

APPENDIX LAWFUL UNES (LAWFUL PROVISION OF ACCESS TO UNBUNDLED NETWORK ELEMENTS)

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APPENDIX LAWFUL UNES (LAWFUL PROVISION OF ACCESS TO UNBUNDLED NETWORK ELEMENTS)

1. INTRODUCTION

- 1.1 This Appendix Lawful UNES sets forth the terms and conditions pursuant to which the applicable AT&T Inc. (AT&T)-owned Incumbent Local Exchange Carrier (ILEC) will furnish CLEC with access to lawful unbundled network elements as specifically defined in this Appendix Lawful UNES for the provision by CLEC of a Telecommunications Service ((Act, Section 251(c)(3)). For information regarding deposit, billing, payment, non-payment, disconnect, and dispute resolution, see the General Terms and Conditions of this Agreement.
- 1.2 **AT&T Inc. (AT&T)** means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, Nevada Bell Telephone Company d/b/a AT&T Nevada, The Ohio Bell Telephone Company d/b/a AT&T Ohio, Pacific Bell Telephone Company d/b/a AT&T California, The Southern New England Telephone Company d/b/a AT&T Connecticut, Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin.
- 1.3 **AT&T-2STATE** - As used herein, **AT&T-2STATE** means **AT&T CALIFORNIA** and **AT&T NEVADA**, the applicable AT&T-owned ILEC(s) doing business in California and Nevada.
- 1.4 **AT&T-4STATE** - As used herein, **AT&T-4STATE** means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, and AT&T Oklahoma the applicable AT&T-owned ILEC(s) doing business in Arkansas, Kansas, Missouri and Oklahoma.
- 1.5 **AT&T-7STATE** - As used herein, **AT&T-7STATE** means **AT&T SOUTHWEST REGION 5-STATE**, **AT&T CALIFORNIA** and **AT&T NEVADA**, the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.6 **AT&T-8STATE** - As used herein, **AT&T-8STATE** means **AT&T SOUTHWEST REGION 5-STATE**, **AT&T CALIFORNIA**, **AT&T NEVADA** and **AT&T CONNECTICUT** the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.7 **AT&T-10STATE** - As used herein, **AT&T-10STATE** means **AT&T SOUTHWEST REGION 5-STATE** and **AT&T MIDWEST REGION 5-STATE** an the applicable AT&T-owned ILEC(s) doing business in Arkansas, Illinois, Indiana, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas and Wisconsin.
- 1.8 **AT&T-12STATE** - As used herein, **AT&T-12STATE** means **AT&T SOUTHWEST REGION 5-STATE**, **AT&T MIDWEST REGION 5-STATE** and **AT&T-2STATE** the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.9 **AT&T-13STATE** - As used herein, **AT&T-13STATE** means **AT&T SOUTHWEST REGION 5-STATE**, **AT&T MIDWEST REGION 5-STATE**, **AT&T-2STATE** and **AT&T CONNECTICUT** the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.10 **AT&T ARKANSAS** - As used herein, **AT&T ARKANSAS** means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, the applicable AT&T-owned ILEC doing business in Arkansas.
- 1.11 **AT&T CALIFORNIA** - As used herein, **AT&T CALIFORNIA** means Pacific Bell Telephone Company d/b/a AT&T California, the applicable AT&T-owned ILEC doing business in California.
- 1.12 **AT&T CONNECTICUT** - As used herein, **AT&T CONNECTICUT** means The Southern New England Telephone Company d/b/a AT&T Connecticut, the applicable above listed ILEC doing business in Connecticut.

- 1.13 AT&T KANSAS - As used herein, AT&T KANSAS means Southwestern Bell Telephone Company d/b/a AT&T Kansas, the applicable AT&T-owned ILEC doing business in Kansas.
- 1.14 AT&T ILLINOIS - As used herein, AT&T ILLINOIS means Illinois Bell Telephone Company d/b/a AT&T Illinois, the applicable AT&T-owned ILEC doing business in Illinois.
- 1.15 AT&T INDIANA - As used herein, AT&T INDIANA means Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, the applicable AT&T-owned ILEC doing business in Indiana.
- 1.16 AT&T MICHIGAN - As used herein, AT&T MICHIGAN means Michigan Bell Telephone Company d/b/a AT&T Michigan, the applicable AT&T-owned ILEC doing business in Michigan.
- 1.17 AT&T MIDWEST REGION 5-STATE - As used herein, AT&T MIDWEST REGION 5-STATE means Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, The Ohio Bell Telephone Company d/b/a AT&T Ohio, and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin, the applicable AT&T-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio and Wisconsin.
- 1.18 AT&T MISSOURI - As used herein, AT&T MISSOURI means Southwestern Bell Telephone Company d/b/a AT&T Missouri, the applicable AT&T-owned ILEC doing business in Missouri.
- 1.19 AT&T NEVADA - As used herein, AT&T NEVADA means Nevada Bell Telephone Company d/b/a AT&T Nevada, the applicable AT&T-owned ILEC doing business in Nevada.
- 1.20 AT&T OHIO - As used herein, AT&T OHIO means The Ohio Bell Telephone Company d/b/a AT&T Ohio, the applicable AT&T-owned ILEC doing business in Ohio.
- 1.21 AT&T OKLAHOMA - As used herein, AT&T OKLAHOMA means Southwestern Bell Telephone Company d/b/a AT&T Oklahoma, the applicable AT&T-owned ILEC doing business in Oklahoma.
- 1.22 AT&T SOUTHWEST REGION 5-STATE - As used herein, AT&T SOUTHWEST REGION 5-STATE means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma and Texas.
- 1.23 AT&T TEXAS - As used herein, AT&T TEXAS means Southwestern Bell Telephone Company d/b/a AT&T Texas, the applicable AT&T-owned ILEC doing business in Texas.
- 1.24 AT&T WISCONSIN - As used herein, AT&T WISCONSIN means Wisconsin Bell, Inc. d/b/a AT&T Wisconsin, the applicable AT&T-owned ILEC doing business in Wisconsin.
- 1.25 The Prices at which AT&T-13STATE agrees to provide electronic access to its Directory Assistance (DA) database are contained in the applicable Appendix Pricing and/or the applicable Commissioned ordered tariff where stated.

2. TERMS AND CONDITIONS

- 2.1 **Lawful UNEs and Declassification.** This Agreement sets forth the terms and conditions pursuant to which AT&T-13STATE will provide CLEC with access to unbundled network elements under Section 251(c)(3) of the Act in AT&T-13STATE's incumbent local exchange areas for the provision of Telecommunications Services by CLEC; provided, however, that notwithstanding any other provision of the Agreement, AT&T-13STATE shall be obligated to provide UNEs only to the extent required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. UNEs that AT&T-13STATE is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders shall be referred to in this Agreement as "Lawful UNEs."

- 2.1.1 A network element, including a network element referred to as a Lawful UNE under this Agreement, will cease to be a Lawful UNE under this Agreement if it is no longer required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. Without limitation, a Lawful UNE that has ceased to be a Lawful UNE may also be referred to as “**Declassified**”.
- 2.1.2 Without limitation, a network element, including a network element referred to as a Lawful UNE under this Agreement is Declassified upon or by (a) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; or (b) the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that an incumbent LEC is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act; or (c) the absence, by vacatur or otherwise, of a legally effective FCC rule requiring the provision of the network element on an unbundled basis under Section 251(c)(3). By way of example only, a network element can cease to be a Lawful UNE or be Declassified generally, or on an element-specific, route-specific or geographically-specific basis or on a class of elements basis. Under any scenario, Section 2.5 “Transition Procedure” shall apply.
- 2.1.3 It is the Parties’ intent that only Lawful UNEs shall be available under this Agreement; accordingly, if this Agreement requires or appears to require Lawful UNE(s) or unbundling without specifically noting that the UNE(s) or unbundling must be “Lawful,” the reference shall be deemed to be a reference to Lawful UNE(s) or Lawful unbundling, as defined in this Section 2.1. If an element is not required to be provided under this Appendix Lawful UNE and/or not described in this Appendix Lawful UNE, it is the Parties’ intent that the element is not available under this Agreement, notwithstanding any reference to the element elsewhere in the Agreement, including in any other Appendix, Schedule or in the Pricing Appendix.
- 2.1.4 By way of example only, if terms and conditions of this Agreement state that AT&T-13STATE is required to provide a Lawful UNE or Lawful UNE combination, and that Lawful UNE or the involved Lawful UNE (if a combination) is Declassified or otherwise no longer constitutes a Lawful UNE, then AT&T-13STATE shall not be obligated to provide the item under this Agreement as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Agreement.
- 2.2 Nothing contained in the Agreement shall be deemed to constitute consent by AT&T-13STATE that any item identified in this Agreement as a UNE, network element or Lawful UNE is a network element or UNE under Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, that AT&T-13STATE is required to provide to CLEC alone, or in combination with other network elements or UNEs (Lawful or otherwise), or commingled with other network elements, UNEs (Lawful or otherwise) or other services or facilities.
- 2.3 The preceding includes without limitation that AT&T-13STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving AT&T-13STATE network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.
- 2.4 Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an unbundled network element or Lawful UNE in this Agreement is Declassified or is otherwise no longer a Lawful UNE, then the Transition Procedure defined in Section 2.5, below, shall govern.
- 2.5 **Non-Impaired Wire Center Criteria and Related Processes**
- 2.5.1 AT&T-13STATE has designated and posted to CLEC Online the wire centers where it contends the thresholds for DS1 and DS3 Unbundled High-Capacity Loops as defined pursuant to Rule

51.319(a)(4) and Rule 51.319(a)(5) and for Tier 1 and Tier 2 Non-Impaired Wire Centers as defined pursuant to Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii) have been met. AT&T-13STATE's designations shall be treated as controlling (even if CLEC believes the list is inaccurate) for purposes of transition and ordering unless CLEC provides a self-certification as outlined below. Until CLEC provides a self-certification for High-Capacity Loops and/or Transport for such wire center designations, CLEC will not submit High Capacity Loop and/or Transport orders based on the wire center designation, and if no self-certification is provided will transition its Embedded Base of DS1 and DS3 Loop and Transport arrangements affected by the designation by disconnecting or transitioning to an alternate facility or arrangement, if available, by March 11, 2006. CLEC will transition any affected Dark Fiber Transport arrangements affected by the wire center designations by disconnecting or transitioning to an alternate facility or arrangement, if available, by September 11, 2006. AT&T-13STATE will update the CLEC Online posted list and will advise CLECs of such posting via Accessible Letter, which term for the purposes of this Section 2.5 of this Agreement shall be deemed to mean an Accessible Letter issued after the effective date of this Agreement, as set forth in this Section 2.5 of this Agreement.

- 2.5.2 If the Commission has not previously determined, in any proceeding, that a wire center is properly designated as a wire center meeting the thresholds set forth pursuant to Rule 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii), then, prior to submitting an order for an unbundled a DS1/DS3 High-Capacity Loop, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangement, CLEC shall perform a reasonably diligent inquiry to determine that, to the best of CLEC's knowledge, whether the wire center meets the non-impairment thresholds as set forth pursuant to Rule 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii). If, based on its reasonably diligent inquiry, the CLEC disputes the AT&T-13STATE wire center non-impairment designation, the CLEC will provide a self-certification to AT&T-13STATE identifying the wire center(s) for which it is self-certifying. In performing its inquiry, CLEC shall not be required to consider any lists of non-impaired Wire Centers compiled by AT&T-13STATE as creating a presumption that a Wire Center is not impaired. CLEC can send a letter to AT&T-13STATE claiming Self Certification or CLEC may elect to self-certify using a written or electronic notification sent to AT&T-13STATE. If CLEC makes such a self-certification, and CLEC is otherwise entitled to the ordered element under the Agreement, AT&T-13STATE shall provision the requested facilities in accordance with CLEC's order and within AT&T-13STATE's standard ordering interval applicable to such facilities. If AT&T-13STATE in error rejects CLEC orders, where CLEC has provided self certification in accordance with this Section 2.5 of this Agreement, AT&T-13STATE will modify its systems to accept such orders within 5 business hours of CLEC notification to its account manager. CLEC may not submit a self-certification for a wire center after the transition period for the DS1/DS3 Loops and/or DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport impacted by the designation of the wire center has passed.
- 2.5.3 The parties recognize that wire centers that AT&T-13STATE had not designated as meeting the FCC's non-impairment thresholds as of March 11, 2005, may meet those thresholds in the future. In the event that a wire center that is not currently designated as meeting one or more of the FCC's non-impairment thresholds, meets one or more of these thresholds at a later date, AT&T-13STATE may add the wire center to the list of designated wire centers and the Parties will use the following process:
- 2.5.3.1 AT&T-13STATE may update the wire center list as changes occur.
- 2.5.3.2 To designate a wire center that had previously not met one or more of the FCC's impairment thresholds but subsequently does so, AT&T-13STATE will provide notification to CLEC via Accessible Letter and by a posting on CLEC Online.
- 2.5.3.3 AT&T-13STATE will continue to accept CLEC orders for impacted DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport without requiring CLEC self-certification for 30 calendar days after the date the Accessible Letter is issued.

- 2.5.3.4 In the event the CLEC disagrees with AT&T-13STATE's determination and CLEC has 60 calendar days from the issuance of the Accessible Letter to dispute AT&T-13STATE's determination regarding the wire center by providing a self-certification to AT&T-13STATE.
- 2.5.3.5 If the CLEC does not use the self-certification process described in this Section 2.5 of this Agreement to self-certify against AT&T-13STATE's wire center designation within 60 calendar days of the issuance of the Accessible Letter, the parties must comply with the Applicable Transitional Period as follows: transition all circuits that have been declassified by the wire center designation(s) within 30 days ending on the 90th day after the issuance of the Accessible Letter providing the wire center designation of non-impairment or the end of the applicable transition period described in Section 2.5.1 of this Agreement, whichever is later. For the Applicable Transitional Period, no additional notification will be required. CLEC may not obtain new DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport in wire centers and/or routes where such circuits have been declassified during the applicable transition period.
- 2.5.3.6 If the CLEC does provide self-certification to dispute AT&T-13STATE's designation determination within 60 calendar days of the issuance of the Accessible Letter, AT&T-13STATE may dispute CLEC's self-certification as described in Sections 2.5.5 and 2.5.6 of this Agreement and AT&T-13STATE will accept and provision the applicable loop and transport orders for the CLEC providing the self certification during a dispute resolution process.
- 2.5.3.7 During the applicable transition period, the rates paid will be the rates in effect at the time of the non-impairment designations plus 15%.
- 2.5.4 If the Commission has previously determined, in any proceeding, that a wire center is properly designated as a wire center meeting the thresholds set forth pursuant to Rule 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii), then CLEC shall not request DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements declassified by the non-impairment status of the wire center in such wire center. If a CLEC withdraws its self-certification after a dispute has been filed with the Commission, but before the Commission has made a determination regarding the wire center designation, the wire center designation(s) that were the subject of the dispute will be treated as though the Commission approved AT&T-13STATE's designations.
- 2.5.5 If it desires to do so, AT&T-13STATE can dispute the self-certification and associated CLEC orders for facilities pursuant to the following procedures: AT&T-13STATE will notify the CLEC of its intent to dispute the CLEC's self-certification within 30 days of the CLEC's self-certification or within 30 days of the effective date of this Agreement, whichever is later. AT&T-13STATE will file the dispute for resolution with the state Commission within 60 days of the CLEC's self-certification or within 60 days of the effective date of this Agreement, whichever is later. AT&T-13STATE will notify CLECs of the filing of such a dispute via Accessible Letter. If the self-certification dispute is filed with the state Commission for resolution, the Parties will not oppose requests for intervention by other CLECs if such request is related to the disputed wire center designation(s). The parties agree to urge the state Commission to adopt a case schedule resulting in the prompt resolution of the dispute. AT&T-13STATE's failure to file a timely challenge, i.e., within 60 days of the CLEC's self-certification or within 60 days of the effective date of this Agreement, whichever is later, to any CLEC's self certification for a given wire center shall be deemed a waiver by AT&T-13STATE of its rights to challenge any subsequent self certification for the affected wire center except as provided below. AT&T-13STATE shall promptly notify CLEC of any time where AT&T-13STATE has waived its ability to challenge a self-certification as to any wire center for carrier. AT&T-13STATE may challenge future CLEC self-certifications pertaining to the wire center if the underlying facts pertaining to the designation of non-impairment have changed, in which case the Parties will follow the provisions for updating the wire center list outlined in Section 2.5.3 of this Agreement. During

the timeframe of any dispute resolution proceeding, AT&T-13STATE shall continue to provide the High-Capacity Loop or Transport facility in question to CLEC at the rates in the Pricing Appendix to the Agreement. If the CLEC withdraws its self-certification, or if the state Commission determines through arbitration or otherwise that CLEC was not entitled to the provisioned DS1/DS3 Loops or DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport under Section 251, the rates paid by CLEC for the affected loop or transport shall be subject to true-up as follows:

2.5.5.1 For wire centers designated by AT&T-13STATE prior to March 11, 2005 and

2.5.5.1.1 For the affected loop/transport element(s) installed prior to March 11, 2005,

2.5.5.1.1.1 CLEC will provide a true-up calculated using a beginning date of March 11, 2005 based on the FCC transitional rate described in Section 2.5.3.7 of this Appendix or if applicable, Section 1.2 of the Embedded Base Rider to this Agreement between March 11, 2005 and the end of the initial TRRO transition period described in Section 2.5.1. If affected loops/transport element(s) remain in place after the end of the initial TRRO transition period, CLEC will also provide a true-up for the period after the end of initial TRRO transition period calculated using the equivalent special access rates during the period between the end of the initial transition period and the date the circuit is actually transitioned. If no equivalent special access rate exists, a true-up will be determined using the transitional rate described in Section 2.5.3.7 of this Appendix or if applicable, Section 1.2 of the Embedded Base Rider of this Agreement. The applicable equivalent special access rate/transitional rate as described above will continue to apply until the facility has been transitioned.

