

- 1.1.1.4.2A location with access to an existing CLEC fiber termination panel. In this case, the network interconnection point (POI) shall be designated outside of the CLEC building, even though the SBC TEXAS fiber may be physically terminated on a fiber termination panel inside of a CLEC building.
- 1.1.1.4.3A location with no existing SBC TEXAS fiber termination panel. In this situation, SBC TEXAS and CLEC will negotiate provisioning, maintenance and ownership of a fiber termination panel and above ground outside cabinet as a meet point and for connection of the fiber cables.
- 1.1.2 Design Two: CLEC will provide fiber cable to the last entrance manhole at the SBC TEXAS tandem or end office switch with which CLEC wishes to interconnect. CLEC will provide a sufficient length of fiber optic cable for SBC TEXAS to pull the fiber cable to the SBC TEXAS cable vault for termination. In this case the POI shall be at the manhole location.
- 1.1.2.1 Each Party is responsible for designing, provisioning, ownership and maintenance of all equipment and facilities on its side of the POI. Each Party is free to select the manufacturer of its Fiber Optic Terminal (FOT). Neither Party will be allowed to access the Data Communication Channel (DCC) of the other Party's FOT.
- 1.1.2.2 The fiber connection point shall occur at the following location:
- 1.1.2.2.1A manhole outside of the SBC TEXAS central office. In this situation, CLEC will provide sufficient fiber optic cable for SBC TEXAS to pull the cable into the SBC TEXAS cable vault for termination. The POI will be at the manhole and SBC TEXAS will assume maintenance responsibility for the fiber cabling from the manhole to the FDF.
- 1.2 The Parties will mutually agree upon the precise terms of each mid-span meet point facility. These terms will cover the technical details of the meet point as well as other network interconnection, provisioning and maintenance issues.
- 1.3 The CLEC location includes FOTs, multiplexing and fiber required to take the optical signal handoff from SBC TEXAS for interconnection trunking as outlined in Appendix ITR.
- 1.4 The SBC TEXAS tandem or end office switch includes all SBC TEXAS FOT, multiplexing and fiber required to take the optical signal hand-off provided from CLEC for interconnection trunking as outlined in Appendix ITR. This location is SBC TEXAS' responsibility to provision and maintain.
- 1.5 In both designs, CLEC and SBC TEXAS will mutually agree on the capacity of the FOT(s) to be utilized. The capacity will be based on equivalent DS1s that contain Local Interconnection Trunk Groups. Each Party will also agree upon the optical frequency and wavelength necessary to implement the interconnection. The Parties will develop and agree upon methods for the capacity planning and management for these facilities, terms and conditions for over-provisioning facilities, and the necessary processes to implement facilities as indicated below. These methods will meet quality standards as mutually agreed to by CLEC and SBC TEXAS.
- 2.0 Avoidance of Over-Provisioning
- 2.1 Underutilization is the inefficient deployment and use of the network due to forecasting a need for more capacity than actual usage requires and results in unnecessary costs for SONET systems. To avoid over-provisioning, the Parties will agree to joint facility growth planning as detailed below.

3.0 Joint Facility Growth Planning

3.1 The initial fiber optic system deployed for each interconnection shall be the smallest standard available. For SONET this is an OC-3 system. The following lists the criteria and processes needed to satisfy additional capacity requirements beyond the initial system.

3.2 Criteria:

3.2.1 Investment is to be minimized;

3.2.2 Facilities are to be deployed in a "just in time" fashion.

3.3 Processes:

3.3.1 Discussions to provide relief to existing facilities will be triggered when either Party recognizes that the overall system facility (DS1s) is at 85% capacity. If necessary, this capacity level should be adjusted in future trunking forums held in accordance with section 4.2 of Appendix ITR, subject to approval by the Public Utility Commission of Texas.

3.3.2 Both Parties will perform a joint validation to ensure current trunks have not been over-provisioned. If any trunk groups are over-provisioned, trunks will be turned down as appropriate. If any trunk resizing lowers the fill level of the system below 85%, the growth planning process will be suspended and will not be reinitiated until an 85% fill level is achieved. Trunk design blocking criteria described in Appendix ITR will be used in determining trunk group sizing requirements and forecasts. If necessary, this capacity level should be adjusted in future trunking forums held in accordance with section 4.2 of Appendix ITR, subject to approval by the Public Utility Commission of Texas.

3.3.3 If based on the forecasted equivalent DS1 growth, the existing fiber optic system is not projected to exhaust within one year, the Parties will suspend further relief planning on this interconnection until a date one year prior to the projected exhaust date. If growth patterns change during the suspension period, either Party may re-initiate the joint planning process;

3.3.4 If the placement of a minimum size FOT will not provide adequate augmentation capacity for the joint forecast over a two year period, and the forecast appears reasonable based upon history, the appropriately sized system shall be deployed at the outset. If the forecast indicates volume sufficient to justify a system larger than OC-3, SBC TEXAS shall provide such a system. If the forecast does not justify installing a system larger than OC-3, another minimally sized system (such as on OC-3) should be placed. This criteria assumes both Parties have adequate fibers for either scenario. If adequate fibers do not exist, both Parties shall negotiate placement of additional fibers.

3.3.5 Both Parties will negotiate a project service date and corresponding work schedule to construct relief facilities in an effort to achieve "just in time" deployment.

3.3.6 The joint planning process/negotiations should be completed within two months of identification of 90% fill.

4.0 Virtual Collocation

4.1 The description of Virtual Collocation Interconnection is contained in SBC TEXAS' Virtual Collocation tariffs (i.e., SBC TEXAS' Tariff F.C.C. No. 73 and §§ 25-26 of SBC TEXAS' Texas Access Service Tariff).

5.0 SONET-Based

5.1 The description for obtaining interconnection by SONET-Based methods is contained in SBC TEXAS' SONET-Based Interconnection tariffs (i.e., SBC TEXAS' Tariff F.C.C. No. 73).

6.0 Physical Collocation

6.1 The terms and conditions governing Physical Collocation are contained in Appendix Collocation to Attachment 13: Ancillary Functions of this Agreement.

