintaining End User Records in SWBT's DBMS" (dated July 31, 1996), and as subsequently modified consistent with industry standards. SWBT will provide IP Communications Corporation additional files with the entire MSAG, including subsequent additions or updates to the MSAG in accordance with the intervals specified in Addendum I. In addition, SWBT will provide IP Communications Corporation with a statistical report in a timely fashion and in accordance with the methods and procedures described in the above mentioned document for each file downloaded by IP Communications Corporation to SWBT's DBMS, so that IP Communications Corporation may ensure the accuracy of the end user records.
- 2.5 At a reasonable time prior to establishment of E911 service, IP Communications Corporation will download and maintain thereafter all information required by SWBT to establish records necessary for furnishing connection to E911 service and will promptly notify SWBT in writing of any changes to be made in such records. IP Communications Corporation will adopt and comply with operating methods applicable to downloading and maintaining IP Communications Corporation's end user records in SWBT's DBMS, as set forth in the document referenced in Section 2.4, above.
- 2.6 IP Communications Corporation acknowledges that its end users in a single local calling scope may be served by different PSAPs. IP Communications Corporation will be responsible for providing facilities to route calls from its end users to the proper E911 Control Office.
- 2.7 At a reasonable time prior to establishment of E911 service, IP Communications Corporation will populate E911 databases using the NENA Version 2 record format, as adapted in the document referenced in Section 2.4 above.
- 2.8 During the period when interim number portability is utilized, SWBT and IP Communications Corporation will coordinate their databases to provide for the display of ported numbers at the PSAP as part of the ALI screen display, subject to PSAP capability.
- 2.9 IP Communications Corporation acknowledges that it may serve end users in communities that do not have 911 service, or communities where 9-1-1 service is not provided by a SWBT E911 Control Office. In circumstances where SWBT provides E911 service with the ALI feature, but there are no CAMA trunks connecting an IP

Communications Corporation switch to a SWBT E911 Control Office, IP Communications Corporation will have access to the SWBT DBMS to include customer name and address information in the ALI database in conjunction with the ALI feature provided to the E911 customer. Trunking configurations in these circumstances must be negotiated on a case-by-case basis within the limitations of the local 9-1-1 service network and the E911 customer's PSAP equipment which may, or may not, be provided by SWBT.

### **3.0 Methods and Practices**

- 3.1 With respect to all matters covered by this Attachment, each Party will adopt and comply with standard industry operating methods and practices and will observe the terms and conditions of SWBT's tariffs, and the rules and regulations of the FCC and the State Commission that apply to the provision of 911 and E911 Service.

### **4.0 Contingency**

- 4.1 The Parties agree that the 911 service is provided for the use of the 911 customer, and recognize the authority of the 911 customer to establish service specifications and grant final approval (or denial) of service configurations offered by SWBT and IP Communications Corporation. The terms and conditions of this Attachment represent a negotiated plan for providing 911 service, for which IP Communications Corporation must obtain documentation of the 911 customer's approval. IP Communications Corporation will provide such documentation to SWBT prior to use of IP Communications Corporation's 911 connection for actual emergency calls.
- 4.2 The Parties designate the following representatives who shall have the authority to execute additional Addenda I to this Attachment when necessary to accommodate expansion of IP Communications Corporation's geographic area into the jurisdiction of additional PSAPs or to increase the number of CAMA trunks:

SWBT representative:

Executive Director and General Manager - Regional Sales  
Southwestern Bell Telephone Company  
Room 640  
4 Bell Plaza  
Dallas, Texas 75202  
214-464-1068 (Phone); 214-858-0281 (FAX); 214-464-1473 (FAX voice contact)

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IP Communications Corporation representative:

Sean Minter-President & Chief Operating Officer  
IP Communications Corporation  
Suite 300  
17300 Preston Road  
Dallas, Texas 75252  
972-248-8210 (Phone)

- 4.2.1 Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving seven (7) days prior written notice to the other Party in compliance with this Section. Any notice or other communication will be deemed given when received.
- 4.3 The terms and conditions of this Attachment are subject to renegotiation in the event that the 911 customer orders changes to the 911 service that necessitate revision of this Attachment.