2.5.5.1.2 For the affected loop/transport element(s) installed after March 11, 2005, CLEC will provide a true-up to an equivalent special access rate as of the later of the date billing began for the provisioned element or thirty days after AT&T-13STATE's notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the transitional rate described in Section 2.5.3.7 of this Appendix or if applicable, Section 1.2 of the Embedded Base Rider of this Agreement. The applicable equivalent special access rate/transitional rate will continue to apply until the facility has been transitioned.

2.5.5.2 For wire centers designated by AT&T-13STATE after March 11, 2005,

2.5.5.2.1 For affected loop/transport elements ordered before AT&T-13STATE's wire center designation,

2.5.5.2.1.1 if the applicable transition period is within the initial *TRRO* transition period described in Section 2.5.1 of this Agreement, CLEC will provide a true-up during the period between the date that is thirty (30) days after AT&T-13STATE's notice of non-impairment and the date the circuit is transitioned to the transitional rate described in Section 2.5.3.7 of this Agreement.

2.5.5.2.1.2 if the applicable transition period is after the initial *TRRO* transition period described in Section 2.5.1 of this Agreement has expired, CLEC will provide a true-up based on the transitional rate described in Section 2.5.3.7 of this Agreement between the date that is thirty (30) days after AT&T-13STATE's notice of non-impairment and the end of the applicable transition period described in Section 2.5.1

and the equivalent special access rates during the period between the end of the initial transition period and the date the circuit is actually transitioned. If no equivalent special access rate exists, a true-up will be determined using the transitional rate described in Section 2.5.3.7 of this Agreement. The applicable equivalent special access/transitional rate as described above will continue to apply until the facility has been transitioned.

- 2.5.5.2.2 For affected loop/transport elements ordered after AT&T-13STATE's wire center designation, CLEC will provide a true-up for the affected loop/transport element(s) to an equivalent special access rate for the affected loop/transport element(s) as of the later of the date billing began for the provisioned element or thirty (30) days after AT&T-13STATE's notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the transitional rate described in Section 2.5.3.7 of this Agreement. The applicable equivalent special access/transitional rate will continue to apply until the facility has been transitioned.
- 2.5.6 In the event of a dispute following CLEC's Self-Certification, upon request by the Commission or CLEC, AT&T-13STATE will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, all documentation and all data upon which AT&T-13STATE intends to rely, which will include the detailed business line information for the AT&T-13STATE wire center or centers that are the subject of the dispute.
- 2.5.7 The provisions of Section 2.5.1 of this Agreement shall apply to the transition of DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements impacted by wire center designation(s). As outlined in Section 2.5.1 of this Agreement, requested transitions of DS1/DS3 High Capacity loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements shall be performed in a manner that reasonably minimizes the disruption or degradation to CLEC's customer's service, and all applicable charges shall apply. Cross-connects provided by AT&T-13STATE in conjunction with such Loops and/or Transport shall be billed at applicable wholesale rates (e.g., prior to transition, cross connects will be billed at transitional rates, after transition, if conversion is to an access product, cross connects will be billed at applicable access rates). Cross-connects that are not associated with such transitioned DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements shall not be re-priced.
- 2.5.8 AT&T-13STATE will process CLEC orders for DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport, or Dark Fiber Transport conversion or disconnection. AT&T-13STATE will not convert or disconnect these services prior to the end of the applicable transitional period unless specifically requested by the CLEC; however, CLEC is responsible for ensuring that it submits timely orders in order to complete the transition by the end of applicable transitional period in an orderly manner.
- 2.5.9 A building that is served by both an impaired wire center and a non impaired wire center and that is not located in the serving area for the non-impaired wire center will continue to have Affected Elements available from the impaired wire center and support incremental moves, adds, and changes otherwise permitted by the Agreement, as amended.
- 2.5.10 CLEC may not self-certify that it is entitled to obtain DS1/DS3 Loops or DS1/DS3 Dedicated Transport at a location where CLEC has met the volume cap set forth in Sections 8.3.4.4.1 and 8.3.5.4.1 (for DS1/DS3 Loops) and 13.3.5.1 and 13.3.6.1 (for DS1/DS3 Dedicated Transport).
- 2.5.11 Notwithstanding anything to the contrary in the Agreement, including any amendments to this Agreement, at the end of the Applicable Transitional Period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under Section 2.5.1 of this Agreement, and if CLEC and AT&T-13STATE have failed to reach agreement under Section 2.5.8 of this Agreement as to a substitute service arrangement or element, then AT&T-13STATE may, at its sole option, disconnect dark fiber element(s), whether previously provided alone or in combination with or as part

of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available at rates applicable to such analogous service or arrangement.

- 2.6 **AT&T-13STATE** will provide access to Lawful UNES for the provision by CLEC of a Telecommunications Service (Act, Section 251(c)(3)).
- 2.7 **AT&T-13STATE** will provide CLEC nondiscriminatory access to Lawful UNES (Act, Section 251(c)(3), Act, 47 CFR § 51.307(a)):
- 2.7.1 At any technically feasible point (Act, Section 251(c)(3); 47 CFR § 51.307(a));
- 2.7.2 At the rates, terms, and conditions which are just, reasonable, and nondiscriminatory (Act, Section 251(c)(3); 47 CFR § 51.307(a));
- 2.7.3 In a manner that allows CLEC to provide a Telecommunications Service that may be offered by means of that Lawful UNE (Act, Section 251(c)(3); 47 CFR § 51.307 (c));
- 2.7.4 In a manner that allows access to the facility or functionality of a requested Lawful UNE to be provided separately from access to other elements, and for a separate charge (47 CFR § 51.307(d));
- 2.7.5 With technical information regarding **AT&T-13STATE**'s network facilities to enable CLEC to achieve access to Lawful UNES (47 CFR § 51.307(e));
- 2.7.6 Except as provided in this Appendix, without imposing limitations, restrictions, or requirements on requests for, or the use of, Lawful UNES for the service CLEC seeks to offer (47 CFR § 51.309(a));
- 2.7.7 Where applicable, terms and conditions of access to Lawful UNES shall be no less favorable than terms and conditions under which **AT&T-13STATE** provides such elements to itself (47 CFR § 51.313(b));
- 2.7.8 Only to the extent it has been determined that these elements are required by the "necessary" and "impair" standards of the Act (Act, Section 251(d)(2));
- 2.7.9 Except upon request of CLEC, **AT&T-13STATE** shall not separate CLEC-requested Lawful UNES that are currently combined. (47 CFR § 51.315(b)) **AT&T-13STATE** is not prohibited from or otherwise limited in separating any Lawful UNES not requested by CLEC or a Telecommunications Carrier, including without limitation in order to provide a Lawful UNE(s) or other **AT&T-13STATE** offering(s).
- 2.8 As provided for herein, **AT&T-13STATE** will permit CLEC exclusive use of a Lawful UNE facility for a period of time, and when CLEC is purchasing access to a feature, function, or capability of such a facility, **AT&T-13STATE** will provide use of that feature, function, or capability for a period of time (47 CFR § 51.309(c)).
- 2.9 **AT&T-13STATE** will maintain, repair, or replace Lawful UNES (47 CFR § 51.309(c)) as provided for in this Agreement.
- 2.10 To the extent technically feasible, the quality of the Lawful UNE and access to such Lawful UNE shall be at least equal to what **AT&T-13STATE** provides other telecommunications carriers requesting access to the Lawful UNE (47 CFR § 51.311(a), (b)).
- 2.11 Each Party shall be solely responsible for the services it provides to its End Users and to other Telecommunications Carriers.
- 2.12 Lawful UNES provided to CLEC under the provisions of this Appendix shall remain the property of **AT&T-13STATE**.
- 2.13 **Performance of Lawful UNES**
- 2.13.1 Each Lawful UNE will be provided in accordance with **AT&T-13STATE** Technical Publications or other written descriptions, if any, as changed from time to time by **AT&T-13STATE** at its sole discretion.

- 2.13.2 Nothing in this Appendix shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise or to otherwise change and/or modify its network including, without limitation, through the retirement and/or replacement of equipment, software or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R. 51.325 through 51.335, as such rules maybe amended from time to time (the "Network Disclosure Rules"). AT&T-13STATE will not discontinue any Lawful UNE that AT&T-13STATE is required to provide to CLEC under this Agreement unless and until: (i) AT&T-13STATE provides requisite notice of the planned network change and/or modification in accordance with the Network Disclosure Rules (when applicable) and no objection is made to AT&T-13STATE's proposed network modification(s) and/or change(s) or any objection(s) is denied or deemed denied under such Rules; or (ii) if and when applicable, following AT&T-13STATE's exercise of its rights under applicable law and/or this Agreement including, without limitation, the intervening law/change in law provisions in this Agreement; or (iii) to the extent otherwise permitted in this Agreement.
- 2.13.3 AT&T-13STATE may elect to conduct upgrades or conversions for the improvement of its network or systems. During such upgrades or conversions, CLEC orders for Lawful UNEs from affected wire center(s) may be suspended for a period of a few days prior and one day after the upgrade or conversion date, consistent with the suspension AT&T-13STATE places on itself for orders from its End Users and other CLEC customers.
- 2.13.4 CLEC will be solely responsible, at its own expense, for the overall design of its Telecommunications Services and for any redesigning or rearrangement of its Telecommunications Services which may be required because of changes in facilities, operations, or procedure of AT&T-13STATE, minimum network protection criteria, or operating or maintenance characteristics of the facilities.
- 2.14 Conditions for Access to Lawful UNES
- 2.14.1 In order to access and use Lawful UNES, CLEC must be a Telecommunications Carrier (Section 251(c)(3), and must use the Lawful UNE(s) for the provision of a Telecommunications Service (Section 251(c)(3)) as permitted by the FCC. Together, these conditions are the "Statutory Conditions" for access to Lawful UNES. Accordingly, CLEC hereby represents and warrants that it is a Telecommunications Carrier and that it will notify AT&T-13STATE immediately in writing if it ceases to be a Telecommunications Carrier. Failure to so notify AT&T-13STATE shall constitute material breach of this Agreement.
- 2.14.1.1 By way of example, use of a Lawful UNE (whether on a stand-alone basis, in combination with other UNES (Lawful or otherwise), with a network element possessed by CLEC, or otherwise) to provide service to CLEC or for other administrative purpose(s) does not constitute using a Lawful UNE pursuant to the Statutory Conditions.
- 2.14.1.2 By way of further example, CLEC may not access Lawful UNES for the exclusive provision of mobile wireless services, or long distance services or interexchange services (telecommunications service between different stations in different exchange areas).
- 2.14.2 Other conditions to accessing and using any Lawful UNE (whether on a stand-alone basis, in combination with other Lawful UNES, with a network element possessed by CLEC, or otherwise) may be applicable under lawful and effective FCC rules and associated lawful and effective FCC and judicial orders and will also apply.
- 2.15 New Combinations Involving Lawful UNES
- 2.15.1 Subject to the provisions hereof and upon CLEC request, AT&T-13STATE shall meet its combining obligations involving Lawful UNES as and to the extent required by FCC rules and orders, and Verizon Comm. Inc. v. FCC, 535 U.S. 467 (May 13, 2002) ("Verizon Comm. Inc.") and, to the extent not inconsistent therewith, the rules and orders of relevant state Commission and any other Applicable Law.

- 2.15.1.1 Any combining obligation is limited solely to combining of Lawful UNEs; accordingly, no other facilities, services or functionalities are subject to combining, including but not limited to facilities, services or functionalities that AT&T-13STATE might offer pursuant to Section 271 of the Act.
- 2.15.2 In the event that AT&T-13STATE denies a request to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC, AT&T-13STATE shall provide written notice to CLEC of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. In any dispute resolution proceeding, AT&T-13STATE shall have the burden to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, *Verizon Comm. Inc.* and the Agreement, including Section 2.15 of this Appendix.
- 2.15.3 In accordance with and subject to the provisions of this Section 2.15, including Section 2.15.3.2 and 2.15.5, the new Lawful UNE combinations, if any, set forth in the Schedule(s) – Lawful UNE Combinations attached and incorporated into this Appendix shall be made available to CLEC as specified in the specific Schedule for a particular State.
- 2.15.3.1 The Parties acknowledge that the United States Supreme Court in *Verizon Comm. Inc.* relied on the distinction between an incumbent local exchange carrier such as AT&T-13STATE being required to perform the functions necessary to combine Lawful UNEs and to combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the time this Appendix was agreed-to by the Parties, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, AT&T-13STATE is willing to perform the actions necessary to also complete the actual physical combination for those new Lawful UNE combinations, if any, set forth in the Schedule(s) – Lawful UNE Combinations to this Appendix, subject to the following:
- 2.15.3.1.1 Section 2.15, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, AT&T-13STATE from pursuing any of its rights, remedies or arguments, including but not limited to those with respect to *Verizon Comm. Inc.*, the remand thereof, or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by AT&T-13STATE. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect AT&T-13STATE from taking any position with respect to combinations including Lawful UNEs or any issue or subject addressed or related thereto.
- 2.15.3.1.2 Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's combining obligations, AT&T-13STATE shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Agreement or otherwise, and CLEC shall thereafter be solely responsible for any such non-included functions or other actions. This Section 2.15.3.1.2 shall apply in accordance with its terms, regardless of change in law, intervening law or other similarly purposed provision of the Agreement and, concomitantly, the first sentence of this Section 2.15.3.1.2 shall not affect the applicability of any such provisions in situations not covered by that first sentence.
- 2.15.3.1.3 Without affecting the application of Section 2.15.3.1.2 (which shall apply in accordance with its provisions), upon notice by AT&T-13STATE, the Parties

shall engage in good faith negotiations to amend the Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine Lawful UNES and combine Lawful UNES with elements possessed by a requesting Telecommunications Carrier, and to eliminate any AT&T-13STATE obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those functions necessary to combine Lawful UNES and combine Lawful UNES with elements possessed by a requesting Telecommunications Carrier, shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.

- 2.15.3.2 A new Lawful UNE combination, if any, listed on a Schedule –Lawful UNE Combinations does not imply or otherwise indicate the availability of related support system capabilities, including without limitation, whether electronic ordering is available for any particular included new Lawful UNE combination in one or more States. Where electronic ordering is not available, manual ordering shall be used.
- 2.15.3.3 For a new Lawful UNE combination, if any, listed on a Schedule – Lawful UNE Combinations, CLEC shall issue appropriate service requests. These requests will be processed by AT&T-13STATE, and CLEC will be charged the applicable Lawful UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual Lawful UNE and cross connect ordered.
- 2.15.3.4 Upon notice by AT&T-13STATE, the Parties shall engage in good faith negotiations to amend the Agreement to include a fee(s) for any work performed by AT&T-13STATE in providing the new Lawful UNE combinations, if any, set forth in Schedule(s) – Lawful UNE Combinations, which work is not covered by the charges applicable per Section 2.16.3.3. For any such work done by AT&T-13STATE under Section 2.16.1, any such fee(s) shall be a reasonable cost-based fee, and shall be calculated using the Time and Material charges as reflected in State-specific pricing. For any such work that is not so required to be done by AT&T-13STATE, any such fee(s) shall be at a market-based rate. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties concerning any such fee(s) shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.
- 2.15.4 In accordance with and subject to the provisions of this Section 2.15, any request not included in Section 2.15.3 in which CLEC wants AT&T-13STATE to perform the functions necessary to combine Lawful UNES or to perform the functions necessary to combine Lawful UNES with elements possessed by CLEC (as well as requests where CLEC also wants AT&T-13STATE to complete the actual combination), shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Agreement.
- 2.15.4.1 In any such BFR, CLEC must designate among other things the Lawful UNE(s) sought to be combined and the needed location(s), the order in which the Lawful UNES and any CLEC elements are to be connected, and how each connection (e.g., cross-connected) is to be made between an AT&T-13STATE Lawful UNE and the lawful network element(s) possessed by CLEC.
- 2.15.4.2 In addition to any other applicable charges, CLEC shall be charged a reasonable cost-based fee for any combining work done by AT&T-13STATE under Section 2.15.1. Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. AT&T-13STATE's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified combining. With respect to a BFR in which CLEC

requests **AT&T-13STATE** to perform work not required by Section 2.15.1, CLEC shall be charged a market-based rate for any such work.

2.15.5 Without affecting the other provisions hereof, the Lawful UNE combining obligations referenced in this Section 2.15 apply only in situations where each of the following is met:

2.15.5.1 it is technically feasible, including that network reliability and security would not be impaired;

2.15.5.2 **AT&T-13STATE**'s ability to retain responsibility for the management, control, and performance of its network would not be impaired;

2.15.5.3 **AT&T-13STATE** would not be placed at a disadvantage in operating its own network;

2.15.5.4 it would not undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with **AT&T-13STATE**'s network; and

2.15.5.5 CLEC is

2.15.5.5.1 unable to make the combination itself; or

2.15.5.5.2 a new entrant and is unaware that it needs to combine certain Lawful UNEs to provide a Telecommunications Service, but such obligation under this Section 2.15.5.5 ceases if **AT&T-13STATE** informs CLEC of such need to combine.

2.15.6 For purposes of Section 2.15.5.5 and without limiting other instances in which CLEC may be able to make a combination itself, CLEC is deemed able to make a combination itself when the Lawful UNE(s) sought to be combined are available to CLEC, including without limitation:

2.15.6.1 at an **AT&T-13STATE** premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement;

2.15.6.2 for **AT&T CALIFORNIA** only, within an adjacent location arrangement, if and as permitted by this Agreement.

2.15.7 Section 2.15.5.5 shall only begin to apply thirty (30) days after notice by **AT&T-13STATE** to CLEC. Thereafter, **AT&T-13STATE** may invoke Section 2.15.5.5 with respect to any request for a combination involving Lawful UNEs.