7.0 Leasing of SBC TEXAS' Facilities

7.1 CLEC's leasing of SBC TEXAS' facilities for purposes of Attachment 11: Network Interconnection Architecture will be subject to the terms of this Agreement or the mutual agreement of the Parties. SBC TEXAS offers leased entrance facilities at the applicable Access Tariff rates and other leased interconnection facilities at TELRIC based prices. If a leased facility is included in Attachment 6 UNE: Schedule of Prices, that price is the TELRIC price.

8.0 Leasing of Facilities From a Third Party or CLEC Self-Build Out

8.1 CLEC's leasing of facilities from a Third Party Carrier or self-build out for purposes of Attachment 11: Network Interconnection Architecture shall be at the discretion of CLEC.

ATTACHMENT 12: COMPENSATION

1.0 Introduction

SBC TEXAS agrees to comply with all Texas Commission reciprocal compensation decisions regarding Internet service traffic subject to the final outcome of appeals of those decisions and the reciprocal compensation selected by the CLEC under this Agreement.

Both parties, however, reserve all rights to contest any order or decision requiring the payment of reciprocal compensation pursuant to regulatory or judicial approval. Nothing in this Attachment shall constitute an admission by SBC TEXAS that ISP-Bound Traffic (as defined in Section 1.2) is in fact Section 251(b)(5) Traffic (as defined below) subject to reciprocal compensation under the 1996 Federal Telecommunications Act. SBC TEXAS will make available to a CLEC that is similarly situated to another ILEC or CLEC (i.e., similar traffic types and the same geographic areas as defined by rate centers) each compensation arrangement for serving customers in optional or mandatory, one way or two way EAS, including ELCS, area serviced by such ILEC or CLEC similar to the corresponding arrangement that SBC has with that ILEC or CLEC for serving those customers, provided the CLEC adopts the agreement containing the compensation arrangement in its entirety, taking all rates, terms, and conditions from the adopted agreement. For purposes of this Agreement, Section 251(b)(5) Traffic shall mean all Local Traffic (as defined in Section 1.2) and any other traffic in which the Parties must pay each other reciprocal compensation for the transport and termination of telecommunications under this Agreement (excluding any ISP-Bound Traffic).

- 1.1 For purposes of compensation under this Agreement, the telecommunications traffic traded between CLEC and SBC TEXAS will be classified as either Section 251(b)(5) Traffic (including Local Traffic), Transit Traffic, Optional EAS Traffic (or Optional Calling Area Traffic), IntraLATA Interexchange Traffic, ISP-bound Traffic, Meet Point Billing, FX Traffic (Virtual, Dedicated and FX-type), FGA Traffic, or Cellular Traffic. The compensation arrangement for terminating calls from a Cellular provider to CLEC or SBC TEXAS end users is set forth in Section 17.0 of this Attachment and Appendix Cellular, attached hereto and incorporated by reference. The compensation arrangement for the joint provision of Feature Group A (FGA) Services is covered in Appendix FGA, attached hereto and incorporated by reference. The Parties agree that, notwithstanding the classification of traffic under this Agreement, either Party is free to define its own "local" calling area(s) for purposes of its provision of telecommunications services to its end users. The provisions of this Attachment apply to calls originated over the originating carrier's facilities or over local switching purchased by CLEC from SBC-TEXAS on a wholesale basis. The provisions of this Attachment do not apply to traffic originated over services provided under local Resale service.
- 1.2 Calls originated by CLEC's end users and terminated to SBC TEXAS' end users (or vice versa) will be classified as "Local Traffic" under this Agreement and subject to reciprocal compensation if the call: (i) originates and terminates to such end-users in the same SBC TEXAS exchange area; or (ii) originates and terminates to such end-users within different Exchanges, or within a SBC exchange and an independent ILEC exchange that share a common mandatory local calling area, as defined in SBC TEXAS' tariff, e.g., mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other like types of mandatory expanded local calling scopes. For the purpose of reciprocal compensation, a call to an Internet Service Provider is classified as "Local Traffic" if it meets either requirement in (i) or (ii). Calls originated by SBC TEXAS' end users and terminated to an ISP served by a CLEC (or vice versa) will be classified as compensable "ISP-Bound Traffic" in accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) (FCC ISP Compensation Order") if the call (i) originates from end users and terminates

to an ISP in the same SBC TEXAS exchange area; or (ii) originates from end users and terminates to an ISP within different SBC TEXAS Exchanges or within a SBC exchange and an independent ILEC exchange that share common mandatory local calling area, as defined in SBC TEXAS' tariff, e.g., mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other like types of mandatory expanded local calling scopes.

- 1.3 To the extent that FX-type and 8YY traffic do not originate from and terminate to an end user within a mandatory local calling scope, they are not eligible for reciprocal compensation. CLECs are not precluded from establishing their own local calling areas or prices for purpose of retail telephone service offerings.

- 1.3.1 Pursuant to the Texas Commission Arbitration Award in Docket 24015, the transport and termination compensation for Virtual FX, Dedicated FX, and FX-type Traffic will be "Bill and Keep."

1.3.1.1 Foreign Exchange (FX) services are retail service offerings purchased by FX customers which allow such FX customers to obtain exchange service from a mandatory local calling area other than the mandatory local calling area where the FX customer is physically located. FX service enables particular end-user customers to avoid what might otherwise be toll calls between the FX customer's physical location and customers in the foreign exchange. There are two types of FX service:

1.3.1.1.1 "Dedicated FX Traffic" shall mean those calls routed by means of a physical, dedicated circuit delivering dial tone or otherwise serving an end user's station from a serving Central Office (also known as End Office) located outside of that station's mandatory local calling area. Dedicated FX Service permits the end user physically located in one exchange to be assigned telephone numbers resident in the serving Central (or End) Office in another, "foreign," exchange, thereby creating a local presence in that "foreign" exchange.