**5.0 Basis of Compensation**

- 5.1 Compensation to SWBT for provision of connection to 911 service provided hereunder will be based upon the charges set forth in Addendum II, Basis Of Compensation, and applied as specified in Addendum I.
- 5.2 For computation in Addendum II, during the initial year that SWBT provides IP Communications Corporation connection to E911 service, the number of lines (business and consumer) as shown in Addendum I will be counted on January 1, April 1, July 1, and October 1 (or the first day of service, with proration of the first months charges) and the number will be used in computing compensation for the corresponding quarter. At the end of the first full year of service, a new count of lines will be made and it will be used until the succeeding December 31. For each succeeding year, a new count of lines, as of the first day of January, will be used in the computation of compensation under this Attachment for that year. Each count of lines will be rounded to the nearest thousand for compensation purposes.
- 5.3 Charges will begin on the date connection to E911 service commences.

**6.0 Monthly Billing**

- 6.1 SWBT will render to IP Communications Corporation monthly statements in advance, showing the amounts determined as provided in Section 5.0 above, and IP Communications Corporation will make payment in full within thirty (30) days from the date of the bill.

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**7.0 Indemnification**

- 7.1 Indemnification provisions covering the matters addressed in this Attachment are contained in the General Terms and Conditions portion of the Agreement.

**8.0 Applicability of Other Rates, Terms and Conditions**

- 8.1 \*Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions; interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

## Addendum I to Attachment 15: 911

LSP SERVING AREA DESCRIPTION AND E911 INTERCONNECTION DETAILS				
LSP NAME & CONTACTS	LSP "OCN"	LSP Switch	Switch Type	LSP NPA/NXX(s) included
E911 Coordinator			CLLI Code	Estimated # of EAAs
	LSP Telco ID			
			"Connect Signal" Digits <sup>(4)</sup>	
911 Database Manager	LSP Service Area Definition		1-1	
			ETST Code	# 911 Trunks Requested
Switch Site Contact			"Default" PSAP	Requested Service Date
SWBT E911 SYSTEM CONFIGURATION ASSOCIATED WITH DESIGNATED E911 CONTROL OFFICE				
E911 CONTROL OFFICE CLLI Code		EXCHANGES FOR MSAG PULL <sup>(1)</sup>	PSAPs INCLUDED	E911 CUSTOMER and AGENCY TYPE (see legend below)
E911 Features Required:				
# of 911 Trunks from LSP:				
MSAG Update Interval:	Monthly			
FOOTNOTES: (1)		MSAG pull is keyed to these exchanges, and will only contain addresses in SWB's service area.		
(2)		n/a		
(3)		Only areas within the listed exchanges and also within the jurisdiction of this PSAP are included. The remainder of the PSAP's jurisdiction is not included.		
(4)		Refer to network interface specifications in Exhibit III.		
<b>"TYPE OF AGENCY" LEGEND:</b>				
HRC		= Home Rule City		
ECD		= Emergency Communications District		
COG		= Council of Governments or Regional Planning Commission		
GLC		= General Law City		
Cnty		= County with special provisions		
			Date Prepared	

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**ATTACHMENT E911**

**ADDENDUM II  
BASIS OF COMPENSATION**

This Addendum II is attached to and made a part of Attachment 15: E911.

- A. The following compensation amounts will be due SWBT for the provision of services under the above-mentioned Attachment for IP Communications Corporation exchanges and the feature configurations shown in Addendum I. These prices are interim in nature from the effective date of this agreement in Case Nos. TO-97-40; TO-97-67.

<u>E911 Feature Configuration</u>	<u>Monthly Charge Per 1000 Access Lines</u>	<u>Nonrecurring Charge Per 1000 Access Lines</u>
Automatic Number Identification		
- SWBT PSAP	\$10.00	\$80.00
- non-SWBT PSAP	\$10.00	\$80.00
Combined Automatic Number Identification and Selective Routing		
- SWBT PSAP	\$51.60	\$85.00
- non-SWBT PSAP	\$51.60	\$85.00
Combined Automatic Number and Automatic Location Identification		
- SWBT PSAP	\$83.60	\$85.00
- non-SWBT PSAP	\$83.60	\$85.00
Combined Automatic Number, Automatic Location Identification, And Selective Routing		
- SWBT PSAP	\$83.60	\$85.00
- non-SWBT PSAP	\$83.60	\$85.00

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- B. The following trunk charges will be paid to SWBT for each E911 control office to which IP Communications Corporation connects. These prices are interim in nature from the effective date of this agreement to the State Commission's determination of permanent prices in Case Nos. TO-97-40; TO-97-67.