2.16 Conversion of Wholesale Services to Lawful UNEs

2.16.1 Upon request, **AT&T-13STATE** shall convert a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, that is available to CLEC under terms and conditions set forth in this Appendix, so long as the CLEC and the wholesale service, or group of wholesale services, and the Lawful UNEs, or combination of Lawful UNEs, that would result from the conversion meet the eligibility criteria that may be applicable. (By way of example only, the statutory conditions would constitute one such eligibility criterion.)

2.16.2 Where processes for the conversion requested pursuant to this Appendix are not already in place, **AT&T-13STATE** will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.

2.16.3 Except as agreed to by the Parties or otherwise provided hereunder, **AT&T-13STATE** shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and a UNE or combination of UNEs. **AT&T-13STATE** may charge applicable service order charges and record change charges.

2.16.4 This Section 2.16 only applies to situations where the wholesale service, or group of wholesale services, is comprised solely of Lawful UNEs offered or otherwise provided for in this Appendix.

2.16.5 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, CLEC shall not request such conversion or

continue using such the Lawful UNE or Lawful UNES that result from such conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a Lawful UNE or combination of Lawful UNES, or Commingled Arrangement (as defined herein), AT&T-13STATE may convert the Lawful UNE or Lawful UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon written notice to CLEC.

2.16.5.1 This Section 2.16.5 applies to any Lawful UNE or combination of Lawful UNES, including whether or not such Lawful UNE or combination of Lawful UNES had been previously converted from an AT&T-13STATE service.

2.16.5.2 AT&T-13STATE may exercise its rights provided for hereunder and those allowed by law in auditing compliance with any applicable eligibility criteria.

2.16.6 In requesting a conversion of an AT&T-13STATE service, CLEC must follow the guidelines and ordering requirements provided by AT&T-13STATE that are applicable to converting the particular AT&T-13STATE service sought to be converted.

2.16.7 Nothing contained in this Appendix or Agreement provides CLEC with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects AT&T-13STATE's ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges.

2.17 Commingling

2.17.1 "Commingling" means the connecting, attaching, or otherwise linking of a Lawful UNE, or a combination of Lawful UNES, to one or more facilities or services that CLEC has obtained at wholesale from AT&T-13STATE, or the combining of a Lawful UNE, or a combination of Lawful UNES, with one or more such facilities or services. "Commingling" means the act of commingling.

2.17.1.1 "Commingled Arrangement" means the arrangement created by Commingling.

2.17.1.2 Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an AT&T-12STATE offering pursuant to 47 U.S.C. § 271 that is not a Lawful UNE under 47 U.S.C. § 251(c)(3).

2.17.1.3 Commingling is not permitted, nor is AT&T-13STATE required to perform the functions necessary to Commingling, where the Commingled Arrangement (i) is not technically feasible, including that network reliability and security would be impaired; or (ii) would impair AT&T-13STATE's ability to retain responsibility for the management, control, and performance of its network; or (iii) would place AT&T-13STATE at a disadvantage in operating its own network; or (iv) would undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNES or to Interconnect with AT&T-13STATE's network.

2.17.1.4 Where processes for any Commingling requested pursuant to this Agreement (including, by way of example, for existing services sought to be converted to a Commingled Arrangement) are not already in place, AT&T-13STATE will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.

2.17.1.5 Any commingling obligation is limited solely to commingling of one or more facilities or services that CLEC has obtained at wholesale from AT&T-13STATE with Lawful UNES; accordingly, no other facilities, services or functionalities are subject to commingling, including but not limited to facilities, services or functionalities that AT&T-12STATE might offer pursuant to Section 271 of the Act.

2.17.2 Except as provided in Section 2 and, further, subject to the other provisions of this Agreement, AT&T-13STATE shall permit CLEC to Commingling a Lawful UNE or a combination of Lawful UNES with facilities or services obtained at wholesale from AT&T-13STATE to the extent required by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders.

- 2.17.3 Upon request, and subject to this Section 2, AT&T-13STATE shall perform the functions necessary to Commingle a Lawful UNE or a combination of Lawful UNES with one or more facilities or services that CLEC has obtained at wholesale from AT&T-13STATE (as well as requests where CLEC also wants AT&T-13STATE to complete the actual Commingling), except that AT&T-13STATE shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) Section 2.17.1.3 applies to the Commingled Arrangement sought by CLEC; or (ii) the CLEC is able to perform those functions itself. Where CLEC is a new entrant and is unaware that it needs to Commingle to provide a Telecommunications Service, AT&T-13STATE's obligation to commingle ceases if AT&T-13STATE informs CLEC of such need to Commingle.
- 2.17.3.1 For purposes of Section 2.17.3 and without limiting other instances in which CLEC may be able to Commingle for itself, CLEC is deemed able to Commingle for itself when the Lawful UNE(s), Lawful UNE combination, and facilities or services obtained at wholesale from AT&T-13STATE are available to CLEC, including without limitation:
- 2.17.3.1.1 at an AT&T-13STATE central office where CLEC is physically collocated or has an on-site adjacent collocation arrangement;
- 2.17.3.1.2 for AT&T CALIFORNIA only, within an adjacent location arrangement, if and as permitted by this Agreement.
- 2.17.3.2 Section 2.17.3(ii) shall only begin to apply thirty (30) days after notice by AT&T-13STATE to CLEC. Thereafter, AT&T-13STATE may invoke Section 2.17.3(ii) with respect to any request for Commingling.
- 2.17.4 In accordance with and subject to the provisions of this Section 2.17, any request by CLEC for AT&T-13STATE to perform the functions necessary to Commingle (as well as requests where CLEC also wants AT&T-13STATE to complete the actual Commingling), shall be made by CLEC in accordance with this Agreement.
- 2.17.4.1 AT&T-13STATE is developing a list of Commingled Arrangements that will be available for ordering, which list will be made available in the CLEC Handbook and posted on "CLEC Online." Once that list is included in the CLEC Handbook or posted, whichever is earlier, CLEC will be able to submit orders for any Commingled Arrangement on that list. The list may be modified, from time to time.
- 2.17.4.2 Any CLEC request for a Commingled Arrangement not found on the then-existing list of orderable Commingled Arrangements must be submitted via the bona fide request (BFR) process. In any such BFR, CLEC must designate among other things the Lawful UNE(s), combination of Lawful UNES, and the facilities or services that CLEC has obtained at wholesale from AT&T-13STATE sought to be Commingled and the needed location(s), the order in which such Lawful UNES, such combinations of Lawful UNES, and such facilities and services are to be Commingled, and how each connection (e.g., cross-connected) is to be made between them.
- 2.17.4.2.1 In addition to any other applicable charges, CLEC shall be charged a reasonable fee for any Commingling work done by AT&T-13STATE under this Section 2.17 (including performing the actual Commingling). Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. AT&T-13STATE's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified Commingling. With respect to a BFR in which CLEC requests AT&T-13STATE to perform work not required by this Section 2.17.4, CLEC shall be charged a market-based rate for any such work.
- 2.17.4.3 AT&T-13STATE shall charge the appropriate non-recurring rates as set forth in the pricing schedule(s) applicable to the Lawful UNES (or Lawful UNE combinations) that are Commingled on a Lawful UNE-by-Lawful UNE basis, and for the facilities and services that are Commingled (under this Section 2) on a facility-by-facility, service-by-service basis,

including without limitation for the type of service and activity being requested to create the Commingled Arrangement.

- 2.17.5 **AT&T-13STATE** shall not be required to, and shall not, provide “ratcheting” as a result of Commingling or a Commingled Arrangement. As a general matter, “ratcheting” is a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate. **AT&T-13STATE** shall charge the rates for Lawful UNES (or Lawful UNE combinations) Commingled with facilities or services obtained at wholesale (including for example special access services) on an element-by-element basis, and such facilities and services on a facility-by-facility, service-by-service basis.
- 2.17.6 Nothing in this Agreement shall impose any obligation on **AT&T-13STATE** to allow or otherwise permit Commingling, a Commingled Arrangement, or to perform the functions necessary to Commingle, or to allow or otherwise permit CLEC to Commingle or to make a Commingled Arrangement, beyond those obligations imposed by the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. The preceding includes without limitation that **AT&T-13STATE** shall not be obligated to Commingle network elements that do not constitute Lawful UNES, or where Lawful UNES are not requested for permissible purposes. If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Lawful UNE involved or to be involved in a Commingled Arrangement, CLEC shall not request such Commingled Arrangement or continue using such Commingled Arrangement.
- 2.17.7 In the event that Commingling also involves **AT&T-13STATE** performing the functions necessary to combine Lawful UNES (e.g., make a new combination of Lawful UNES), including making the actual Lawful UNE combination, then Section 2.16 shall govern with respect to that Lawful UNE combining aspect of that particular Commingling and/or Commingled Arrangement.
- 2.17.8 Subject to this 2.17, **AT&T-13STATE** shall not deny access to a Lawful UNE or a combination of Lawful UNES on the grounds that one or more of the Lawful UNES is connected to, attached to, linked to, or combined with, a facility or service obtained at wholesale from **AT&T-13STATE**.
- 2.17.9 Commingling in its entirety (including its definition, the ability of CLEC to Commingle, **AT&T-12STATE**'s obligation to perform the functions necessary to Commingle, and Commingled Arrangements) shall not apply to or otherwise include, involve or encompass **AT&T-12STATE** offerings pursuant to 47 U.S.C. § 271 that are not Lawful UNES under 47 U.S.C. § 251(c)(3).
- 2.18 **Mandatory Eligibility Criteria for Access to Certain Lawful UNES**
- 2.18.1 Except as provided below in this Section 2.18 or elsewhere in the Agreement and subject to this Section and Section 2.16, **Conversion of Wholesale Services to UNES**, of this Appendix, **AT&T-13STATE** shall provide access to UNES and combinations of UNES without regard to whether the CLEC seeks access to the UNES to establish a new circuit or to convert an existing circuit from a service to UNES.
- 2.18.1.1 “Enhanced Extended Link” or “EEL” means a UNE combination consisting of an unbundled loop(s) and Unbundled Dedicated Transport, together with any facilities, equipment, or functions necessary to combine those UNES (including, for example, multiplexing capabilities). An DS1 or higher EEL is required to terminate in a collocation arrangement that meets the requirements of Section 2.18.3 of this Appendix (e.g., the end of the Unbundled Dedicated Transport that is opposite the end connected to the UNE local loop, must be accessed by CLEC at such a CLEC collocation arrangement via a cross-connect).
- 2.18.2 **AT&T-13STATE** is not obligated, and shall not, provide access to (1) an unbundled DS1 loop in combination, or Commingled, with a dedicated DS1 transport facility or service or a dedicated DS3 or higher transport facility or service, or an unbundled DS3 loop in combination, or Commingled, with a dedicated DS3 or higher transport facility or service, or (2) an unbundled dedicated DS1 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled dedicated DS3 transport facility in combination, or Commingled, with an

unbundled DS1 loop or a DS1 channel termination service, or to an unbundled DS3 loop or a DS3 or higher channel termination service (collectively, the "Included Arrangements"), unless CLEC certifies that all of the following conditions are met with respect to the arrangement being sought:

- 2.18.2.1 CLEC (directly and not via an Affiliate) has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.
- 2.18.2.2 The following criteria are satisfied for each Included Arrangement, including without limitation each DS1 circuit, each DS3 circuit, each DS1 EEL and each DS1 equivalent circuit on a DS3 EEL:
 - 2.18.2.2.1 Each circuit to be provided to each End User will be assigned a local telephone number (NPA-NXX-XXXX) that is associated with local service provided within an **AT&T-13STATE** local service area and within the LATA where the circuit is located ("Local Telephone Number"), prior to the provision of service over that circuit (and for each circuit, CLEC will provide the corresponding Local Telephone Number(s) as part of the required certification); and
 - 2.18.2.2.2 Each DS1-equivalent circuit on a DS3 EEL or on any other Included Arrangement, must have its own Local Telephone Number assignment, so that each DS3 must have at least 28 Local voice Telephone Numbers assigned to it; and
 - 2.18.2.2.3 Each circuit to be provided to each End User will have 911 or E911 capability prior to the provision of service over that circuit; and
 - 2.18.2.2.4 Each circuit to be provided to each End User will terminate in a collocation arrangement that meets the requirements of Section 2.18.3 of this Appendix Lawful UNE; and
 - 2.18.2.2.5 Each circuit to be provided to each End User will be served by an interconnection trunk that meets the requirements of Section 2.18.4 of this Appendix Lawful UNE; and
 - 2.18.2.2.6 For each 24 DS1 EELs, or other facilities having equivalent capacity, CLEC will have at least one active DS1 local service interconnection trunk that meets the requirements of Section 2.18.4 of this Appendix; and
 - 2.18.2.2.7 Each circuit to be provided to each End User will be served by a switch capable of providing local voice traffic.

By way of example only, the application of the foregoing conditions means that a wholesale or retail DS1 or higher service/circuit (whether intrastate or interstate in nature or jurisdiction) comprised, in whole or in part, of a UNE local loop-Unbundled Dedicated Transport(s)-UNE local loop (with or without multiplexing) cannot qualify for at least the reason that the UNE local loop-Unbundled Dedicated Transport combination included within that service/circuit does not terminate to a collocation arrangement. Accordingly, **AT&T-13STATE** shall not be required to provide, and shall not provide, any UNE combination of a UNE local loop and Unbundled Dedicated Transport at DS1 or higher (whether as a UNE combination by themselves, with a network element possessed by CLEC, or pursuant to Commingling, or whether as a new arrangement or from a conversion of an existing service/circuit) that does not terminate to a collocation arrangement that meets the requirements of Section 2.18.3 of this Appendix Lawful UNE. Section 2.18.2 shall apply in any arrangement that includes more than one of the UNES, facilities, or services set forth in that Section, including, without limitation, to any arrangement where one or more UNES, facilities, or services not set forth in Section 2.18.2 is also included or otherwise used in that arrangement (whether as part of a UNE combination, Commingled Arrangement, or otherwise), and irrespective of the placement or sequence of them.

- 2.18.3 A collocation arrangement meets the requirements of Section 2.18 of this Appendix Lawful UNE if it is:
- 2.18.3.1 Established pursuant to Section 251(c)(6) of the Act and located at AT&T-13STATE's premises within the same LATA as the End User's premises, when AT&T-13STATE is not the collocator; or
 - 2.18.3.2 Located at a third party's premises within the same LATA as the End User's premises, when AT&T-13STATE is the collocator.
- 2.18.4 An interconnection trunk meets the requirements of Sections 2.18.2.2.5 and 2.18.2.2.6 of this Appendix Lawful UNE if CLEC will transmit the calling party's Local Telephone Number in connection with calls exchanged over the trunk, and the trunk is located in the same LATA as the End User premises served by the Included Arrangement.
- 2.18.5 For a new circuit to which Section 2.18.2 applies, CLEC may initiate the ordering process if CLEC certifies that it will not begin to provide any service over that circuit until a Local Telephone Number is assigned and 911/E911 capability is provided, as required by Section 2.18.2.2.1 and Section 2.18.2.2.3, respectively. In such case, CLEC shall satisfy Section 2.18.2.2.1 and/or Section 2.18.2.2.3 if it assigns the required Local Telephone Number(s), and implements 911/E911 capability, within 30 days after AT&T-13STATE provisions such new circuit. CLEC must provide AT&T-13STATE with sufficient proof that such assignment and/or implementation has occurred by the end of such 30th day.
- 2.18.5.1 Section 2.18.5 does not apply to existing circuits to which Section 2.18.2 applies, including conversions or migrations (e.g., CLEC shall not be excused from meeting the Section 2.18.2.2.1 and Section 2.18.2.2.3 requirements for existing circuits at the time it initiates the ordering process).
- 2.18.6 CLEC hereby agrees that by submitting an order to AT&T-13STATE for an Included Arrangement (whether new, as a result of a requested conversion, or otherwise), CLEC is certifying that it meets and will continue to meet the requirements of Section 2.18 as to such Included Arrangement(s) on a circuit-by-circuit/service-by-service/Included Arrangement-by-Included Arrangement basis. Such certification-by-order shall have the same weight and effect as a separate certification. and certification-by-order shall not diminish or otherwise affect CLEC's obligation to meet and to continue to comply with the criteria or certification requirements set forth in this Section 2.18.
- 2.18.6.1 If the information previously provided in a certification is inaccurate (or ceases to be accurate), CLEC shall update such certification promptly with AT&T-13STATE.
- 2.18.7 In addition to any other audit rights provided for this Agreement and those allowed by law, AT&T-13STATE may obtain and pay for an independent auditor to audit CLEC, on an annual basis, applied on a State-by-State basis, for compliance with this Section 2.18. For purposes of calculating and applying an "annual basis", it means for a State a consecutive 12-month period, beginning upon AT&T-13STATE's written notice that an audit will be performed for that State, subject to Section 2.18.7.4 of this Section.
- 2.18.7.1 Unless otherwise agreed by the Parties (including at the time of the audit), the independent auditor shall perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the qualifying service eligibility criteria.
 - 2.18.7.2 The independent auditor's report will conclude whether CLEC complied in all material respects with this Section 2.18.
 - 2.18.7.3 Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.