1.3.1.1.2 "Virtual Foreign Exchange (FX) Traffic" and "FX-type Traffic" shall refer to those calls originated by or delivered to telephone numbers that are rated as local to the other telephone numbers in a given mandatory local calling area, but where the recipient end user's station assigned that telephone number is physically located outside of that mandatory local calling area. Virtual FX Service also permits an end user physically located in one exchange to be assigned telephone numbers resident in the serving Central (or End) Office in another, "foreign," exchange, thereby creating a local presence in the "foreign" exchange. Virtual FX Service differs from Dedicated FX Service, however, in that Virtual FX end users continue to draw dial tone or are otherwise served from a Central (or End) Office which may provide service across more than one Commission-prescribed mandatory local calling area, whereas Dedicated FX Service end users draw dial tone or are otherwise served from a Central (or End) Office located outside their mandatory calling area.

- 1.3.2 "FX Telephone Numbers" (also known as "NPA-NXX" codes) shall be those telephone numbers with different rating and routing points relative to a given mandatory local calling area. FX Telephone Numbers that deliver second dial tone and the ability for the calling party to enter access codes and an additional recipient telephone number remain classified as Feature Group A (FGA) calls, and are subject to the originating and terminating carrier's tariffed Switched Exchange

Access rates (also known as "Meet Point Billed" compensation), or if jointly provisioned FGA service, subject to the terms and conditions of Appendix FGA.

- 1.3.3 The Terminating Carrier shall be responsible for not billing any minutes of use on its network that are "Virtual FX Traffic," "FX-type Traffic," or "Dedicated FX Service" as defined herein. To the extent minutes of use are nevertheless billed and paid by the originating carrier, but later found to be Virtual FX, Dedicated FX, or FX-type Traffic that should have been subject to Bill and Keep, the terminating carrier will be responsible for reimbursing the originating carrier the amount of compensation paid, plus interest at the interest rate defined in the General Terms and Conditions of this Agreement.
- 1.3.4 To the extent that the Parties jointly provide the Dedicated FX circuit serving the end user, the terms of Appendix FGA (as amended) shall apply for the joint revenue sharing between ILEC and CLEC.
- 1.3.5 FX traffic shall be segregated and tracked using the Percentage of FX Usage (PFX) method.
- 1.4 With respect to CLEC's rights and obligations concerning CLEC and SBC TEXAS termination of wireline traffic, CLEC shall select one of the three options set forth below upon execution of this Agreement by making a designation on the signature page of the General Terms and Conditions of the Agreement. If CLEC fails to select one of the billing options identified below upon execution of this Agreement on the signature page in the General Terms and Conditions, Option 2 shall automatically apply for the duration of the Agreement.
 - 1.4.1 Option 1: Rates, terms and conditions for compensation (except those pertaining to Option 2 and 3) as awarded in Docket No. 21982 for Section 251(b)(5) Traffic contained below in Section 3.0 and the FCC's interim ISP terminating compensation rate plan for ISP Bound Traffic as contained below in Section 1.5; or
 - 1.4.2 Option 2: Exchange all ISP-Bound Traffic and All Section 251(b)(5) Traffic at the FCC's Interim ISP Terminating Compensation Plan Rate as contained below in Section 1.6; or
 - 1.4.3 Option 3: A reciprocal compensation arrangement for the transport and termination of wireline Section 251(b)(5) Traffic and ISP-Bound Traffic, based upon a long-term Bill and Keep arrangement. With this option, the Parties agree that and the terms and conditions as more particularly described in Section 1.7 below shall apply.
- 1.5 Contract Rates for Section 251(b)(5) Traffic and FCC's Interim ISP Terminating Compensation Plan rate for ISP-Bound Traffic (Option 1)

The CLEC may elect to take the rates, terms, and conditions for Section 251(b)(5) Traffic contained in Section 3.0 of this Attachment, which are based on the compensation awarded in Docket No. 21982 and the rates, terms and conditions for ISP-Bound Traffic in Sections 1.5.2 through 1.5.4 which are based on the FCC ISP Compensation Order. In the event CLEC and SBC TEXAS have not previously exchanged traffic for a full nine- (9) month period, CLEC and SBC TEXAS will use the Bill and Keep compensation arrangement described in Section 1.5.1 below.

 - 1.5.1 In the event CLEC and SBC TEXAS have not previously exchanged traffic for a full nine (9) month period, Bill and Keep will be the reciprocal compensation arrangement for Section 251(b)(5) Traffic and ISP-Bound Traffic for the first nine (9) months after the date upon which the first commercial

call is terminated between SBC TEXAS and CLEC in Texas. The Parties will notify each other of the date when the first commercial call is terminated in Texas between SBC TEXAS and CLEC pursuant to this Section. Where CLEC and SBC TEXAS have exchanged traffic for less than nine (9) months prior to entering this Agreement, Bill and Keep will be the compensation arrangement for nine (9) months less the time traffic has already been exchanged under another Agreement. At the completion of the nine month period, if the difference between the traffic volumes flowing between the two networks in Texas exceeds ten percent of the larger volume of traffic, the rates, terms and conditions in Section 3.0 for Section 251(b)(5) Traffic shall apply and the rates, terms and conditions in Sections 1.5.2 through 1.5.4 for ISP-Bound Traffic shall apply. The ten percent threshold should be calculated on a per-minute basis. When traffic exceeds the ten percent threshold, SBC TEXAS and CLEC will compensate each other for all calls unless the Parties agree to apply the compensation rates only to the volume of traffic that exceeds ten percent. The reciprocal compensation rates as adopted herein apply to calls that originate and terminate within the mandatory single or multi-exchange local calling area of SBC TEXAS including the mandatory EAS areas served by SBC TEXAS. Bill and Keep applies only to Section 251(b)(5) Traffic as defined in Section 1.0 and ISP-Bound Traffic as defined in Section 1.2 of this Attachment and does not include Transit Traffic, Optional Calling Area Traffic, IntraLATA Interexchange Traffic, Meet Point Billing Traffic, FX Traffic, FGA Traffic or Cellular Traffic.

1.5.2 Intercarrier Compensation Rate for ISP-Bound Traffic:

1.5.2.1 The Parties agree to compensate each other for ISP-Bound Traffic on a minute of use basis at \$.0007 per minute of use.