Trunk Charge - Channel (Each)

Monthly Recurring

\$85.00 per trunk

Nonrecurring

\$170.00 per trunk

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## **ATTACHMENT 16: NETWORK SECURITY AND LAW ENFORCEMENT**

This Attachment 16: Network Security and Law Enforcement to the Agreement sets forth terms and conditions concerning certain Network Security and Law Enforcement requirements.

### **1.0 Protection of Service and Property**

- 1.1 The Parties will exercise due care to prevent harm or damage to their respective employees, agents or customers, or their property. The Parties' employees, agents, or representatives agree to take reasonable and prudent steps to ensure the adequate protection of their respective property and services. In recognition of its obligation under this attachment, SWBT agrees to take the following reasonable and prudent steps, including but not limited to:
  - 1.1.1 Restricting access to IP Communications Corporation equipment, support equipment, systems, tools and data, or spaces which contain or house IP Communications Corporation equipment to the extent SWBT provides this protection to its own facilities. SWBT will provide access to IP Communications Corporation employees and its agents based on IP Communications Corporation providing a list of authorized personnel. If escorted, IP Communications Corporation employees and authorized agents must present identification required by SWBT.
  - 1.1.2 SWBT will follow mutually agreed upon notification procedures in the event it becomes necessary for a SWBT employee to enter into the exclusive IP Communications Corporation collocated space.
  - 1.1.3 Complying at all times with mutually agreed to IP Communications Corporation security and safety procedures and requirements, including but not limited to sign in, identification, and escort requirements while in spaces which house or contain IP Communications Corporation equipment or equipment enclosures.
  - 1.1.4 Allowing IP Communications Corporation to inspect or observe spaces which house or contain IP Communications Corporation equipment or equipment enclosures after such time as SWBT has turned over the collocation area to IP Communications Corporation and to furnish IP Communications Corporation with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry into any secured IP Communications Corporation space.
  - 1.1.5 Provide card access, coded locks or keyed locks providing security to the exclusive IP Communications Corporation collocated space that is unique to that space.

- 1.1.6 Ensuring that the area which houses IP Communications Corporation's equipment is adequately secured to prevent unauthorized entry to the same level as SWBT provides to itself.
- 1.1.7 Limiting the keys used in SWBT's keying systems for cages which contain or house IP Communications Corporation equipment or equipment enclosures to its employees for required access only. Any access required other than emergency will be coordinated with IP Communications Corporation to allow escort opportunity. SWBT will change locks at IP Communications Corporation's request and expense where a security breach is known or suspected and the breach is not caused by SWBT.
- 1.1.8 Where IP Communications Corporation requests these specifications and is amenable to funding said custom work, installing security studs in the hinge plates of doors having exposed hinges with removable pins if such leads to spaces which contain or house IP Communications Corporation equipment or equipment enclosures.
- 1.1.9 Controlling unauthorized access from passenger and freight elevators by continuous surveillance or by installing security partitions, security grills, locked gates or doors between elevator lobbies and spaces which contain or house IP Communications Corporation equipment or equipment enclosures.
- 1.1.10 Providing prompt notification to designated IP Communications Corporation personnel to indicate an actual or attempted security breach of which SWBT is aware.
- 1.2 IP Communications Corporation and SWBT further agree to:
  - 1.2.1 Providing a mutually acceptable back-up and recovery plan to be used in the event of a security system failure or emergency.
  - 1.2.2 Installing controls:
    - to disconnect a user for a pre-determined period of inactivity on authorized ports;
    - to protect customer proprietary information; and,
    - to databases to ensure both ongoing operational and update integrity.
  - 1.2.3 Logical Security:
    - assuring that all approved system and modem access be secured through security servers. Access to or connection with a network element will be established through a secure network or security gateway.