- 2.18.7.4 To the extent the independent auditor's report concludes that CLEC failed to comply with this Section 2.18, CLEC must true-up any difference in payments beginning from the date that the non-compliant circuit was established as a UNE/UNE combination, in whole or in part (notwithstanding any other provision hereof), CLEC must convert the UNE or UNE combination, or Commingled Arrangement, to an equivalent or substantially similar wholesale service, or group of wholesale services, (and AT&T-13STATE may initiate and affect such a conversion on its own without any further consent by CLEC), and CLEC shall timely make the correct payments on a going-forward basis, and all applicable remedies for failure to make such payments shall be available to AT&T-13STATE. In no event shall rates set under Section 252(d)(1) of the Act apply for the use of any UNE for any period in which CLEC does not meet the conditions set forth in this Section 2.18 for that UNE, arrangement, or circuit, as the case may be. Also, the "annual basis" calculation and application shall be immediately reset, e.g., AT&T-13STATE shall not have to wait the remaining part of the consecutive 12-month period before it is permitted to audit again in that State.
- 2.18.7.4.1 To the extent that the independent auditor's report concludes that CLEC failed to comply in all material respects with this Section 2.18, CLEC must reimburse AT&T-13STATE for the cost of the independent auditor and for AT&T-13STATE's costs in the same manner and using the same methodology and rates that AT&T-13STATE is required to pay CLEC's costs under Section 2.18.7.4.2.
- 2.18.7.4.2 To the extent the independent auditor's report concludes that the CLEC complied in all material respects with this Section 2.18, AT&T-13STATE must reimburse CLEC for its reasonable staff time and other reasonable costs associated in responding to the audit (e.g., collecting data in response to the auditor's inquiries, meeting for interviews, etc.).
- 2.18.7.5 CLEC will maintain the appropriate documentation to support its eligibility certifications, including without limitation call detail records, Local Telephone Number assignment documentation, and switch assignment documentation.
- 2.18.8 Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, CLEC shall fully comply with this Section 2.18 in all cases and, further, the failure of AT&T-13STATE to require such compliance, including if AT&T-13STATE provides a circuit(s), an EEL(s), or a Commingled circuit, that does not meet any eligibility criteria, including those in this Section 2.18, shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.
- 2.19 Where processes for any Lawful UNE requested pursuant to this Agreement, whether alone or in conjunction with any other UNE(s) or service(s), are not already in place, AT&T-13STATE will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.
- 2.20 AT&T-13STATE will combine Lawful UNES, combine Lawful UNE(s) with network elements possessed by CLEC, and/or Commingle only as set forth in this Appendix Lawful UNES.
- 2.21 The Parties intend that this Appendix Lawful UNES contains the sole and exclusive terms and conditions by which CLEC will obtain Lawful UNES from AT&T-13STATE. Accordingly, except as may be specifically permitted by this Appendix Lawful UNES, and then only to the extent permitted, CLEC and its affiliated entities hereby fully and irrevocably waive any right or ability any of them might have to purchase any unbundled network element (whether on a stand-alone basis, in combination with other UNES (Lawful or otherwise), with a network element possessed by CLEC, or pursuant to Commingling or otherwise) directly from any AT&T-13STATE tariff, to the extent such tariff(s) is/are available, and agree not to so purchase or attempt to so purchase from any such tariff. Without affecting the application or interpretation of any other

provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of AT&T-13STATE to enforce the foregoing (including if AT&T-13STATE fails to reject or otherwise block orders for, or provides or continues to provide, unbundled network elements, Lawful or otherwise, under tariff) shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder. At its option, AT&T-13STATE may either reject any such order submitted under tariff, or without the need for any further contact with or consent from CLEC, AT&T-13STATE may process any such order as being submitted under this Appendix Lawful UNEs and, further, may convert any element provided under tariff, to this Appendix Lawful UNEs, effective as of the later in time of the (i) Effective Date of this Agreement/Amendment, or (ii) the submission of the order by CLEC.

3. ACCESS TO LAWFUL UNE CONNECTION METHODS

- 3.1 Subject to Section 2 of this Appendix Lawful UNEs, AT&T-13STATE shall provide Access to Lawful UNE without compromising the security, integrity, and reliability of the public switched network, as well as to minimize potential service disruptions.
 - 3.1.1 In the AT&T-13STATE premises where CLEC is Physically Collocated (e.g., in a caged, cageless or shared cage arrangement) or Virtually Collocated (see Physical and Virtual Collocation Appendices) AT&T-13STATE will extend AT&T-13STATE Lawful UNEs via-cross connects to CLEC's Physical or Virtual Collocation Point of Termination (POT), within the same AT&T-13STATE premises where the Lawful UNEs are located.
 - 3.1.2 CLEC shall be responsible for initial testing and trouble sectionalization of facilities containing CLEC installed cross connects.
 - 3.1.3 CLEC shall refer trouble sectionalized in the AT&T-13STATE Lawful UNE to AT&T-13STATE.
 - 3.1.4 Prior to AT&T-13STATE providing access to Lawful UNEs under this Appendix, CLEC and AT&T-13STATE shall provide each other with a point of contact for overall coordination.
 - 3.1.5 CLEC shall designate each Lawful UNE being ordered from AT&T-13STATE. CLEC shall provide an interface to receive assignment information from AT&T-13STATE regarding location of the affected Lawful UNEs. This interface may be manual or mechanized.
 - 3.1.6 AT&T-13STATE will provide CLEC with contact numbers as necessary to resolve assignment conflicts encountered. All contact with AT&T-13STATE shall be referred to such contact numbers.
- 3.2 Any other method may be requested by the Bona Fide Request Process outlined in Section 6 below.

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6. BONA FIDE REQUEST

- 6.1 Subject to Section 2, AT&T-13STATE shall process BFR requests under the following terms and conditions in this subsection.
- 6.2 The Bona Fide Request process described in Item I of this Section 6 applies to each Bona Fide Request submitted in the AT&T-10STATE and AT&T NEVADA Territory. The Bona Fide Request process described in Item II of this Section 6 shall apply to each Bona Fide Request submitted in the AT&T CONNECTICUT Territory and the Bona Fide Request Process described in Item III of this Section shall apply to each Bona Fide Request submitted in the AT&T CALIFORNIA Territory. If CLEC submits the same Request in more than one Territory that requires such Request to be processed under more than one Item in this Section 6 (e.g., in Territories that have different processes), separate BFRs shall be required. For purposes of this Appendix, a "Business Day" means Monday through Friday, excluding Holidays observed by AT&T-13STATE.

6.3 Item I

AT&T-10STATE, AT&T NEVADA Bona Fide Request Process

- 6.3.1 A Bona Fide Request ("BFR") is the process by which CLEC may request AT&T-10STATE, AT&T NEVADA to provide CLEC access to an additional or new, undefined Lawful UNE, Lawful UNE Combination and/or Lawful Commingling requests that constitute or involve a Lawful UNE required to be provided by AT&T-10STATE, AT&T NEVADA but that is not available under this Agreement at the time of CLEC's request.
- 6.3.2 The BFR process set forth herein does not apply to those services requested pursuant to Report & Order and Notice of Proposed Rulemaking 91-141 (rel. Oct. 19, 1992) paragraph 259 and n. 603 and subsequent rulings.
- 6.3.3 All BFRs must be submitted with a BFR Application Form in accordance with the specifications and processes set forth in the respective sections of the CLEC Handbook. Included with the Application CLEC shall provide a technical description of each requested Lawful UNE, drawings when applicable, the location(s) where needed, the date required, and the projected quantity to be ordered with a 3 year forecast.
- 6.3.4 CLEC is responsible for all costs incurred by AT&T-10STATE, AT&T NEVADA to review, analyze and process a BFR. When submitting a BFR Application Form, CLEC has two options to compensate AT&T-10STATE, AT&T NEVADA for its costs incurred to complete the Preliminary Analysis of the BFR:
- 6.3.4.1 Include with its BFR Application Form a \$2,000 deposit to cover AT&T-10STATE, AT&T NEVADA's preliminary evaluation costs, in which case AT&T-10STATE, AT&T NEVADA may not charge CLEC in excess of \$2,000 to complete the Preliminary Analysis; or
- 6.3.4.2 Not make the \$2,000 deposit, in which case CLEC shall be responsible for all preliminary evaluation costs incurred by AT&T-10STATE, AT&T NEVADA to complete the preliminary Analysis (regardless of whether such costs are greater or less than \$2,000).
- 6.3.5 If CLEC submits a \$2,000 deposit with its BFR, and AT&T-10STATE, AT&T NEVADA is not able to process the Request or determines that the Request does not qualify for BFR treatment, then AT&T-10STATE, AT&T NEVADA will return the \$2,000 deposit to CLEC. Similarly, if the costs incurred to complete the Preliminary Analysis are less than \$2,000, the balance of the deposit will, at the option of CLEC, either be refunded or credited toward additional developmental costs authorized by CLEC.
- 6.3.6 Upon written notice, CLEC may cancel a BFR at any time, but will pay AT&T-10STATE, AT&T NEVADA its reasonable and demonstrable costs of processing and/or implementing the BFR up to and including the date AT&T-10STATE, AT&T NEVADA received notice of cancellation. If cancellation occurs prior to completion of the preliminary evaluation, and a \$2,000 deposit has been made by CLEC, and the reasonable and demonstrable costs are less than \$2,000, the remaining balance of the deposit will be, at the option of the CLEC, either returned to CLEC or credited toward additional developmental costs authorized by CLEC.
- 6.3.7 AT&T-10STATE, AT&T NEVADA will promptly consider and analyze each BFR it receives. Within ten (10) Business Days of its receipt AT&T-10STATE, AT&T NEVADA will acknowledge receipt of the BFR and in such acknowledgement advise CLEC of the need for any further information needed to process the Request. CLEC acknowledges that the time intervals set forth in this Appendix begins once AT&T-10STATE, AT&T NEVADA has received a complete and accurate BFR Application Form and, if applicable, \$2,000 deposit.
- 6.3.8 Except under extraordinary circumstances, within thirty (30) calendar days of its receipt of a complete and accurate BFR AT&T-10STATE, AT&T NEVADA will provide to CLEC a preliminary analysis of such Request (the "Preliminary Analysis"). The Preliminary Analysis will (i) indicate that AT&T-10STATE, AT&T NEVADA will offer the Request to CLEC or (ii) advise CLEC that AT&T-10STATE, AT&T NEVADA will not offer the Request. If AT&T-10STATE, AT&T NEVADA indicates

it will not offer the Request, AT&T-10STATE, AT&T NEVADA will provide a detailed explanation for the denial. Possible explanations may be, but are not limited to: (i) access to the Request is not technically feasible, (ii) that the Request is not for a Lawful UNE, or is otherwise not required to be provided by AT&T-10STATE, AT&T NEVADA under the Act and/or, (iii) that the BFR is not the correct process for the request.

- 6.3.9 If the Preliminary Analysis indicates that AT&T-10STATE, AT&T NEVADA will offer the Request, CLEC may, at its discretion, provide written authorization for AT&T-10STATE, AT&T NEVADA to develop the Request and prepare a "BFR Quote". The BFR Quote shall, as applicable, include (i) the first date of availability, (ii) installation intervals, (iii) applicable rates (recurring, nonrecurring and other), (iv) BFR development and processing costs and (v) terms and conditions by which the Request shall be made available. CLEC's written authorization to develop the BFR Quote must be received by AT&T-10STATE, AT&T NEVADA within thirty (30) calendar days of CLEC's receipt of the Preliminary Analysis. If no authorization to proceed is received within such thirty (30) calendar day period, the BFR will be deemed canceled and CLEC will pay to AT&T-10STATE, AT&T NEVADA all demonstrable costs as set forth above. Any request by CLEC for AT&T-10STATE, AT&T NEVADA to proceed with a Request received after the thirty (30) calendar day window will require CLEC to submit a new BFR.
- 6.3.10 As soon as feasible, but not more than ninety (90) calendar days after its receipt of authorization to develop the BFR Quote, AT&T-10STATE, AT&T NEVADA shall provide to CLEC a BFR Quote.
- 6.3.11 Within thirty (30) calendar days of its receipt of the BFR Quote, CLEC must either (i) confirm its order pursuant to the BFR Quote (ii) cancel its BFR and reimburse AT&T-10STATE, AT&T NEVADA for its costs incurred up to the date of cancellation, or (iii) if it believes the BFR Quote is inconsistent with the requirements of the Act and/or this Appendix, exercise its rights under the Dispute Resolution Process set forth in the General Terms and Conditions of this Agreement. If AT&T-10STATE, AT&T NEVADA does not receive notice of any of the foregoing within such thirty (30) calendar day period, the BFR shall be deemed canceled. CLEC shall be responsible to reimburse AT&T-10STATE, AT&T NEVADA for its costs incurred up to the date of cancellation (whether affirmatively canceled or deemed canceled by CLEC).
- 6.3.12 Unless CLEC agrees otherwise, all rates and costs quoted or invoiced herein shall be consistent with the pricing principles of the Act.
- 6.3.13 If a Party believes that the other Party is not requesting, negotiating or processing a BFR in good faith and/or as required by the Act, or if a Party disputes a determination, or price or cost quote, such Party may seek relief pursuant to the Dispute Resolution Process set forth in the General Terms and Conditions section of this Agreement.

6.4 Item II

AT&T CONNECTICUT Bona Fide Request Process

- 6.4.1 The Bona Fide Request provisions set forth in 6.3 Item I shall apply to BFRs submitted to AT&T CONNECTICUT, with the following exceptions:
- 6.4.2 Section 6.3.1 is amended to add the following: A CLEC may submit a BFR to request new Lawful UNES, provided the request is not covered by one of the following conditions:
- 6.4.2.1 The Lawful UNES requested have not previously been identified or defined by the Department of Public Utility Control (DPUC), the Federal Communications Commission, the CLEC's approved interconnection agreement, or in the listings of combinations in Docket No. 98-02-01, DPUC Investigation into Rebundling of Telephone Company Network Elements, August 17, 1998.
- 6.4.2.2 The Lawful UNES requested are not currently deployed by an incumbent local exchange carrier in another jurisdiction or deemed acceptable for deployment by another state Commission or an industry standards body.

6.4.2.3 The Lawful UNEs requested are not included in a Telco tariffed offering as an existing capability or functional equivalent.

6.4.2.4 If the request is covered by one of the conditions listed above, AT&T CONNECTICUT will make these items generally available.

6.4.3 Sections 6.3.3 and 6.3.4 are amended as follows: No charges apply for AT&T CONNECTICUT to prepare the Preliminary Analysis.

6.4.4 Section 6.3.6 is amended as follows: Cancellation charges will not apply if the written notice of cancellation is received by AT&T CONNECTICUT after AT&T CONNECTICUT submits its Preliminary Analysis to CLEC but before CLEC's request for the BFR Quote. Cancellation charges will apply after CLEC submits its request for AT&T CONNECTICUT to provide a BFR Quote, but before the BFR Quote is provided to CLEC. CLEC shall be liable for reimbursement of all actual costs in connection with developing the BFR Quote incurred up to the time AT&T CONNECTICUT receives the written notice of cancellation from CLEC. However, if AT&T CONNECTICUT receives notification from CLEC for cancellation of the BFR after receipt by CLEC of the BFR Quote, the cancellation charges shall not exceed the lesser of the actual costs incurred by AT&T CONNECTICUT or the estimate in the BFR Quote plus twenty percent (20%).

6.4.5 Section 6.3.7 is amended as follows: AT&T CONNECTICUT will promptly consider and analyze each BFR it receives. Within ten (10) Business Days of its receipt, AT&T CONNECTICUT will acknowledge receipt of the BFR and in such acknowledgement advise CLEC of the need for any further information needed to process the Request. CLEC acknowledges that the time intervals set forth in this Appendix begin once AT&T CONNECTICUT has received a complete and accurate BFR Application Form.

6.4.6 AT&T CONNECTICUT will apply standard tariffed Processing Fees (BFR development costs) according to the Connecticut Access Service Tariff 4.11.

6.4.7 For AT&T CONNECTICUT, under the Dispute Resolution Process (DRP), either Party may petition the Department for relief pursuant to its own processes and the Uniform Administrative Procedures Act regarding the issues raised during the BFR process. Upon request, a designated member of the Department staff may confer with both Parties orally or in person concerning the substance of the Parties' dispute, and may make such recommendations as he or she shall deem appropriate for consideration by both Parties to resolve expeditiously the issues in dispute. Any such participation by Department staff in such mediation shall not be construed in any subsequent proceeding as establishing precedent or any Formal position of the Department on the matter in dispute.

6.5 Item III

AT&T CALIFORNIA Bona Fide Request Process

6.5.1 The Bona Fide Request provisions set forth in 6.3 Item I shall apply to BFRs submitted to AT&T CALIFORNIA, with the following exceptions:

6.5.2 Section 6.3.1 is amended as follows: A Bona Fide Request ("BFR") is the process by which CLEC may request AT&T CALIFORNIA to provide CLEC access to an additional or new, undefined Lawful UNE.

6.5.3 Interconnection arrangement, or other (a "Request"), that is required to be provided by AT&T CALIFORNIA under the Act but is not available under this Agreement or defined in a generic appendix at the time of CLEC's request.

6.5.4 Section 6.3.3 is amended as follows: All BFRs must be submitted with a BFR/Interconnection or Network Element Application Form in accordance with the specifications and processes set forth in the sections of the Handbook.

* Section 6.5 is available only in the State of California. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS, Paragraph 2.10.1.

- 6.5.5 Section 6.3.8 is amended as follows: Except under extraordinary circumstances, within thirty (30) calendar days of its receipt of a complete and accurate BFR, AT&T CALIFORNIA will provide to CLEC a Preliminary Analysis of such Request. The Preliminary Analysis will confirm that AT&T CALIFORNIA will offer the request. The Preliminary Analysis provided by AT&T CALIFORNIA will include cost categories (material, labor and other) and high level costs for the request. AT&T CALIFORNIA will attempt to provide a “yes” response earlier than thirty (30) calendar days if possible. The costs will be sent by the 30th calendar day. When wholesale construction is required, costs will be provided within an additional twenty-four (24) calendar days (i.e., by the 54th calendar day).
- 6.5.6 If the BFR is denied, AT&T CALIFORNIA will notify CLEC within fifteen (15) calendar days. The reason for denial will accompany the notification. Reasons for denial may include, but are not limited to: 1) not technically feasible, 2) the BFR is not the appropriate process for the Request and there is a referral to the appropriate process, and/or 3) the Request does not qualify as a new Lawful UNE, interconnection or other arrangement required by law.
- 6.5.7 If AT&T CALIFORNIA refers CLEC to an alternate process, the details of the provision of the alternate process will accompany the notification. The details may include an application form for the alternate process and other documentation required for CLEC to submit the application for the alternate process.