1.5.2.2 Payment of Reciprocal Compensation on ISP-Bound Traffic will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch. Where the terminating party utilizes a hierarchical or two-tier switching network, the Parties agree that the payment of these rates in no way modifies, alters, or otherwise affects any requirements to establish Direct End Office Trunking, or otherwise avoids the applicable provisions of the Interconnection Agreement and industry standards for interconnection, trunking, CPN, call transport, and switch usage recordation.

1.5.3 ISP-Bound Traffic Rebuttable Presumption

In accordance with Paragraph 79 of the FCC's ISP Compensation Order, CLEC and SBC TEXAS agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-Bound traffic exchanged between CLEC and SBC TEXAS exceeding a 3:1 terminating to originating ratio is presumed to be ISP-Bound Traffic subject to the compensation terms in this Section 1.5. Either Party has the right to rebut the 3:1 ISP presumption by identifying the actual ISP-Bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission approval and, in addition, shall be utilized to determine the appropriate true-up as described below. During the pendency of any such proceedings to rebut the presumption, CLEC and SBC TEXAS will remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in Section 1.5.2.1 for traffic above the ratio) subject to a true-up upon the conclusion of such proceedings. Such true-up shall be retroactive back to the date a Party first sought appropriate relief from the Commission.

1.5.4 For purposes of this Section 1.5.4 all Section 251(b)(5) Traffic and all ISP-Bound Traffic shall be referred to as "Billable Traffic" and will be billed in accordance with Section 15.0 below. The Party that transports and terminates more "Billable Traffic" ("Out-of-Balance Carrier") will, on a monthly basis, calculate (i) the amount of such traffic to be compensated at the FCC interim ISP terminating compensation rate set forth in Section 1.5.2.1 above. The Out-of-Balance Carrier will invoice on a monthly basis the other Party in accordance with the provisions in this Agreement and the FCC's interim ISP terminating compensation plan.

1.6. Exchange All ISP-Bound Traffic and All Section 251(b)(5) Traffic at the FCC's ISP Terminating Compensation Plan Rate (Option 2)

The CLEC may elect to take the rates, terms, and conditions contained in this Attachment in Sections 1.6 through 1.6.2 for all ISP-Bound Traffic and Section 251(b)(5) Traffic.

1.6.1 Compensation Rate Schedule for ISP-Bound Traffic and Section 251(b)(5) Traffic:

1.6.1.1 The rates, terms, conditions in Sections 1.6 through 1.6.2 apply to the termination of all ISP-Bound Traffic and all Section 251(b)(5) Traffic.

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

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

1.6.2 For purposes of this Section 1.6, all Section 251(b)(5) Traffic and all ISP-Bound Traffic shall be referred to as "Billable Traffic" and will be billed in accordance with Section 15.0 below.

1.6.2.1 Each party will invoice the other party on a monthly basis for combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties at the rate set forth in Section 1.6.1.2 above.

1.7 Long-Term Local Bill and Keep Option (Option 3)

As an alternative to Options 1 and 2, a CLEC can elect long-term local Bill and Keep as the reciprocal compensation arrangement for Section 251(b)(5) Traffic and ISP-Bound originated and terminated between SBC TEXAS and CLEC in Texas so long as qualifying traffic between the parties remains in balance in accordance with this Section 1.7. Long-term local Bill and Keep applies only to Section 251(b)(5) Traffic as defined in Section 1.0 and ISP-Bound Traffic as defined in Section 1.2 of this Attachment and does not include Transit Traffic, Optional Calling Area Traffic IntraLATA Interexchange Traffic, Meet Point Billing Traffic, FGA Traffic or Cellular Traffic, which shall be subject to compensation as provided in Appendix Cellular or described later in this Attachment.

1.7.1 The Parties agree that Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties will be subject to Bill and Keep as the method of inter-carrier compensation provided that Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties is in balance within +/-5% of equilibrium (50%).

- 1.7.1.1 The calculation for determining whether traffic is in balance will be based on the difference between the total Section 251(b)(5) Traffic and ISP-Bound Traffic originated by each Party's end users terminated to the other Party's End Users, divided by the sum of both Parties' end users' terminated Section 251(b)(5) traffic, and ISP-Bound Traffic multiplied by 100.
- 1.7.2 The Parties agree that where Section 251(b)(5) Traffic and ISP-Bound Traffic is determined to be out-of-balance by more than 5% per month for three (3) consecutive months, Option 2 shall immediately apply to all Section 251(b)(5) Traffic and ISP-Bound Traffic.
- 1.7.3 Once Option 2 applies to CLEC's Section 251(b)(5) Traffic and ISP-Bound Traffic, it will apply for the remaining term of this Agreement.
- 1.7.3.1 In the event that either Party disputes whether its Section 251(b)(5) Traffic and ISP-Bound Traffic is in balance, the Parties agree to work cooperatively to reconcile the inconsistencies in their usage data.
- 1.7.3.2 Should the Parties be unable to agree on the amount and balance of Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between their End Users, either Party may invoke the dispute resolution procedures under this Agreement. In the event that dispute resolution procedures results in the calculations being delayed, the reciprocal compensation rates will apply retroactively to the date such reciprocal compensation were applicable under Sections 1.7.1 and 1.7.2.
- 1.7.3.3 In the event one Party determines that the Section 251(b)(5) Traffic and ISP-Bound Traffic originated and terminated by the Parties returns to an "in-balance" condition (i.e., differs by less than 5% per month for three (3) consecutive months as provided in Section 1.7.1 above) after Option 2 is applied, then such Party may provide written notice to the other party requesting that Option 3 apply to all Section 251(b)(5) Traffic and ISP-Bound Traffic. Such requests may be submitted no more than once per calendar year. The requesting Party will provide supporting usage data to the other Party for the three (3) consecutive months used to determine the Section 251(b)(5) Traffic and ISP-Bound Traffic has returned to an "in-balance" condition. If the Parties agree the traffic originated and terminated by the Parties is "in-balance" pursuant to Section 1.7.1, Bill and Keep will apply to all Section 251(b)(5) Traffic and ISP-Bound Traffic beginning with the second billing cycle following receipt of such notice. If the Parties do not agree the traffic originated and terminated by the Parties is "in-balance," then either Party may invoke Dispute Resolution as outlined in the General Terms and Conditions of this Agreement. In the event that dispute resolution procedures result in the calculations being delayed, the bill and keep arrangement will apply retroactively to the date such bill and keep arrangements are deemed to be applicable.
- 1.7.4 Upon reasonable belief that traffic other than Section 251(b)(5) Traffic defined in Section 1.0, and ISP-Bound Traffic as defined in Section 1.2 of this Attachment is being terminated under this long-term local Bill and Keep arrangement, either Party may request a meeting to confirm the jurisdictional nature of traffic delivered as Bill and Keep. Parties will consult with each other to attempt to resolve issues without the need for an audit. Should no resolution be reached within 60 days, an audit may be requested and will be conducted by an independent auditor under an appropriate non-disclosure agreement. Only one audit may be conducted by each Party within a six-month period.