7. NETWORK INTERFACE DEVICE

- 7.1 Subject to Section 2 of this Appendix Lawful UNE, AT&T-13STATE shall provide Lawful UNE Network Interface Device under the following terms and conditions in this subsection.
- 7.2 The Lawful UNE Network Interface Device (NID) is defined as any means of interconnection of End User premises wiring to AT&T-13STATE's distribution loop facilities, such as a cross connect device used for that purpose. Fundamentally, the Lawful UNE NID establishes the final (and official) network demarcation point between the loop and the End User's inside wire. Maintenance and control of the End User's inside wiring (on the End User's side of the Lawful UNE NID) is under the control of the End User. Conflicts between telephone service providers for access to the End User's inside wire must be resolved by the End User. Pursuant to applicable FCC rules, AT&T-13STATE offers nondiscriminatory access to the Lawful UNE NID on an unbundled basis to CLEC for the provision of a Telecommunications Service. CLEC access to the Lawful UNE NID is offered as specified below (AT&T-12STATE) or by tariff (AT&T CONNECTICUT).
- 7.3 AT&T-12STATE will permit CLEC to connect its local loop facilities to End Users' premises wiring through AT&T-12STATE's Lawful UNE NID, or at any other technically feasible point.
- 7.4 CLEC may connect to the End User's premises wiring through the AT&T-12STATE Lawful UNE NID, as is, or at any other technically feasible point. Any repairs, upgrade and rearrangements to the Lawful UNE NID required by CLEC will be performed by AT&T-12STATE based on Time and Material charges. AT&T-12STATE, at the request of CLEC, will disconnect the AT&T-12STATE local loop from the Lawful UNE NID, at charges reflected in the state specific Appendix Pricing.
- 7.5 With respect to multiple dwelling units or multiple-unit business premises, CLEC will connect directly with the End User's premises wire, or may connect with the End User's premises wire via AT&T-12STATE's Lawful UNE NID where necessary.
- 7.6 The AT&T-12STATE Lawful UNE NIDs that CLEC uses under this Appendix will be existing Lawful UNE NIDs installed by AT&T-12STATE to serve its End Users.
- 7.7 CLEC shall not attach to or disconnect AT&T-12STATE's ground. CLEC shall not cut or disconnect AT&T-12STATE's loop from the Lawful UNE NID and/or its protector. CLEC shall not cut any other leads in the Lawful UNE NID.

- 7.8 CLEC, who has constructed its own NID at a premises and needs only to make contact with AT&T-12STATE's Lawful UNE NID, can disconnect the End User's wiring from AT&T-12STATE's Lawful UNE NID and reconnect it to the CLEC's NID.
- 7.9 If CLEC requests a different type of Lawful UNE NID not included with the loop, AT&T-12STATE will consider the requested type of Lawful UNE NID to be facilitated via the Bona Fide Request (BFR) Process.

8. LAWFUL UNE LOCAL LOOP

- 8.1 Subject to Section 2 of this Appendix Lawful UNES, AT&T-13STATE shall provide Lawful UNE Local Loop under the following terms and conditions in this subsection.
- 8.2 Pursuant to applicable FCC rules, a local loop network element is a transmission facility between a distribution frame (or its equivalent) in an AT&T-13STATE Central Office and the loop demarcation point at an End User premises. Therefore, consistent with the applicable FCC rules, AT&T-13STATE will make available the Lawful UNE Local Loops set forth herein below between a distribution frame (or its equivalent) in an AT&T-13STATE Central Office and the loop demarcation point at an End User premises. The Parties acknowledge and agree that AT&T-13STATE shall not be obligated to provision any of the Lawful UNE Local Loops provided for herein to cellular sites or to any other location that does not constitute an End User premises. Where applicable, the Lawful UNE Local Loop includes all wire within multiple dwelling and tenant buildings and campuses that provides access to End User premises wiring, provided such wire is owned and controlled by AT&T-13STATE. The Lawful UNE Local Loop includes all features, functions and capabilities of the transmission facility, including attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and CLEC requested line conditioning (subject to applicable charges in Appendix Pricing). The Lawful UNE Local Loop includes, but is not limited to copper loops (two-wire and four-wire analog voice-grade copper loops, digital copper loops [e.g., DS0s and integrated services digital network lines]), as well as two-wire and four-wire copper loops conditioned, at CLEC request and subject to charges, to transmit the digital signals needed to provide digital subscriber line services), Lawful UNE DS1 Digital Loops (where they have not been Declassified and subject to caps set forth in Section 8.3.4.4.1) and Lawful UNE DS3 Digital Loops (where they have not been Declassified and subject to caps set forth in Section 8.3.5.4.1), where such loops are deployed and available in AT&T-13STATE wire centers. CLEC agrees to operate each loop type within applicable technical standards and parameters.
- 8.2.1 When a Lawful UNE Local Loop is ordered to a high voltage area, the Parties understand and agree that such loop will require a High Voltage Protective Equipment (HVPE) (e.g., a positron), to ensure the safety and integrity of the network, the Parties' employees and/or representatives, and the CLEC's End User. Therefore, any request by CLEC for a Lawful UNE Local Loop to a high voltage area will be submitted by CLEC to AT&T-13STATE via the BFR process set forth in Section 6 hereinabove and CLEC shall be required to pay AT&T-13STATE for any HVPE that is provisioned by AT&T-13STATE to CLEC in connection with the CLEC's Lawful UNE Local Loop order to the high voltage area.
- 8.3 The following types of Lawful UNE Local Loops will be provided at the rates, terms, and conditions set forth in this Appendix (AT&T-12STATE) or by tariff (AT&T CONNECTICUT) and in the state specific Appendix Pricing (AT&T-12STATE) or by tariff (AT&T CONNECTICUT):
- 8.3.1 2-Wire Analog Loop
- 8.3.1.1 A 2-Wire analog loop is a transmission facility which supports analog voice frequency, voice band services with loop start signaling within the frequency spectrum of approximately 300 Hz and 3000 Hz.
- 8.3.1.2 If CLEC requests one or more Lawful UNE loops serviced by Integrated Digital Loop Carrier (IDLC) AT&T-12STATE will, where available, move the requested loop(s) to a spare, existing all-copper or universal digital loop carrier Lawful UNE loop at no additional charge to CLEC. If, however, no spare Lawful UNE loop is available, as defined above, AT&T-

12STATE will within two (2) business days of CLEC's request, notify CLEC of the lack of available facilities.

8.3.2 4-Wire Analog Loop

8.3.2.1 A 4-Wire analog loop is a transmission facility that provides a non-signaling voice band frequency spectrum of approximately 300 Hz to 3000 Hz. The 4-Wire analog loop provides separate transmit and receive paths.

8.3.3 2-Wire Digital Loop

8.3.3.1 A 2-Wire 160 Kbps digital loop is a transmission facility which supports Basic Rate ISDN (BRI) digital exchange services. The 2-Wire digital loop 160 Kbps supports usable bandwidth up to 160 Kbps, including overhead.

8.3.4 DS1 Digital Loop

8.3.4.1 A DS1 Digital Loop (DS1) is a transmission facility that will support DS1 service including Primary Rate ISDN (PRI). The DS1 Digital Loop supports usable bandwidth up to 1.544 Mbps.

8.3.4.2 DS1 Lawful UNE Digital Loops will be offered and/or provided only where such Loops have not been Declassified.

8.3.4.3 The procedures set forth in Section 8.4, below will apply in the event DS1 Digital Loops (DS1) are or have been Declassified.

8.3.4.4 DS1 Loop "Caps"

8.3.4.4.1 **AT&T-13STATE** is not obligated to provide to CLEC more than ten (10) DS1 Lawful UNE loops per requesting carrier to any single building in which DS1 Loops have not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Loops once CLEC has already obtained ten DS1 Lawful UNE Loops at the same building. If, notwithstanding this Section, CLEC submits such an order, at **AT&T-13STATE**'s option it may accept the order, but convert any requested DS1 Lawful UNE Loop(s) in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS1 Loop(s) as of the date of provisioning.

8.3.5 DS3 Digital Loop

8.3.5.1 The DS3 loop provides a digital, 45 Mbps transmission facility from the **AT&T-13STATE** Central Office to the end user premises.

8.3.5.2 DS3 Lawful UNE loops will be offered and/or provided only where such Loops have not been Declassified.

8.3.5.3 The procedures set forth in Section 8.4, below will apply in the event DS3 Digital Loops are or have been Declassified.

8.3.5.4 DS3 Loop "Caps"

8.3.5.4.1 **AT&T-13STATE** is not obligated to provide to CLEC more than one (1) DS3 Lawful UNE loop per requesting carrier to any single building in which DS3 Loops have not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Loops once CLEC has already obtained one DS3 Lawful UNE loop to the same building. If, notwithstanding this Section, CLEC submits such an order, at **AT&T-13STATE**'s option it may accept the order, but convert any requested DS3 Lawful UNE Loop(s) in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS3 Loop(s) as of the date of provisioning.

8.4 Declassification Procedure

- 8.4.1 **DS1.** Subject to the cap described in Section 8.3.4.4.1, AT&T-13STATE shall provide CLEC with access to a DS1 Lawful UNE Digital Loop, where available, to any building **not** served by a wire center with 60,000 or more business lines and four or more (4) fiber-based collocators. Once a wire center exceeds these thresholds, no future DS1 Digital Loop unbundling will be required in that wire center, or any buildings served by that wire center, and DS1 Digital Loops in that wire center, or any buildings served by that wire center, shall be Declassified and no longer available as Lawful UNES under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS1 Lawful UNE Digital Loops in such wire center(s), or any buildings served by such wire center(s).
- 8.4.2 **DS3.** Subject to the cap described in Section 8.3.5.4.1, AT&T-13STATE shall provide CLEC with access to a DS3 Lawful UNE Digital Loop, where available, to any building **not** served by a wire center with at least 38,000 business lines and at least four (4) fiber-based collocators. Once a wire center exceeds these thresholds, no future DS3 Digital Loop unbundling will be required in that wire center, or any buildings served by that wire center, and DS3 Digital Loops in that wire center, or any buildings served by that wire center, shall be Declassified, and no longer available as Lawful UNES under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS3 Lawful UNE Digital Loops in such wire center(s), or any buildings served by such wire center(s).
- 8.4.3 **Effect on Embedded Base.** Upon Declassification of DS1 Digital Loops or DS3 Digital Loops already purchased by CLEC as Lawful UNES under this Agreement, AT&T-13STATE will provide written notice to CLEC of such Declassification, and proceed in accordance with Section 2.5.
- 8.4.3.1 Products provided by AT&T-13STATE in conjunction with such Loops (e.g. Cross-Connects) shall also be subject to re-pricing under this Section and Section 2.5 where such Loops are Declassified.
- 8.4.4 The Parties agree that activity by AT&T-13STATE under this Section 8.4 shall not be subject to the Network Disclosure Rules.

8.5 Routine Network Modifications – Lawful UNE Local Loops

- 8.5.1 AT&T-13STATE shall make routine network modifications to Lawful UNE Local Loop facilities used by requesting telecommunications carriers where the requested Lawful UNE Local Loop facility has already been constructed. AT&T-13STATE shall perform routine network modifications to Lawful UNE Local Loop facilities in a nondiscriminatory fashion, without regard to whether the Lawful UNE Local Loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.
- 8.5.2 A routine network modification is an activity that AT&T-13STATE regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of existing cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to activate such loops for its own retail customers, under the same conditions and in the same manner that AT&T-13STATE does for its own customers. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable and installing equipment casings. AT&T-13STATE will place drops in the same manner as it does for its own customers.
- 8.5.3 Routine network modifications do not include constructing new Lawful UNE Loops; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; installing new terminals; removing or reconfiguring packetized transmission facility. AT&T-13STATE is not obligated to perform those activities for a requesting telecommunications carrier.

- 8.5.4 AT&T-13STATE shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to AT&T-13STATE's retail customers.
- 8.5.5 AT&T-13STATE has no obligation to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability.
- 8.5.6 Notwithstanding anything to the contrary herein, AT&T-13STATE's obligations with respect to routine network modifications apply only where the loop transmission facilities are subject to unbundling and do not apply to FTTH loops or FTTC loops.
- 8.5.7 AT&T-12STATE shall provide routine network modifications at the rates, terms and conditions set out in this Appendix (AT&T-12STATE), and in the state specific Appendix Pricing (AT&T-12STATE) or by tariff, as such tariff may be modified from time to time (AT&T CONNECTICUT). AT&T-12STATE will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which AT&T-12STATE is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all AT&T-12STATE include, but are not limited to: (i) adding an equipment case, (ii) adding a doubler or repeater including associated line card(s), (iii) installing a repeater shelf, and any other necessary work and parts associated with a repeater shelf, and (iv) in AT&T-California only, deploying of multiplexing equipment, to the extent such equipment is not present on the loop or transport facility when ordered. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates based upon actual time and materials costs for such routine network modifications or specific rates are otherwise established for such routine network modifications through applicable state commission proceedings.
- 8.6 Lawful UNE DS1 and DS3 Loops may not be employed in combination with transport facilities to replace Special Access services or facilities, except consistently with the other terms and conditions of this Agreement, including but not limited to, Section 2.16 of this Appendix.
- 8.7 xDSL Subloop is as defined in the xDSL and Line Splitting Appendix, if any, and will be available to CLEC in the AT&T-12STATE states in those instances where CLEC has an approved and effective xDSL and Line Splitting Appendix as a part of this Agreement. In addition to the provisions set forth in the xDSL and Line Splitting Appendix, the xDSL Subloop is subject to the subloop terms and conditions set forth in this Section 9, the collocation provisions set forth elsewhere in this Agreement and the rates set forth in the Appendix Pricing. If there is any conflict between the provisions set forth in the xDSL and Line Splitting Appendix as to the xDSL Subloop and the subloop provisions set forth in this Section 9, the subloop provisions set forth in Section 9 shall control.

9. LAWFUL UNE SUBLOOPS

- 9.1 Subject to the other terms and conditions of this Appendix, AT&T-12STATE shall provide Lawful UNE Subloops under the following terms and conditions in this subsection.
- 9.2 AT&T-12STATE will provide copper Lawful UNE Subloops as set forth in this Appendix. Other than as specifically set out elsewhere in this Agreement, AT&T CONNECTICUT does not offer Lawful UNE Subloops under this Agreement. Rather, Lawful UNE Subloops are available as described in Section 18 of the Connecticut Service Tariff.
 - 9.2.1 A Lawful UNE Subloop is a smaller included segment of AT&T-12STATE's Lawful UNE local loop plant, i.e., a portion of the Lawful UNE Loop from some technically accessible terminal beyond AT&T-12STATE's central office and the network demarcation point, including that portion of the Lawful UNE Loop, if any, which AT&T-12STATE's owns and controls inside the End User premises.

9.3 Definitions Pertaining to the Lawful UNE Subloop

- 9.3.1 Accessible terminals contain cables and their respective wire pairs that terminate on screw posts. This allows technicians to affix cross connects between binding posts of terminals collocated at the same point. Terminals differ from splice cases, which are inaccessible because the case must be breached to reach the wires within.
- 9.3.2 "Dead Count" refers to those binding posts which have cable spliced to them but which cable is not currently terminated to any terminal to provide service.
- 9.3.3 "Demarcation Point" is defined as the point on the loop where the ILEC's control of the wire ceases and the subscriber's control (or on the case of some multiunit premises, the landlord's control) of the wire begins.
- 9.3.4 "Digital Lawful UNE Subloop" may be deployed on non-loaded copper cable pairs of either 2 Wire or 4 Wire facilities. Where AT&T uses channels of a digital loop carrier system, channels of a fiber optic transport system or other technologies suitable for the purpose of providing 160 Kbps Lawful UNE Subloop transport in a Multi Tenant Environment (MTE), such facilities will be unbundled as part of AT&T's MTE Sub Loop offering. AT&T-13STATE is not required to provide Subloop Dark Fiber on an unbundled basis.
- 9.3.5 "Distribution Cable" is defined as the cable from the SAI/FDI to the terminals from which an end user can be connected to the ILEC's network.
- 9.3.6 "MTE" for the purpose of Term To NID Lawful UNE Subloop. "MTE" is a Multi Tenant Environment for buildings with exterior or interior mounted terminals.
- 9.3.7 "Network Terminating Wire" (NTW) is the service wire that connects the ILEC's distribution cable to the NID at the demarcation point.
- 9.3.8 "SAI/FDI-to-Term Lawful UNE Subloop" is that portion of the Lawful UNE Loop from the SAI/FDI to an accessible terminal.
- 9.3.9 "SAI/FDI-to-NID Lawful UNE Subloop" is that portion of the Lawful UNE Loop from the SAI/FDI to the Network Interface Device (NID), which is located on an end user's premise.
- 9.3.10 "SPOI" is defined as a Single Point of Interconnection. At the request of CLEC, and subject to charges, AT&T-12STATE will construct a SPOI only to those multiunit premises where AT&T-12STATE has distribution facilities to the premises and AT&T-12STATE either owns, controls, or leases the inside wire, if any, at such premises. If AT&T-12STATE has no facilities which it owns, controls or leases at a multiunit premises through which it serves, or can serve, End Users at such premises, it is not obligated to construct a SPOI. AT&T-12STATE's obligation to build a SPOI for multiunit premises only arises when CLEC indicates that it will place an order for a Lawful UNE Subloop via a SPOI.
- 9.3.11 "SAI/FDI" is defined as the point in the ILEC's network where feeder cable is cross connected to the distribution cable. "SAI" is Serving Area Interface. "FDI" is Feeder Distribution Interface. The terms are interchangeable.
- 9.3.12 "Term-to-NID Lawful UNE Subloop" is that portion of the Lawful UNE Loop from an accessible terminal to the NID, which is located at an end user's premise. Term-to-NID Lawful UNE Subloop includes use of the Network Terminating Wire (NTW).