- 1.7.5 The auditing Party will pay the audit costs unless the audit reveals the delivery of a substantial amount of traffic originating from a party in this Agreement other than Section 251(b)(5) Traffic defined in Section 1.0 and ISP-Bound Traffic for termination to the other party under the long term local Bill and Keep arrangement. In the event the audit reveals a substantial amount of traffic other than Section 251(b)(5) Traffic defined in Section 1.2 and ISP-Bound Traffic, the Party delivering such traffic will bear the cost of the audit and will pay appropriate compensation for such traffic with interest at the commercial paper rate as referenced in the General Terms and Conditions of this Agreement.
- 1.7.6 The Parties will consult and negotiate in good faith to resolve any issues of accuracy or integrity of data collected, generated, or reported in connection with audits or otherwise.
- 1.7.7 The audit provisions set out in Sections 1.7.4 through 1.7.6 above do not alter or affect audit provisions set out elsewhere in this Agreement.

2.0 Responsibilities of the Parties

- 2.1 Under any option, each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the respective Parties involved.
- 2.2 For all traffic including, without limitation, Interexchange Circuit-Switched Traffic, IP Traffic and wireless traffic, each Party shall provide calling party number as defined in 47 C.F.R. § 64.1600(c) ("CPN") in accordance with Section 2.5 and shall not strip, alter, modify, add, delete, change, or incorrectly assign any CPN. CPN shall, at a minimum, include information that accurately reflects the physical location of the end user that originated, and/or dialed the call, when including such information is technically feasible. Each party shall use commercially reasonable efforts to prohibit the use of its local exchange services (including, but not limited to, PRI, ISDN and/or Smart Trunks) that such party sells to others to be used for the purpose of delivering Interexchange Traffic.
- 2.3 The type of originating calling number transmitted depends on the protocol of the trunk signaling used for interconnection. Traditional toll protocol will be used with Multi-Frequency (MF) signaling, and Automatic Number Identification (ANI) will be sent either from the originating Party's end office switch to the terminating Party's tandem or end office switch.
- 2.4 If one Party is passing CPN but the other Party is not properly receiving information, the Parties will work cooperatively to correct the problem.
- 2.5 For traffic which is delivered by SBC TEXAS or CLEC to be terminated on the other Party's network, if the percentage of calls passed with CPN is greater than ninety percent (90%), all calls exchanged without CPN will be billed as either Section 251(b)(5) Traffic or IntraLATA Toll Traffic in direct proportion to the MOUs of calls exchanged with CPN. If the percentage of calls passed with CPN is less than 90%, all calls passed without CPN will be billed as Intrastate IntraLATA Toll Traffic
- 3.0 Reciprocal Compensation for Termination of Section 251(b)(5) Traffic
- 3.1 If Option 1 is elected by the CLEC, in accordance with Section 1.5 of this Attachment, the compensation set forth below will apply to all Section 251(b)(5) Traffic as defined in Section 1.0 of this Attachment.
- 3.2 Applicability of Rates:

- 3.2.1 The rates, terms, conditions in this Section 3.0 apply only to the termination Section 251(b)(5) Traffic except as explicitly noted.
- 3.2.2 The Parties agree to compensate each other for the termination of Section 251(b)(5) Traffic on a minute of use (MOU) basis and a Per Message basis.
- 3.3 Rate Elements:
- 3.3.1 Tandem Switching - compensation for the use of tandem switching functions. The applicable rate is:
- 3.3.2 Tandem Switching \$.000794 per MOU
- 3.3.3 Tandem Transport - compensation for the transmission facilities between the local tandem and the end offices subtending that tandem. The applicable rates are:
- a.) Common Transport Termination \$.000135 per MOU
- b.) Common Transport Facility \$.000002 per MOU per mile
- 3.3.4 End Office Switching - compensation for the local end office switching and line termination functions necessary to complete the transmission. It consists of a call set-up rate element and a duration rate element and the applicable rates are as follows:
- a.) End Office Setup \$.0010887 per Message
- b.) End Office Duration \$.0010423 per MOU
- 4.0 Reciprocal Compensation for Section 251(b)(5) Traffic Terminated by a Party Utilizing a Hierarchical or Two-Tier Switch Network
- 4.1 Transport and termination rates will vary according to whether the traffic is routed through a tandem switch or directly to an end office switch. The transport and termination rates assessed on the originating carrier shall reflect the functions performed by the terminating carrier in transporting and terminating the calls. Where the terminating party utilizes a hierarchical or two-tier switch network (i.e., separate switches performing tandem and end office functions), the compensation rate for Local Traffic terminated to the party's tandem switch shall consist of the summation of the rates for tandem switching, tandem transport and end office switching as listed in Section 3.3 above.
- 4.2 Where the terminating party utilizes a hierarchical or two-tier switch network, the End Office Switching rate, as described in Section 3.3.4. above, applies to direct-routed Section 251(b)(5) Traffic terminating at the carrier's End Office Switch. This includes direct-routed Section 251(b)(5) Traffic that terminates to offices that have combined tandem and end office functions.
- 5.0 Reciprocal Compensation for Section 251(b)(5) Traffic Terminated by a Party that does not Utilize a Hierarchical or Two-Tier Switch Network
- 5.1 For Section 251(b)(5) Traffic terminated by a LEC that does not have a two-tier or hierarchical switch, but instead employs multiple-function switches, a tandem blended rate applies. This rate is calculated as follows:
- 5.2 End Office Switching + .42 [Tandem Switching + (Common Transport Termination + (14 * Common Transport Facility))]