9.4 AT&T-12STATE will offer the following Lawful UNE Subloop types:

- 9.4.1 2-Wire Analog Lawful UNE Subloop provides a 2-wire (one twisted pair cable or equivalent) capable of transporting analog signals in the frequency range of approximately 300 to 3000 hertz (voiceband).
- 9.4.2 4-Wire Analog Lawful UNE Subloop provides a 4-wire (two twisted pair cables or equivalent, with separate transmit and receive paths) capable of transporting analog signals in the frequency range of approximately 300 to 3000 hertz (voiceband).

- 9.4.3 Lawful UNE xDSL Subloop is as defined in the xDSL and Line Splitting Appendix and will be available to CLEC in the AT&T-12STATE states in those instances where CLEC has an approved and effective xDSL and Line Splitting Appendix as a part of this Agreement. In addition to the provisions set forth in the xDSL and Line Splitting Appendix, the Lawful UNE xDSL Subloop is subject to the Lawful UNE subloop terms and conditions set forth in this Appendix, the collocation provisions set forth elsewhere in this Agreement and the rates set forth in the Appendix Pricing. If there is any conflict between the provisions set forth in the xDSL and Line Splitting Appendix as to the Lawful UNE xDSL Subloop and the Lawful UNE subloop provisions set forth in this Appendix, the Lawful UNE subloop provisions set forth in this Appendix shall control.
- 9.4.4 As no other type of Subloop constitutes a Lawful UNE subloop, AT&T-13STATE is not obligated under this Section 251/252 Agreement to provide any other type of subloop. CLEC shall not request such subloops under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and AT&T-13STATE provides a subloop(s) that is not described or provided for in this Agreement, AT&T-13STATE may, at any time, even after the subloop(s) has been provided to CLEC, discontinue providing such subloop(s) (including any combination(s) including that subloop) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of AT&T-13STATE to refuse to provide, including if AT&T-13STATE provides or continues to provide, access to such subloop(s) (whether on a stand-alone basis, in combination with UNES (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.
- 9.5 Intentionally Left Blank.
- 9.6 Lawful UNE Subloops are provided "as is" unless CLEC requests loop conditioning on Lawful UNE xDSL Subloops for the purpose of offering advanced services. Lawful UNE xDSL Subloop conditioning will be provided at the rates, terms, and conditions set out in the state specific Appendix Pricing.
- 9.7 If a Term to NID Lawful UNE Subloop has been disconnected and thus an end-user is no longer receiving service via that Lawful UNE Subloop, and such Lawful UNE Subloop has been determined to be a non-defective pair, then that Lawful UNE Subloop would be considered an existing spare portion of the loop, based on a first come first served basis.
- 9.8 Copper Lawful UNE Subloops
- 9.8.1 Access to terminals for copper Lawful UNE Subloops is defined to include:
- any technically feasible point near the End User premises accessible by a cross-connect (such as the pole or pedestal, the NID, or the minimum point of entry (MPOE) to the End User premises),
 - the Feeder Distribution Interface (FDI) or Serving Area Interface (SAI), where the "feeder" leading back to the central office and the "distribution" plant branching out to the subscribers meet,
 - the Terminal (underground or aerial).
- 9.9 CLEC may request access to the following copper Lawful UNE Subloop segments:
- | <u>FROM:</u> | <u>TO:</u> |
|---|--------------------------|
| 1. Serving Area Interface or
Feeder Distribution Interface | Terminal |
| 2. Serving Area Interface or
Feeder Distribution Interface | Network Interface Device |
| 3. Terminal | Network Interface Device |
| 4. NID | Stand Alone |
| 5. SPOI (Single Point of Interface) | Terminal |
| 6. SPOI (Single Point of Interface) | Terminal |

9.10 Provisioning

- 9.10.1 Connecting Facility Arrangement (CFA) assignments must be in-place prior to ordering and assigning specific Lawful UNE Subloop circuit(s).
- 9.10.2 Spare Lawful UNE Subloop(s) will be assigned to CLEC only when an LSR/ASR is processed. LSR/ASRs will be processed on a "first come first serve" basis.

9.11 Maintenance

- 9.11.1 The Parties acknowledge that by separating switching, and distribution plant, the ability to perform mechanized testing and monitoring of the Lawful UNE Subloop from the AT&T-12STATE switch/testing equipment will be lost.
- 9.11.2 CLEC shall isolate trouble to the AT&T-12STATE Lawful UNE Subloop portion of the CLEC's service before reporting trouble to AT&T-12STATE.
- 9.11.3 AT&T-12STATE shall charge the CLEC a Maintenance of Service Charge (MSC) when CLEC dispatches AT&T-12STATE on a trouble report and the fault is determined to be in the CLEC's portion of the loop. Such charges may be found in the individual state pricing appendices or tariffs.
- 9.11.4 Once all Lawful UNE Subloop access arrangements have been completed and balance of payment due AT&T-12STATE is received, the CLEC may place a LSR for Subloops at this location. Prices at which AT&T-12STATE agrees to provide CLEC with Lawful UNE Subloops are contained in the state specific Appendix Pricing.
- 9.11.5 In the event of Catastrophic Damage to the RT, SAI/FDI, Terminal, SPOI, or NID where CLEC has a SAA, AT&T-12STATE repair forces will restore service in a non-discriminatory manner which will allow the greatest number of all End Users to be restored in the least amount of time. Should the CLEC cabling require replacement, AT&T-12STATE will provide prompt notification to CLEC for CLEC to provide the replacement cable to be terminated as necessary.

9.12 Lawful UNE Subloop Access Arrangements

- 9.12.1 Prior to ordering Lawful UNE Subloop facilities, CLEC will establish Collocation using the Collocation process as set forth in the Collocation Appendix, or will establish a Lawful UNE Subloop Access Arrangement utilizing the Special Construction Arrangement (SCA), either of which are necessary to interconnect to the AT&T-12STATE Lawful UNE Subloop network.
- 9.12.2 The space available for collocating or obtaining various Lawful UNE Subloop Access Arrangements will vary depending on the existing plant at a particular location. The CLEC will initiate an SCA by submitting a Lawful UNE Subloop Access Arrangement Application.
- 9.12.3 Upon receipt of a complete and correct application, AT&T-12STATE will provide to CLEC within 30 days a written estimate for the actual construction, labor, materials, and related provisioning costs incurred to fulfill the SCA on a Time and Materials basis. When CLEC submits a request to provide a written estimate for Lawful UNE Subloop access, appropriate rates for the engineering and other associated costs performed will be charged.
- 9.12.4 The assignment of Lawful UNE Subloop facilities will incorporate reasonable practices used to administer outside plant loop facilities. For example, where SAI/FDI interfaces are currently administered in 25 pair cable complements, this will continue to be the practice in assigning and administering Lawful UNE Subloop facilities.
- 9.12.5 Subloop inquiries do not serve to reserve Lawful UNE Subloops.
- 9.12.6 Several options exist for Collocation or Lawful UNE Subloop Access Arrangements at technically feasible points. Sound engineering judgment will be utilized to ensure network security and integrity. Each situation will be analyzed on a case-by-case basis.
- 9.12.7 CLEC will be responsible for obtaining rights of way from owners of property where AT&T-12STATE has placed the equipment necessary for the SAA prior to submitting the request for SCA.

- 9.12.8 Prior to submitting the Lawful UNE Subloop Access Arrangement Application for SCA, the CLEC should have the "Collocation" and "Poles, Conduit, and Row" appendices in the Agreement to provide the guidelines for both CLEC and ILEC to successfully implement Lawful UNE Subloops, should collocation, access to poles/conduits or rights of way be required.
- 9.12.9 Except as set forth below in this 9.12.9, construction of the Lawful UNE Subloop Access Arrangement shall be completed within 90 days of CLEC submitting to AT&T-12STATE written approval and payment of not less than 50% of the total estimated construction costs and related provisioning costs after an estimate has been accepted by the carrier and before construction begins, with the balance payable upon completion. AT&T-12STATE will not begin any construction under the SCA until the CLEC has provided proof that it has obtained necessary rights of way as defined in Section 9.12.7. In the event CLEC disputes the estimate for an SAA in accordance with the dispute resolution procedures set forth in this Agreement, AT&T-12STATE will proceed with construction of the SAA upon receipt from CLEC of notice of the dispute and not less than fifty percent (50%) of the total estimated costs, with the balance payable by CLEC upon completion of the SAA. Such payments may be subject to any "true-up", if applicable, upon resolution of the dispute in accordance with the Dispute Resolution procedures.
- 9.12.10 Upon completion of the construction activity, the CLEC will be allowed to test the installation with a AT&T-12STATE technician. If the CLEC desires test access to the SAA, the CLEC should place its own test point in its cable prior to cable entry into AT&T-12STATE's interconnection point.
- 9.12.11 A non-binding CLEC forecast shall be required as a part of the request for SAA. This will allow AT&T-12STATE to properly engineer access to each SAI and to ensure AT&T-12STATE does not provide more available terminations than the CLEC expects to use.
- 9.12.12 In order to maximize the availability of terminations for all CLECs, the CLEC shall provide CFA for their Lawful UNE Subloop pairs utilizing the same 25-pair binder group. The CLEC would begin utilizing the second 25-pair binder group once the first 25-pair binder group reached its capacity.
- 9.12.13 Unused CLEC terminations (in normal splicing increments such as 25-pair at a SAI/FDI) which remain unused for a period of one year after the completion of construction shall be subject to removal at CLEC expense.
- 9.12.14 In the event a CLEC elects to discontinue use of an existing SAA, or abandons such arrangement, CLEC shall pay AT&T-12STATE for removal of their facilities from the SAA.
- 9.13 Lawful UNE Subloop Access Arrangement (SAA) Access Points
- 9.13.1 SAI/FDI, ECS, SPOI, or Terminal
- 9.13.1.1 CLEC cable to be terminated in a AT&T-12STATE SAI/FDI, or Terminal, shall consist of 22 or 24-gauge copper twisted pair cable bonded and grounded to the power company Multi Grounded Neutral (MGN). Cable may be filled if buried or buried to aerial riser cable. CLEC's Aerial cables should be aircore.
- 9.13.1.2 The CLEC may elect to place their cable to within 3 feet of the SAA site and coil up an amount of cable, defined by the engineer in the design phase, that AT&T-12STATE will terminate on available binding posts in the SAI/FDI or Terminal.
- 9.13.1.3 The CLEC may "stub" up a cable at a prearranged meet point, defined during the engineering site visit, and AT&T-12STATE will stub out a cable from the SAI/FDI or Terminal, which AT&T-12STATE will splice to the CLEC cable at the meet point.
- 9.13.1.4 Dead counts will be offered as long as they have not been placed for expansion purposes planned within the 12-month period beginning on the date of the inquiry LSR.

- 9.14 Relocation of Existing ILEC/CLEC Facilities Involved in a SAA at a RT/ECS, SAI/FDI, SPOI, Terminal or NID
- 9.14.1 AT&T-12STATE shall notify CLEC of pending relocation as soon as AT&T-12STATE receives such notice.
- 9.14.2 CLEC shall notify AT&T-12STATE of its intentions to remain, or not, in the SAA by way of a new Lawful UNE Subloop Access Arrangement Application for a new SCA.
- 9.14.3 AT&T-12STATE shall then provide the CLEC an estimate to terminate their facilities as part of the relocation of the site including the applicable SAA. This process may require a site visit with the CLEC and AT&T-12STATE engineer.
- 9.14.4 CLEC shall notify AT&T-12STATE of acceptance or rejection of the new SCA within 10 business days of its receipt of AT&T-12STATE's estimate.
- 9.14.5 Upon acceptance of the AT&T-12STATE estimate, CLEC shall pay at least 50% of the relocation costs at the same time as they notify AT&T-12STATE of their acceptance of estimate costs.
- 9.14.6 Should CLEC decide not to continue the SAA, CLEC will notify AT&T-12STATE as to the date that AT&T-12STATE may remove CLEC's facilities from that SAA. CLEC will pay AT&T-12STATE for all costs associated with the removal of the CLEC's SAA.
- 9.14.7 In the event that CLEC does not respond to AT&T-12STATE in time to have their facilities relocated, AT&T-12STATE shall move CLEC facilities and submit a bill for payment to the CLEC for the costs associated with the relocation. Should CLEC elect not pay this bill, then CLEC facilities will be removed from the site upon 30 days notice to the CLEC.
- 9.15 Establishment of Intermediary Box for CLEC Access to Term to NID MTE Lawful UNE Subloop Segment
- 9.15.1 As an alternative to the establishment of a Lawful UNE Subloop Access Arrangement in those instances where CLEC wishes to access/lease AT&T-12STATE Term to NID Lawful UNE Subloop segments in order to serve its End Users at MTEs in AT&T-12STATE ("Term to NID MTE Lawful UNE Subloop Segments"), CLEC may place, own and manage, for its own use, an intermediary box, which would provide CLEC with access to a Term to NID MTE Lawful UNE Subloop Segment cross-connect leased from AT&T-12STATE within the intermediary box (in order to obtain access to AT&T-12STATE Term to NID MTE Lawful UNE Subloop Segments). In the event CLEC wishes to access AT&T-12STATE Term to NID MTE Lawful UNE Subloop Segments via the establishment of an intermediary box, the following rates, terms and conditions shall apply:
- 9.15.1.1 CLEC would manage the process for placing its own intermediary box, including, without limitation, coordination with the property owner and/or management. CLEC may, at its discretion, choose to retain ownership in whole or to share ownership of the intermediary box with other CLECs. Intermediary box shall be placed no more than two feet from the AT&T terminal.
- 9.15.1.2 The intermediary box shall contain blocks that meet AT&T-12STATE's published industry standards for the placement of services and facilities and should be labeled with CLEC's ACNA to enable the AT&T-12STATE technician the ability to run jumper/cross connect from AT&T-12STATE terminal to the intermediary box.
- 9.15.1.3 CLEC agrees that the AT&T-12STATE technician shall run the jumper/cross-connect from AT&T-12STATE's serving terminal to CLEC's intermediary box, in order for CLEC to access AT&T-12STATE Term to NID MTE Lawful UNE Subloop Segments in AT&T-12STATE. For security and safety, AT&T will incase the cross connect in conduit, a protective covered common path, between the AT&T terminal and the CLEC's intermediary box.
- 9.15.1.4 CLEC must have in place Connecting Facility Arrangement (CFA) assignments prior to ordering and assigning specific Term to NID MTE Lawful UNE Subloop Segments from AT&T-12STATE.

- 9.15.1.5 Following CLEC's provisioning, placement, and completion of Connecting Facility Arrangement Assignments ("CFA") data submission to AT&T-12STATE associated with the intermediary box, CLEC would place orders and schedule activities related to access to the Term to NID MTE Lawful UNE Subloop Segment including, without limitation: transferring the End User's service from AT&T-12STATE to CLEC, providing AT&T-12STATE with CFA prior to ordering and the assigning of a specific Term to NID MTE Lawful UNE Subloop Segment(s).
- 9.15.1.6 The ordering procedures for the Term to NID MTE Lawful UNE Subloop Segment will be the same as those that apply to Lawful UNE Subloop today and shall be submitted to AT&T-12STATE by CLEC via a Local Service Request ("LSR").
- 9.15.1.7 AT&T-12STATE will upon receipt of the LSR from CLEC for a Term to NID MTE Lawful UNE Subloop Segment, process the order and place the jumper/cross connect to the CFA provided by the CLEC on the LSR, from the AT&T-12STATE terminal to the CLEC intermediary box. AT&T-12STATE must have access to the intermediary box for completion of the order.
- 9.15.2 In connection with the MTE intermediary box for CLEC access to Term to NID MTE Lawful UNE Subloop Segments in AT&T-12STATE only, CLEC may elect to lease from AT&T-12STATE Term to NID MTE Lawful UNE Subloop Segments which do not include traditional testing and the associated labor, at the recurring and non-recurring rates set forth in Appendix Pricing for the "Term to NID MTE Lawful UNE Subloop Segment." In the event CLEC wishes to lease the Term to NID MTE Lawful UNE Subloop Segment from AT&T-12STATE in lieu of AT&T-12STATE's standard Term to NID Lawful UNE Subloop segment addressed in this 9.15.2, CLEC understands and agrees no performance measures and/or remedies shall apply to the Term to NID MTE Lawful UNE Subloop Segment as a result of the elimination of associated testing and reduction in functionality associated with the Term to NID MTE Lawful UNE Subloop Segment.
- 9.16 Establishment of Term to NID MTE Lawful UNE Subloop Segment When No Intermediary Box is Installed
- 9.16.1 In those instances where CLEC elects not to install an intermediary box or to have AT&T-12STATE install an intermediary box pursuant to the SAA process outlined herein above, the CLEC may still lease from AT&T-12STATE Term to NID MTE Lawful UNE Subloop Segments which do not include traditional testing and the associated labor, at the recurring and non-recurring rates set forth in Appendix Pricing for the "Term to NID MTE Lawful UNE Subloop Segment". In the event CLEC wishes to lease the Term to NID MTE Lawful UNE Subloop Segment from AT&T-12STATE in lieu of AT&T-12STATE's standard Term to NID Lawful UNE Subloop segment addressed in Section 9.15.2 above, CLEC understands and agrees no performance measures and/or remedies shall apply to the Term to NID MTE Lawful UNE Subloop Segment as a result of the elimination of associated testing and reduction in functionality associated with the Term to NID MTE Lawful UNE Subloop Segment. In such cases, AT&T-12STATE will provide CLEC with access to the Term To NID MTE Lawful UNE Subloop via a cross connect. The AT&T technician will tag appropriately and will leave up to two feet of exposed wire at AT&T-12STATE's terminal. The cross connect would then be terminated by the CLEC technician in the CLEC terminal, at a time of CLEC's own choosing. For security and safety, AT&T will incase the cross connect in conduit, a protective covered common path, between the AT&T terminal and the CLEC's terminal.
- 9.16.2 If CLEC elects this option to obtain access to the Term To NID Lawful UNE Subloop in an MTE Environment, neither the AT&T-12STATE SAA process nor the intermediary box option would be required. Because the CLEC would have full responsibility for terminating the AT&T-12STATE cross-connect, AT&T-12STATE could not require any CFA information from CLEC.