- 5.3 For purposes of this tandem blended rate, the end office rate, the tandem switching rate, and the tandem transport rates are the rates defined in Section 3.3.
- 5.4 The percentage is the approximate percentage of traffic terminated on SBC TEXAS' network using tandems (42%), which serves as the proxy for SBC TEXAS' traffic terminated on the CLECs' networks that involves the performance of tandem or tandem-like functions. This tandem blended rate applies until a 3:1 ratio (terminating to originating traffic) threshold is reached. After the 3:1 ratio is reached, only the end office rate applies, unless the terminating carrier demonstrates actual tandem or tandem-like functionality.
- 5.5 The terminating carrier may demonstrate actual tandem or tandem-like functionality in the delivery of this "excess" traffic, in either an arbitration proceeding or other appropriate proceeding designated by the Commission, such as a post-interconnection agreement dispute proceeding, using various network design factors that demonstrate the existence of a network serving an area comparable to the ILEC's geographic area with tandem or tandem-like functions, a network designed to both send and receive customer traffic for the purpose of serving a dispersed customer base. Merely evidencing a capability to serve a comparable geographic area will not rebut the presumption. The network design factors upon which a carrier may make its case include, but are not limited to:
- 5.5.1 The number and capacity of central office switches;
 - 5.5.2 the number of points of interconnection offered to other local exchange carriers;
 - 5.5.3 the number of collocation cages;
 - 5.5.4 the presence of SONET rings and other types of transport facilities;
 - 5.5.5 the presence of local distribution facilities such as coaxial cable and/or unbundled loops; or
 - 5.5.6 any other indicia reliably demonstrating that the carrier is transporting a significant volume of traffic to a geographically dispersed area.
- 5.6 Upon a demonstration of actual tandem or tandem-like functionality, the terminating carrier will receive, on a going-forward basis, compensation in the range of 0% to 100% of the tandem rate, depending on the extent to which actual tandem or tandem-like functionality is proven to occur. This rate shall prospectively apply to all of traffic terminated on the terminating carrier's network.

6.0 Transit Traffic Compensation

6.1 SBC TEXAS will provide CLEC with SBC Texas' Transit Service to deliver Local, Optional EAS and intraLATA toll traffic to all Third Party Carriers with whom SBC TEXAS is interconnected. SBC Texas' Transit Service is a service provided to carriers, that are interconnected with SBC TEXAS, for the transmission of Section 251(b)(5) Traffic, ISP-Bound Traffic, (collectively "Local Transit Traffic"), Optional EAS traffic and/or IntraLATA Interexchange Traffic ("intraLATA Toll Transit Traffic") as defined in Sections 6.2, 6.2.1, 6.2.2, and 6.2.3 below. At no time shall either party provide transit service to an Interexchange Carrier (IXC) or any other Third Party Carrier for the purposes of avoiding paying appropriate access charges.

6.2 For the purposes of this Agreement, Transit Traffic is defined as traffic between CLEC's end users and a Third Party Carrier's end user (e.g. Competitive Local Exchange Carriers, Incumbent Local Exchange Carriers, or Commercial Mobile Radio Service providers) that is routed utilizing an SBC TEXAS tandem switch where an SBC TEXAS end user is neither the originating nor the terminating party.

6.2.1 Local Transit Traffic is defined as Transit Traffic between CLEC's local end users and the local end users of a Third Party Carrier originated and terminated within the same mandatory local calling area.

6.2.1.1 The SBC TEXAS Transit Service for local traffic shall be billed as follows:

Transit Compensation

| | |
|---|--------------------------------|
| Transit Rate | \$ 0.000960 |
| Tandem Switching | \$ 0.000794 |
| Common Transport Termination Facility/mile (multiply this by 14 to develop average transit rate) | \$ 0.000002 (* 14 = 000028) |
| Common Transport Termination MOU Statewide | \$ 0.000135 |

6.2.2 Optional EAS Transit Traffic is defined as Transit Traffic between CLEC's local end users and the local end users of a Third Party Carrier originated and terminated within an optional calling area. The transit rate applies when traffic transits SBC's network but SBC does not perform terminating switching.

6.2.2.1 The SBC TEXAS Optional EAS Transit Service shall be billed at \$.001030 per MOU.

6.2.3 IntraLATA Toll Transit Traffic is defined as Transit Traffic between CLEC's end users and the end users of a Third Party Carrier originated in one mandatory local calling area and terminated in a different mandatory local calling area but where both mandatory local calling areas are within the same LATA. Switched Access rates found in the SBC TEXAS Intrastate Switched Access Tariff shall apply for intraLATA Toll Transit Traffic.

6.2.3.1 CLEC shall establish direct interconnection to third parties as detailed in Attachment ITR.

6.3 When CLEC utilizes SBC Texas' Transit Service, CLEC shall indemnify SBC TEXAS against any and all charges levied by a Third Party Carrier upon SBC TEXAS, including any termination charges related to such traffic as well as any attorneys fees and expenses. SBC TEXAS shall not be required to function as a billing intermediary, (e.g. clearinghouse) when SBC Texas' Transit Service is provided.