10. ENGINEERING CONTROLLED SPLICE (ECS)

- 10.1 Subject to the other terms and conditions of this Appendix, AT&T-12STATE shall provide to Engineering controlled Splice under the following terms and conditions in this subsection.

- 10.2 AT&T-12STATE will also make available an Engineering Controlled Splice (ECS), which will be owned by AT&T-12STATE, for CLECs to gain access to Lawful UNE Subloops at or near remote terminals.
- 10.3 The ECS shall be made available for Lawful UNE Subloop Access Arrangements (SAA) utilizing the Special Construction Arrangement (SCA).
- 10.3.1 CLEC requesting such a SCA shall pay all of the actual construction, labor, materials and related provisioning costs incurred to fulfill its SCA on a Time and Materials basis, provided that AT&T-12STATE will construct any Lawful UNE Subloop Access Arrangement requested by a Telecommunications Carrier in a cost-effective and efficient manner. If AT&T-12STATE elects to incur additional costs for its own operating efficiencies and that are not necessary to satisfy an SCA in a cost-effective and efficient manner, CLEC will not be liable for such extra costs.
- 10.3.2 CLEC shall be liable only for costs associated with cable pairs that it orders to be presented at an engineering controlled splice (regardless of whether the requesting carrier actually utilizes all such pairs), even if AT&T-12STATE places more pairs at the splice.
- 10.3.3 Although AT&T-12STATE will construct the engineering controlled splice, the ECS maybe owned by AT&T-12STATE or the CLEC (depending on the specific arrangement) at the option of AT&T-12STATE.
- 10.3.4 If more than one requesting Telecommunications Carrier obtains space in expanded remote terminals or adjacent structures and obtains an SAA with the new copper interface point at the ECS, the initial Telecommunications Carrier which incurred the costs of construction of the engineering controlled splice and/or additional copper/fiber shall be reimbursed those costs in equal proportion to the space or lines used by the requesting carriers.
- 10.3.5 AT&T-12STATE may require a separate SCA for each remote terminal site.
- 10.3.6 Except as set forth below in this Section 10.3.6, written acceptance and at least 50% of payment for the SCA must be submitted at least 90 days before access to the copper Lawful UNE Subloop is to be provisioned by AT&T-12STATE. If an augment of cabling is required between the ECS and the SAI, the interval for completion of the SCA will be determined on an individual case basis. AT&T-12STATE will not begin any construction of the ECS until the CLEC has provided proof that it has obtained the necessary rights of way as defined in Section 9.12.7. In the event CLEC disputes the estimate for the ECS in accordance with the dispute resolution procedures set forth in this Agreement, AT&T-12STATE will proceed with construction of the ECS upon receipt from CLEC of notice of the dispute and not less than fifty percent (50%) of the total estimated costs, with the balance payable by CLEC upon completion of the ECS. Such payments may be subject to any "true-up", if applicable, upon resolution of the dispute in accordance with the Dispute Resolution procedures.
- 10.4 CLECs will have two (2) options for implementing the ECS: a "Dedicated Facility Option" (DFO) and a "Cross-connected Facility Option" (CFO).
- 10.4.1 Dedicated Facility Option (DFO)
- 10.4.1.1 CLEC may request AT&T-12STATE splice the existing cabling between the ECS and the SAI to the CLEC's SAA facility. This facility will be "dedicated" to the CLEC for subsequent Lawful UNE Subloop orders.
- 10.4.1.2 CLEC must designate the quantity of Lawful UNE Subloops they desire to access via this spliced, dedicated facility, specified by subtending SAI.
- 10.4.1.3 CLECs will compensate AT&T-12STATE for each of the dedicated Lawful UNE Subloop facilities, based on recurring Lawful UNE Subloop charges, for the quantity of Lawful UNE Subloops dedicated to the CLEC between the ECS and the SAI.

10.4.2 Cross-connected Facility Option (CFO)

10.4.2.1 CLEC may request AT&T-12STATE build an ECS cross-connect junction on which to terminate CLEC's SAA facility.

10.4.2.2 The SCA associated with this option will include the charges associated with constructing the cross-connect device, including the termination of AT&T-12STATE cabling between the ECS and the RT and/or SAI, and the inventorying of that AT&T-12STATE cabling.

10.4.2.3 CLEC must designate the quantity of Lawful UNE Subloops they desire to access via this cross-connectable, dedicated facility, specified by subtending SAI.

10.4.2.4 CLECs will compensate AT&T-12STATE for the charges incurred by AT&T-12STATE derived from the CLEC's request for the SCA.

10.5 The introduction of an ECS creates the following additional copper Lawful UNE Subloop segments:

FROM:TO:

- | | |
|--------|---|
| 1. ECS | Serving Area Interface or Feeder Distribution Interface |
| 2. ECS | Terminal |
| 3. ECS | NID |

11. RESERVED FOR FUTURE USE**12. RESERVED FOR FUTURE USE****13. DS1 AND DS3 DEDICATED TRANSPORT**

13.1 Subject to Section 2 of this Appendix Lawful UNES, AT&T-13STATE shall provide Lawful UNE DS1/DS3 Dedicated Transport under the following terms and conditions in this subsection.

13.2 For purposes of this Agreement, the following definitions apply:

13.2.1 "Dedicated Transport" is defined as AT&T-13STATE interoffice transmission facilities between wire centers or switches owned by AT&T-13STATE, or between wire centers or switches owned by AT&T-13STATE and switches owned by requesting telecommunications carriers, dedicated to a particular customer or carrier.

13.2.1.1 AT&T-13STATE is not obligated to provide CLEC with unbundled access to Dedicated Transport that does not connect a pair of AT&T-13STATE wire centers.

13.2.2 A "route" is defined as a transmission path between one of AT&T-13STATE's wire centers or switches and another of AT&T-13STATE's wire centers or switches. A route between two points (e.g., wire center of switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g. wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.

13.3 AT&T-13STATE will be responsible for the engineering, provisioning, maintenance of the underlying equipment and facilities that are used to provide Lawful UNE DS1/DS3 Dedicated Transport.

13.3.1 Subject to the caps set forth in Sections 13.3.5 and 13.3.6, Lawful UNE DS1/DS3 Dedicated Transport will be provided only where such facilities exist at the time of CLEC request, and only over routes that are not or have not been Declassified.

13.3.2 Other than as specifically set forth elsewhere in this Agreement, AT&T CONNECTICUT does not offer Lawful UNE DS1/DS3 Dedicated Transport under this Agreement. Rather, it is available as described in Section 18 of the Connecticut Access Service Tariff.

13.3.3 AT&T-13STATE will provide Lawful UNE DS1 and DS3 Transport to a requesting CLEC only at the following speeds: DS1 (1.544 Mbps) and DS3 (44.736 Mbps).

13.3.4 Lawful UNE DS1 and DS3 Transport includes, as follows:

13.3.4.1 Multiplexing – an option ordered in conjunction with Lawful UNE DS1 or DS3 Dedicated Transport which converts a circuit from higher to lower bandwidth, or from digital to voice grade. Multiplexing is only available when ordered at the same time as Lawful UNE DS1 or DS3 Dedicated Transport.

13.3.4.2 Other Optional features are outlined in Appendix Pricing.

13.3.5 DS3 Transport “Caps”

13.3.5.1 **AT&T-13STATE** is not obligated to provide to CLEC more than twelve(12) DS3 Lawful UNE Dedicated Transport circuits on each route on which DS3 Dedicated Transport has not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Dedicated Transport once CLEC has already obtained twelve DS3 Lawful UNE Dedicated Transport circuits on the same route. If, notwithstanding this Section, CLEC submits such an order, at **AT&T-13STATE**'s option it may accept the order, but convert any requested DS3 Lawful UNE Dedicated Transport in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS3 Dedicated Transport circuits as of the date of provisioning.

13.3.6 DS1 Transport “Caps”

13.3.6.1 **AT&T-13STATE** is not obligated to provide to CLEC more than ten (10) DS1 Lawful UNE Dedicated Transport circuits on each route on which DS1 Dedicated Transport has not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Dedicated Transport once CLEC has already obtained ten DS1 Lawful UNE Dedicated Transport circuits on the same route. If, notwithstanding this Section, CLEC submits such an order, at **AT&T-13STATE**'s option it may accept the order, but convert any requested DS1 Lawful UNE Dedicated Transport in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS1 Dedicated Transport circuits as of the date of provisioning

13.4 Diversity

13.4.1 When requested by CLEC, and subject to all applicable terms, conditions, and applicable charges, and only where such interoffice facilities exist at the time of CLEC request, Physical diversity shall be provided for Lawful UNE Dedicated Transport. Physical diversity means that two circuits are provisioned in such a way that no single failure of facilities or equipment will cause a failure on both circuits.

13.4.2 **AT&T-12STATE** shall provide the Physical separation between intra-office and inter-office transmission paths when technically and economically feasible. Physical diversity requested by the CLEC shall be subject to additional charges. When additional costs are incurred by **AT&T-12STATE** for CLEC specific diversity, **AT&T-12STATE** will advise CLEC of the applicable additional charges. **AT&T-12STATE** will not process the request for diversity until CLEC accepts such charges. Any applicable performance measures will be abated from the time diversity is requested until CLEC accepts the additional charges.

13.5 Declassification Procedure

13.5.1 Wire Center “Tiers” -- For purposes of this Section 13.5 (and Section 14 related to Dark Fiber), wire centers are classified into three “tiers,” as follows:

- (i) Tier 1 Wire Centers are those ILEC wire centers that contain at least four fiber-based collocators, at least 38,000 business lines, or both. Tier 1 Wire Centers also are those ILEC tandem switching locations that have no line-side switching facilities, but nevertheless serve as a point of traffic aggregation accessible by CLECs. Once a wire center is determined to be a Tier 1 Wire Center, that wire center is not subject to later reclassification as a Tier 2 or Tier 3 Wire Center.

- (ii) Tier 2 Wire Centers are those ILEC wire centers that are not Tier 1 Wire Centers, but contain at least 3 fiber-based collocators, at least 24,000 business lines, or both. Once a wire center is determined to be a Tier 2 Wire Center, that Wire Center is not subject to later reclassification as a Tier 3 Wire Center.
- (iii) Tier 3 Wire Centers are those ILEC wire centers that do not meet the criteria for Tier 1 or Tier 2 Wire Centers.

13.5.2 DS1 Transport Declassification

13.5.2.1 Subject to the cap described in Section 13.3.6, AT&T-13STATE shall provide CLEC with access to Lawful UNE DS1 Dedicated Transport on routes, except routes where both wire centers defining the route are Tier 1 Wire Centers. As such AT&T-13STATE must provide Lawful UNE DS1 Dedicated Transport under this Agreement only if a wire center at either end of a requested route is not a Tier 1 Wire Center, or if neither is a Tier 1 Wire Center. DS1 Dedicated Transport circuits on routes between Tier 1 Wire Centers are Declassified and no longer available as Lawful UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS1 Lawful UNE Dedicated Transport on such route(s).

13.5.3 DS3 Transport Declassification

13.5.3.1 Subject to the cap described in Section 13.3.5, AT&T-13STATE shall provide CLEC with access to Lawful UNE DS3 Dedicated Transport, except on routes where both wire centers defining the route are either Tier 1 or Tier 2 Wire Centers. As such AT&T-13STATE must provide Lawful UNE DS3 Dedicated Transport under this Agreement only if a wire center on either end of the requested route is a Tier 3 Wire Center. If both wire centers defining a requested route are either Tier 1 or Tier 2 Wire Centers, then DS3 Dedicated Transport circuits on such routes are Declassified and no longer available as Lawful UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS3 Lawful UNE Dedicated Transport on such route(s).

13.5.4 **Effect on Embedded Base.** Upon Declassification of DS1 Dedicated Transport or DS3 Dedicated Transport already purchased by CLEC as Lawful UNEs under this Agreement, AT&T-13STATE will provide written notice to CLEC of such Declassification, and proceed in accordance with Section 2.5.

13.5.5 Products provided by AT&T-13STATE in conjunction with Lawful UNE DS1 or DS3 Dedicated Transport (e.g. Cross-Connects) shall also be subject to re-pricing under this Section and Section 2.5 where such Transport is Declassified.

13.6 The Parties agree that activity by AT&T-13STATE under this Section 13.5 shall not be subject to the Network Disclosure Rules.

13.7 Routine Network Modifications – Lawful UNE Dedicated Transport

13.7.1 AT&T-13STATE shall make routine network modifications to Lawful UNE Dedicated Transport facilities used by requesting telecommunications carriers where the requested Lawful UNE Dedicated Transport facilities have already been constructed. AT&T-13STATE shall perform routine network modifications to Lawful UNE Dedicated Transport facilities in a nondiscriminatory fashion, without regard to whether the Lawful UNE Dedicated Transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

13.7.2 A routine network modification is an activity that AT&T-13STATE regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of cable and deploying a multiplexer or reconfiguring an existing multiplexer. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable. Routine network modifications do not include the installation of new aerial or buried cable for a requesting

telecommunications carrier, and AT&T-13STATE is not obligated to perform those activities for a requesting telecommunications carrier.

- 13.7.3 Routine network modifications do not include constructing new Lawful UNE Dedicated Transport; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; or installing new terminals. AT&T-13STATE is not obligated to perform those activities for a requesting telecommunications carrier.
- 13.7.4 AT&T-13STATE shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to AT&T-13STATE's retail customers.
- 13.7.5 Notwithstanding anything to the contrary herein, AT&T-13STATE's obligations with respect to routine network modifications apply only where the dedicated transport transmission facilities are subject to unbundling.
- 13.7.6 AT&T-12STATE shall provide routine network modifications at the rates, terms and conditions set out in this Appendix (AT&T-12STATE), and in the state specific Appendix Pricing (AT&T-12STATE) or by tariff, as such tariff may be modified from time to time (AT&T CONNECTICUT). AT&T-13STATE will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which AT&T-12STATE is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all AT&T-12STATE include, but are not limited to,: (i) splicing and (ii) in AT&T CALIFORNIA only, deploying of multiplexing equipment, to the extent such equipment is not present on the loop or transport facility when ordered. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates based upon actual time and materials costs for such routine network modifications through applicable state commission proceedings.

14. DARK FIBER DEDICATED TRANSPORT

- 14.1 Subject to Section 2 of this Appendix Lawful UNES, AT&T-12STATE shall provide Lawful UNE Dedicated Transport Dark Fiber under the following terms and conditions in this subsection. AT&T-13STATE is not required to provide Loop and/or Subloop Dark Fiber on an unbundled basis.
- 14.2 In AT&T-12STATE, Dedicated Transport Dark Fiber is deployed, unlit optical fiber within AT&T-12STATE's network. Dedicated Transport Dark Fiber consists of unactivated optical interoffice transmission facilities. Other than as specifically set out elsewhere in this Agreement, AT&T CONNECTICUT does not offer dedicated transport dark fiber under this Agreement; rather, unbundled dedicated transport dark fiber is available to CLECs as described in Section 18.2.1N of the Connecticut Service Tariff.
- 14.3 Lawful UNE Dedicated Transport Dark Fiber
 - 14.3.1 At dedicated transport dark fiber segments in routes that have not been Declassified, AT&T-12STATE will provide a Lawful UNE Dedicated Transport Dark Fiber segment that is considered "spare" as defined in Sections 14.6 and 14.7 below. Lawful UNE Dedicated Transport Dark Fiber is defined as AT&T-12STATE dark fiber interoffice transmission facilities dedicated to a particular CLEC that are within AT&T-12STATE's network, connecting AT&T-12STATE switches or wire centers within a LATA. AT&T-12STATE is not obligated to provide CLEC with unbundled access to Dedicated Transport that does not connect a pair of AT&T-12STATE wire centers. AT&T-12STATE will offer Lawful UNE Dedicated Transport Dark Fiber to CLEC when CLEC has collocation space in each AT&T-12STATE CO where the requested Lawful UNE Dedicated Transport Dark Fiber(s) terminate.
- 14.4 A "route" is defined as a transmission path between one of AT&T-12STATE's wire centers or switches and another of AT&T-12STATE's wire centers or switches. A route between two points (e.g., wire center of switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or

switches (e.g. wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.

14.5 Spare Fiber Inventory Availability and Condition

14.5.1 All available spare Lawful UNE Dedicated Transport Dark Fiber will be provided as is. No conditioning will be offered. Spare dedicated transport dark fiber is fiber that can be spliced in all segments, point to point but not assigned, and spare dedicated transport dark fiber does not include maintenance spares, fibers set aside and documented for **AT&T-12STATE**'s forecasted growth, defective fibers, or fibers subscribed to by other Telecommunications Carriers. CLEC will not obtain any more than 25% of the spare Lawful UNE Dedicated Transport Dark Fiber contained in the requested segment during any two-year period.

14.6 Determining Spare Fibers

14.6.1 **AT&T-12STATE** will inventory dedicated transport dark fiber. Spare dedicated transport dark fiber does not include the following:

14.6.1.1 Maintenance spares. Maintenance spares shall be kept in inventory like a working fiber. Spare maintenance fibers are assigned as follows:

14.6.1.1.1 Cables with 24 fibers and less: two maintenance spare fibers

14.6.1.1.2 Cables with 36 and 48 fibers: four maintenance spare fibers

14.6.1.1.3 Cables with 72 and 96 fibers: eight maintenance spare fibers

14.6.1.1.4 Cables with 144 fibers: twelve maintenance spare fibers

14.6.1.1.5 Cables with 216 fibers: 18 maintenance spares

14.6.1.1.6 Cables with 288 fibers: 24 maintenance spares

14.6.1.1.7 Cables with 432 fibers: 36 maintenance spares

14.6.1.1.8 Cables with 864 fibers: 72 maintenance spares

14.6.1.2 Defective fibers. Defective fibers, if any, will be deducted from the total number of spare dedicated transport dark fiber that would otherwise be available.

14.6.1.3 **AT&T-12STATE** growth fibers. Fibers documented as reserved by **AT&T-12STATE** for utilization for growth within the 12 month-period following the carrier's request.

14.6.2 The appropriate **AT&T-12STATE** engineering organization will maintain records on each fiber optic cable for which CLECs request Lawful UNE Dedicated Transport Dark Fiber.

14.7 Quantities and Time Frames for Ordering Lawful UNE Dedicated Transport Dark Fiber

14.7.1 The minimum number of Lawful UNE Dedicated Transport Dark Fiber strands that CLEC can order is one, and such strands must be ordered on a strand-by-strand basis. The maximum number of such strands that CLEC can order is no greater than 25% of the spare dedicated transport dark fiber in the segment requested. Should spare dedicated transport dark fiber fall below 8 strands in a given location, **AT&T-12STATE** will provide no more than a quantity of 2 strands. (See definition of spare set forth in Section 14.6 above.)

14.7.2 If CLEC wishes to request Lawful UNE Dedicated Transport Dark Fiber, it must submit a dark fiber facility inquiry, providing CLEC's specific point to point (A to Z) dark fiber requirements. When CLEC submits a dark fiber facility inquiry appropriate rates for the inquiry will be charged as outlined in state specific Appendix Pricing.

14.7.2.1 If spare Lawful UNE Dedicated Transport Dark Fiber is available, as determined under this Agreement, **AT&T-12STATE** will notify CLEC and CLEC may place an Access Service Request (ASR) for such fiber.

14.7.3 Lawful UNE Dedicated Transport Dark Fiber will be assigned to CLEC only when an ASR is processed. ASRs will be processed on a first-come-first-served basis. Inquiry facility checks do

not serve to reserve Lawful UNE Dedicated Transport Dark Fiber. When CLEC submits the ASR, the ASR will be processed and the Lawful UNE Dedicated Transport Dark Fiber facilities will be assigned. The charges which will be established as set forth in Appendix Pricing will be applied.

14.8 Right of Revocation of Access to Lawful UNE Dedicated Transport Dark Fiber

14.8.1 Right of revocation of access to Lawful UNE Dedicated Transport Dark Fiber is distinguishable from Declassification as defined in Section 5 of this Appendix. For clarification purposes, AT&T-12STATE's right of revocation of access under this Section 14.9 applies even when the affected dedicated transport dark fiber remains a Lawful UNE, subject to unbundling obligations under Section 251(c)(3) of the Act, in which case CLEC's rights to the affected network element may be revoked as provided in this Section 14.8.

14.8.2 Should CLEC not utilize the fiber strand(s) subscribed to within the 12-month period following the date AT&T-12STATE provided the fiber(s), AT&T-12STATE may revoke CLEC's access to the Lawful UNE Dedicated Transport Dark Fiber and recover those fiber facilities and return them to AT&T-12STATE inventory.

14.8.3 AT&T-12STATE may reclaim from the CLEC the right to use Lawful UNE Dedicated Transport Dark Fiber, whether or not such fiber is being utilized by CLEC, upon twelve (12) months written notice to the CLEC. If the reclaimed Lawful UNE Dedicated Transport Dark Fiber is not otherwise Declassified during the notice period, AT&T-12STATE will provide an alternative facility for the CLEC with the same bandwidth the CLEC was using prior to reclaiming the facility. AT&T-12STATE must also demonstrate to the CLEC that the reclaimed dedicated transport dark fiber will be needed to meet AT&T-12STATE's bandwidth requirements within the 12 months following the revocation.

14.9 Access Methods Specific to Lawful UNE Dedicated Transport Dark Fiber

14.9.1 The termination point for Lawful UNE Dedicated Transport Dark Fiber at Central Offices will be in an AT&T-12STATE approved splitter shelf. This arrangement allows for non-intrusive testing.

14.9.2 At CO's, Lawful UNE Dedicated Transport Dark Fiber terminates on a fiber distribution frame, or equivalent in the CO. CLEC access is provided via collocation.

14.10 Installation and Maintenance for Lawful UNE Dedicated Transport Dark Fiber

14.10.1 AT&T-12STATE will install termination points and place the fiber jumpers from the fiber optic terminals to the termination point. CLEC will run its fiber jumpers from the termination point (1x2, 90-10 optical splitter) to the CLEC.

14.11 Dark Fiber Transport Declassification

14.11.1 AT&T-13STATE shall provide CLEC with access to Lawful UNE Dedicated Transport Dark Fiber, except on routes where both wire centers defining the route are either Tier 1 or Tier 2 Wire Centers. As such AT&T-13STATE must provide Lawful UNE Dedicated Transport Dark Fiber under this Agreement only if a wire center on either end of the requested route is a Tier 3 Wire Center. If both wire centers defining a requested route are either Tier 1 or Tier 2 Wire Centers, then Dedicated Transport Dark Fiber circuits on such routes are Declassified and no longer available as Lawful UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering Lawful UNE Dedicated Transport Dark Fiber on such route(s).

14.11.2 **Effect on Embedded Base.** Upon Declassification of Dedicated Transport Dark Fiber already purchased by CLEC as Lawful UNEs under this Agreement, AT&T-13STATE will provide written notice to CLEC of such Declassification, and proceed in accordance with Section 2.5 and at the end of the notice period under that Section, provision of the affected dedicated transport dark fiber to CLEC will be terminated without further obligation of AT&T-12STATE.

14.11.3 Products provided by AT&T-12STATE in conjunction with Lawful UNE Dedicated Transport Dark Fiber, if any, shall also be subject to termination under this Section 14.11 where such fiber is Declassified.

14.11.4 The Parties agree that activity by AT&T-12STATE under this Section 14.11 shall not be subject to the Network Disclosure Rules.

14.12 Routine Network Modifications

14.12.1 AT&T-12STATE shall make routine network modifications to Lawful UNE Dedicated Transport Dark Fiber used by requesting Telecommunications Carriers for the provision of Telecommunication Services where the requested Lawful UNE Dedicated Transport Dark Fiber facilities have already been constructed. AT&T-12STATE shall perform routine network modifications to Lawful UNE Dedicated Transport Dark Fiber in a nondiscriminatory fashion, without regard to whether such fiber being accessed was constructed on behalf, or in accordance with the specifications, of any Telecommunications Carrier.

14.12.2 A routine network modification is an activity that AT&T-12STATE regularly undertakes for its own customers. Routine network modifications do not include the installation of fiber for a requesting Telecommunications Carrier, nor do routine network modifications include the provision of electronics for the purpose of lighting dark fiber (i.e., optronics), and AT&T-12STATE is not obligated to perform those activities for a requesting Telecommunications Carrier.

14.12.3 Routine network modifications do not include constructing new Lawful UNE Dedicated Transport Dark Fiber; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; or installing new terminals. AT&T-13STATE is not obligated to perform those activities for a requesting telecommunications carrier.

14.12.4 AT&T-13STATE shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to AT&T-13STATE's retail customers.

14.12.5 Notwithstanding anything to the contrary herein, AT&T-13STATE's obligations with respect to routine network modifications apply only where the dark fiber transport transmission facilities are subject to unbundling.

14.12.6 AT&T-12STATE shall provide routine network modifications at the rates, terms and conditions set out in this Appendix (AT&T-12STATE), and in the state specific Appendix Pricing (AT&T-12STATE) or by tariff, as such tariff may be modified from time to time (AT&T CONNECTICUT). AT&T-12STATE will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which AT&T-12STATE is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all AT&T-12STATE's include: dark fiber transport splicing. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates based upon actual time and materials costs for such routine network modifications or specific rates are otherwise established for such routine network modifications through applicable state commission proceedings.

15. RESERVED FOR FUTURE USE

16. 911 OR E911 DATABASE

16.1 Access to the AT&T-13STATE 911 or E911 call related databases will be provided as described in the Lawful 911 and E911 Appendix.

17. OPERATIONS SUPPORT SYSTEMS FUNCTIONS

17.1 Operations Support Systems Functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by AT&T-13STATE's databases and information. AT&T-13STATE will provide CLEC access to its Operations Support Systems Functions as outlined in Appendix OSS.

18. CROSS CONNECTS

- 18.1 AT&T-13STATE shall provide Cross Connects under this Appendix only for purposes of permitting CLEC to access AT&T-13STATE Lawful UNE(s), to connect a Lawful UNE to another Lawful UNE, to Commingle (as provided for in this Agreement), or as may otherwise be used with respect to Lawful UNES in accordance with this Agreement. AT&T-13STATE shall provide Cross Connects under the following terms and conditions in this subsection. AT&T-13STATE shall only be obligated to provide Cross Connects under this Appendix for purposes of permitting CLEC to connect AT&T-13STATE Lawful UNE(s) to other Lawful UNE(s) or to CLEC's own facilities.
- 18.2 A "Cross Connect" is the media used as described in Section 18.1. This includes, for example, the media between an AT&T-13STATE Lawful UNE and the point of access associated with an Interconnection Cable Arrangement to CLEC's Collocation arrangement, and the media between one AT&T-13STATE Lawful UNE and another AT&T-13STATE Lawful UNE where AT&T-13STATE has connected or left connected those Lawful UNES. Nothing in this Section 18 is a commitment to connect or leave connected any two or more Lawful UNES.
- 18.3 AT&T-12STATE will provide the Cross Connects at the rates, terms, and conditions set forth in applicable pricing appendix and/or pricing schedule. For all cross-connect pricing for AT&T CONNECTICUT, refer to the applicable state tariff.

19. PROVISIONING/MAINTENANCE OF LAWFUL UNES

- 19.1 Access to Lawful UNES is provided under this Agreement over such routes, technologies, and facilities as AT&T-13STATE may elect at its own discretion. AT&T-13STATE will provide access to Lawful UNES where technically feasible. Where facilities and equipment are not available, AT&T-13STATE shall not be required to provide Lawful UNES. Collocation is available from AT&T-13STATE for obtaining access to Lawful UNES. See collocation appendices. CLEC may request, through the Bona Fide Request (BFR) process, and, to the extent required by law, AT&T-13STATE may agree to provide an alternative, technically feasible method(s) of accessing Lawful UNES.
- 19.2 Subject to the terms herein, AT&T-13STATE is responsible only for the installation, operation and maintenance of the Lawful UNES it provides. AT&T-13STATE is not otherwise responsible for the Telecommunications Services provided by CLEC through the use of those Lawful UNES.
- 19.3 Where Lawful UNES provided to CLEC are dedicated to a single End User, if such Lawful UNES are for any reason disconnected they shall be made available to AT&T-13STATE for future provisioning needs, unless such Lawful UNE is disconnected in error. The CLEC agrees to relinquish control of any such Lawful UNE concurrent with the disconnection of a CLEC's End User's service.
- 19.4 CLEC shall make available at mutually agreeable times the Lawful UNES provided pursuant to this Appendix in order to permit AT&T-13STATE to test and make adjustments appropriate for maintaining the Lawful UNES in satisfactory operating condition. No credit will be allowed for any interruptions involved during such testing and adjustments.
- 19.5 CLEC's use of any AT&T-13STATE Lawful UNE, or of its own equipment or facilities in conjunction with any AT&T-13STATE Lawful UNE, will not materially interfere with or impair service over any facilities of AT&T-13STATE, its affiliated companies or its connecting and concurring carriers involved in its services, cause damage to their plant, impair the privacy of any communications carried over their facilities or create hazards to the employees of any of them or the public. Upon reasonable written notice and opportunity to cure, AT&T-13STATE may discontinue or refuse service if CLEC violates this provision, provided that such termination of service will be limited to CLEC's use of the Lawful UNE(s) causing the violation.
- 19.6 When an AT&T-13STATE provided tariffed or resold service is replaced by CLEC's facility-based service using any AT&T-13STATE provided Lawful UNE(s), CLEC shall issue appropriate service requests, to both disconnect the existing service and order Lawful UNES. These requests will be processed by AT&T-13STATE, and CLEC will be charged the applicable Lawful UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual Lawful UNE and cross connect ordered. Similarly,

- when an End User is served by one CLEC using AT&T-13STATE provided Lawful UNES is converted to a different CLEC's service which also uses any AT&T-13STATE provided Lawful UNE, the requesting CLEC shall issue appropriate service requests to both disconnect the existing service and connect new service to the requesting CLEC's End User. These requests will be processed by AT&T-13STATE and the CLEC will be charged the applicable service order charge(s), in addition to the recurring and nonrecurring charges for each individual Lawful UNE and cross connect ordered.
- 19.7 CLEC shall connect equipment and facilities that are compatible with the AT&T-13STATE Lawful UNES, and shall use Lawful UNES in accordance with the applicable regulatory standards and requirements referenced in this Agreement.
- 19.8 CLEC shall not combine or use Lawful UNES in a manner that will undermine the ability of other Telecommunications Carriers to obtain access to lawful unbundled network elements or to Interconnect with AT&T-13STATE's network.
- 19.8.1 AT&T-13STATE shall charge the CLEC a Maintenance of Service Charge (MSC) when CLEC reports a suspected failure of a Lawful UNE and AT&T-13STATE dispatches personnel to the End User's premises or an AT&T-13STATE Central Office and trouble was not caused by AT&T-13STATE's facilities or equipment. Time and materials will include all technicians dispatched, including technicians dispatched to other locations for purposes of testing.
- 19.9 CLEC shall pay Time and Material charges when AT&T-13STATE dispatches personnel and the trouble is in equipment or communications systems provided an entity by other than AT&T-13STATE or in detariffed CPE provided by AT&T-13STATE, unless covered under a separate maintenance agreement.
- 19.10 CLEC shall pay Maintenance of Service charges when the trouble clearance did not otherwise require dispatch, but dispatch was requested for repair verification or cooperative testing, and the circuit did not exceed maintenance limits.
- 19.11 If CLEC issues a trouble report allowing AT&T-13STATE access to End User's premises and AT&T-13STATE personnel are dispatched but denied access to the premises, then Time and Material charges will apply for the period of time that AT&T-13STATE personnel are dispatched. Subsequently, if AT&T-13STATE personnel are allowed access to the premises, these charges will still apply.
- 19.12 Time and Material charges apply on a first and additional basis for each half-hour or fraction thereof. If more than one technician is dispatched in conjunction with the same trouble report, the total time for all technicians dispatched will be aggregated prior to the distribution of time between the "First Half Hour or Fraction Thereof" and "Each Additional Half Hour or Fraction Thereof" rate categories. Basic Time is work-related efforts of AT&T-13STATE performed during normally scheduled working hours on a normally scheduled workday. Overtime is work-related efforts of AT&T-13STATE performed on a normally scheduled workday, but outside of normally scheduled working hours. Premium Time is work related efforts of AT&T-13STATE performed other than on a normally scheduled workday.
- 19.12.1 If CLEC requests or approves an AT&T-13STATE technician to perform services in excess of or not otherwise contemplated by the nonrecurring charges herein, CLEC will pay Time and Material charges for any additional work to perform such services, including requests for installation or other work outside of normally scheduled working hours.
- 19.13 Maintenance of Elements
- 19.13.1 If trouble occurs with Lawful UNES provided by AT&T-13STATE, CLEC will first determine whether the trouble is in CLEC's own equipment and/or facilities or those of the End User. If CLEC determines the trouble is in AT&T-13STATE's equipment and/or facilities, CLEC will issue a trouble report to AT&T-13STATE.
- 19.13.2 CLEC shall pay Time and Material charges (maintenance of service charges/additional labor charges) when CLEC reports a suspected failure of a Lawful UNE and AT&T-13STATE dispatches personnel to the End User's premises or an AT&T-13STATE Central Office and trouble was not

caused by **AT&T-13STATE**'s facilities or equipment. Time and Material charges will include all technicians dispatched, including technicians dispatched to other locations for purposes of testing.

20. RESERVATION OF RIGHTS

- 20.1 **AT&T-13STATE**'s provision of UNES identified in this Agreement is subject to the provisions of the Federal Act, including but not limited to, Section 251(d). By entering into this Agreement which makes available certain UNES, or any Amendment to this Agreement, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including but not limited each Party's right to dispute whether any UNES identified in the Agreement must be provided under Section 251(c)(3) and Section 251(d) of the Act, and under this Agreement, including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36) including, without limitation, the FCC's MDU Reconsideration Order (FCC 04-191) (rel. Aug. 9, 2004) and the FCC's Order on Reconsideration (FCC 04-248) (rel. Oct. 18, 2004), and the FCC's Biennial Review Proceeding; the FCC's Order on Remand (FCC 04-290), WC Docket No. 04-313 and CC Docket No. 01-338 (rel. Feb. 4, 2005) ("TRO Remand Order"); the FCC's Report and Order and Notice of Proposed Rulemaking (FCC 05-150), CC Docket Nos. 02-33, 01-337, 95-20, 98-10 and WC Docket Nos. 04-242 and 05-271 (rel. Sept. 23, 2005) ("Title I Order"); the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including without limitation, this Appendix and/or Attachment), **AT&T-13STATE** shall have no obligation to provide UNES, combinations of UNES, combinations of UNE(s) and CLEC's own elements or UNES in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. In the event that a state or federal regulatory or legislative body or a court of competent jurisdiction, in any proceeding finds, rules and/or otherwise orders that any of the UNES and/or UNE combinations provided for under this Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.