- 6.4 When a Third Party Carrier originates Local, Optional EAS or intraLATA toll traffic to be transited by SBC TEXAS to CLEC SBC agrees to pass the originating CPN information to the terminating Party when the Third Party Carrier provides such information and/or the Originating Carrier Information (OCN) identifying the carrier SBC TEXAS immediately receives traffic from when such information is available.
- 6.5 CLEC shall not bill SBC TEXAS for terminating any traffic that is originated by a Third Party Carrier whether that traffic or carrier is identified or unidentified, (i.e. whether CPN is sent or is not sent by the Third Party Carrier or the OCN is or is not available) even though SBC TEXAS is acting as the transit service provider.
- 6.6 The Parties agree to seek terminating compensation directly from the Third Party Carrier that is originating traffic, not from the Party providing the transit service.
- 7.0 Non-Local Call Termination
- 7.1 The Parties recognize and agree that ISP and Internet traffic could also be traded outside of the applicable local calling scope, or routed in ways that could make the rates and rate structure in Options 1, 2, and/or 3 above not apply, including but not limited to ISP calls that fit the definitions of:
- Transit Traffic
 - FX Traffic
 - Optional EAS Traffic
 - IntraLATA Interexchange Traffic
 - InterLATA Interexchange Traffic
 - 800, 888, 877, ("8YY") Traffic
 - Feature Group A Traffic
 - Feature Group D Traffic
- 7.2 The Parties agree that, for the purposes of this Attachment, either Party's end users remain free to place ISP calls under any of the above classifications. Notwithstanding anything to the contrary herein, to the extent ISP calls are placed, the Parties agree that Options 1, 2, and/or 3 above does not apply, and that the Agreement's rates, terms and conditions for Transit Traffic, Optional EAS Traffic, "8YY" Traffic, Feature Group A Traffic, Feature Group D Traffic, FX Traffic IntraLATA and/or InterLATA Traffic, whichever is applicable, shall apply.
- 8.0 Compensation for Termination of Optional Extended Area Service Traffic
- 8.1 Optional Extended Area Service (Optional EAS) - In accordance with SBC tariffs, Optional EAS, also known as Optional Calling Area Traffic is defined as a service which enlarges a customer's local calling scope and permits subscribers between exchanges that are contiguous or that are contained within a continuous boundary, to call each other for an additional monthly charge. Extended Area Calling Service (EACS) plans may be either one-way or two way. This Optional EAS compensation rate applies to all terminating traffic for calls to and from end users physically located in specific areas designated as Commission approved Optional EAS route(s) in accordance with SBC Texas' tariffs. A list of such areas will be provided by SBC to CLEC upon request. Notwithstanding anything to the contrary herein, the Optional EAS compensation rate shall not apply to FX Traffic.
- 8.2 For extended area traffic including Optional Area Traffic, except mandatory extended traffic addressed in Section 1.2 of this Attachment compensation for termination of intercompany traffic will be the rates listed below. CLEC is not precluded from establishing its own local calling areas or prices for purposes of retail telephone service offerings.

- 8.3 The following rates will apply as permanent rates for the transport and termination of optional calling area traffic. The transport and termination rate applies when SBC TEXAS transports traffic and terminates it at its own switch.

8.3.1 Optional EAS Transport & Termination Rate \$.002487 per MOU

- 8.4 When CLEC uses unbundled local switching to provide services associated with a telephone number with a NXX which has an expanded 2-way area calling scope (EAS) in a SBC TEXAS end office, CLEC will pay the charge contained on Appendix Pricing UNE - Schedule of Prices labeled "EAS Additive per MOU". The additives to be paid by CLEC to SBC TEXAS are \$0.024 per MOU for toll-free calls made by a SBC TEXAS customer from a metro exchange to an exchange contiguous to a metro exchange and \$0.0355 per MOU for toll free calls made by a SBC TEXAS customer to CLEC's optional 2-way EAS customer for contiguous exchanges other than those contiguous to a metro exchange within the scope of the 2-way calling area. These additives will apply in addition to cost-based transport and termination rates for Optional EAS service set forth in the rates spreadsheet. SBC TEXAS agrees to extend to a CLEC that is similarly situated to another ILEC or CLEC (i.e., similar traffic types and the same geographic area as defined by rate centers) the same terms and conditions that SBC TEXAS has with such ILEC or CLEC for similar two-way arrangements in each area where SBC TEXAS offers optional two-way EAS to allow the CLEC to serve its customers in each such area in a manner comparable to SBC TEXAS, provided the CLEC adopts the agreement containing the Optional EAS compensation arrangement in its entirety, taking all rates, terms, and conditions from the adopted agreement. These additives are reciprocal in nature, and CLEC is entitled to receive compensation from SBC TEXAS if CLEC agrees to waive usage sensitive charges for its customers who call SBC TEXAS optional two-way EAS customers. These additives also apply if the CLEC chooses to adopt the transport and termination rates in effect between SBC TEXAS and other ILECs for optional EAS traffic.

9.0 Segregating and Tracking FX Traffic

- 9.1 In order to ensure that Virtual FX, Dedicated FX, and FX-type Traffic is being properly segregated from other types of intercarrier traffic, the terminating carrier will be responsible for keeping a written record of all FX Telephone Numbers (whether Dedicated, Virtual, and FX-type) for which Bill and Keep applies, and providing an NXX level summary of the minutes of use to FX Telephone Numbers on its network to the originating carrier each month (or in each applicable billing period, if not billed monthly).
- 9.2 The Parties agree to retain written records of their full 10 digit FX Telephone Numbers for two (2) years from the date the FX Telephone Numbers were assigned.
- 9.3 Alternatively, the Parties may mutually agree to assign a Percentage of FX Usage (PFX) which shall represent the estimated percentage of minutes of use that is attributable to all Dedicated FX, Virtual FX, and FX-type Traffic in a given usage month.
- 9.3.1 The PFX must be agreed upon in writing prior to the usage month (or other applicable billing period) in which the PFX is to apply, and may only be adjusted once each quarter. The parties may agree to use traffic studies, retail sales of Dedicated FX lines, or any other agreed method of estimating the FX traffic to be assigned the PFX.

10.0 Compensation for Termination of IntraLATA Interexchange Toll Traffic

10.1 IntraLATA Interexchange traffic, not considered Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic, Meet Point Billing Traffic, FX Traffic (Virtual, Dedicated and FX-type), FGA Traffic, or Cellular Traffic and carried on the jointly-provided ILEC network, is considered as IntraLATA Toll traffic and is subject to tariff access charges. Billing arrangements are outlined in Section 15.

10.2 Compensation for the termination of this traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge, as set forth in each Party's intrastate access service tariff.

10.3 For interstate IntraLATA service, compensation for terminating of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge, as set forth in each Party's interstate access service tariff.

11.0 Compensation for Origination and Termination of Switched Access Service Traffic to or from an Interexchange Carrier (IXC) (Meet-Point Billing (MPB) Arrangements)

11.1 Meet Point Billing Traffic compensation for origination or termination of intercompany Meet Point Billing traffic will be at access rates as set forth in each Party's own applicable interstate or intrastate access tariffs. When such traffic is contained in Optional Calling Areas, compensation will be applied pursuant to Section 6.0 above.

11.2 For exchange access IXC traffic via SBC TEXAS' access tandem switch the CLEC will establish MPB arrangements in order to provide Switched Access Services to Interexchange Carriers, in accordance with the MPB guidelines adopted by and contained in the Ordering and Billing Forum's MECOD and MECAB documents. Except as modified herein, MPB will be determined during joint network planning.

11.3 Initially, billing to Interexchange carriers for the Switched Access Services jointly provided by the parties via the MPB arrangement will be according to the multiple bill single tariff method. As described in the MECAB document each Party will render a bill in accordance with its tariff for its portion of the service. Each Party will bill its own network access service rates to the IXC. The residual interconnection charge (RIC), if any, will be billed by the Party providing the End Office function.

11.4 The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.

11.5 As detailed in the MECAB document, the Parties will exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Access Services jointly handled by the parties via the MPB arrangement. Where the Exchange Message Interface (EMI) records cannot be transferred due to transmission failure, records can be provided via a mutually acceptable medium. The exchange of Access Usage Records ("AURs") to accommodate meet point billing will be on a reciprocal, no charge basis. Each Party agrees to provide the other Party with AURs based upon mutually agreed upon intervals.

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15.0 Billing Arrangements for Termination of Section 251(b)(5), Optional EAS, ISP-Bound, and Transit Traffic

- 15.1 In SBC-TEXAS each Party, unless otherwise agreed, will calculate terminating interconnection minutes of use based on standard switch recordings made within the terminating carrier's network for Section 251(b)(5) Traffic, Optional EAS Traffic, ISP-Bound Traffic and Transit Traffic. These terminating recordings are the basis for each Party to generate bills to the other Party. If CLEC does not have the technical ability to correctly generate bills from terminating recordings, the terminating carrier shall use any method agreed upon between the Parties.
- 15.2 For Option 1, ISP-Bound Traffic will be calculated using the 3:1 Presumption as outlined in Sections 1.5.3 above.
- 15.3 The measurement of minutes of use over Local Interconnection Trunk Groups shall be in actual conversation seconds. The total conversation seconds over each individual Local Interconnection Trunk Group will be totaled for the entire monthly bill and then rounded to the next whole minute.
- 15.4 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) consecutive months of prior usage data.

16.0 Billing Arrangements for LEC Carried IntraLATA Toll

- 16.1 For LEC Carried IntraLATA Toll each Party will deliver monthly settlement statements for terminating the other Party's IntraLATA Toll traffic based on a mutually agreed schedule as described in this Section:
- 16.2 Until such time when SBC Texas offers to bill IntraLATA Toll Traffic using terminating records, the Parties will use the Category 92 method of data exchange. Once the terminating records are offered by SBC TEXAS, if CLEC does not have the technical ability to correctly generate bills from terminating recordings, SBC TEXAS will continue to provide the appropriate Category 92 records to allow billing by the CLEC. The decision by the CLEC to cease the exchange of Category 92 records with SBC TEXAS and replace it with terminating recordings does not in any way relieve the obligation of the CLEC to exchange data with other LECs
- 16.3 When applicable, the Parties will transmit the summarized originating minutes of use within 15 business days following the prior month's close of business via the Category 92 record process to the terminating Party for subsequent monthly intercompany settlement billing.
- 16.4 Bills rendered by either Party will be paid within 30 days of receipt subject to subsequent audit verification.
- 16.5 Detailed technical descriptions and requirements for the recording, record exchange and billing of traffic are included in the Technical Exhibit Settlement Procedures (TESP), a copy of which has been provided to CLEC by SBC TEXAS.
- 16.6 MOUs for the rates contained in this Attachment will be measured in seconds by call type, and accumulated each billing period into one minute increments for billing purposes in accordance with industry rounding standards.

- 16.7 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) consecutive months of prior usage data.
- 17.0 Compensation for Terminating Cellular Traffic
- 17.1 Appendix Cellular sets forth the terms and conditions under which the Parties will distribute revenue from their joint provision of Wireless Interconnection Service for mobile to landline traffic terminating through the Parties' respective wireline switching networks within a LATA. The provisions of the Appendix Cellular shall apply only when a Wireless Provider exchanges mobile to landline traffic with a Facilities Based Provider whereby the Wireless Provider is purchasing Interconnection Services from SBC-Texas's Cellular Mobile Telephone Interconnection Tariff. For a Party utilizing an SBC TEXAS non-resale offering whereby SBC TEXAS provides the end office switching on a wholesale basis, SBC TEXAS will provide Usage Data for calls that SBC TEXAS records, as defined in Attachment 28. If one Party enters into an interconnection agreement with a Commercial Mobile Radio Service (CMRS) provider, Appendix Cellular shall no longer be applicable between the Parties with respect to such CMRS provider, and the other Party shall be obligated within a reasonable length of time to enter into an agreement with such CMRS provider for the termination of wireless to landline traffic.
- 17.2 CLEC will pay the Local Transit Traffic rates (found in Section 6.0 of this Attachment) to SBC TEXAS for calls that originate on CLEC's network and are sent to SBC TEXAS for termination to a CMRS provider as long as such Traffic can be identified as wireless traffic. SBC TEXAS will pay the same Local Transit Traffic rate to CLEC for such calls that originate on SBC TEXAS' network and are sent through CLEC for termination on a CMRS Provider's network. Each Party shall be responsible for interconnection agreements with CMRS provider's network. The Parties agree to cooperate with each other regarding third party compensation issues. In the event that the originating party does send traffic through the transiting party's network to a third party provider with whom the originating party does not have a traffic interchange agreement, then the originating party agrees to indemnify the transiting party for such traffic pursuant to Section 6.3 above.
- 17.3 When traffic is originated by either Party to a CMRS Provider, and the traffic cannot be specifically identified as wireless traffic for purposes of compensation between SBC TEXAS and CLEC, the traffic will be rated either as local or Access and the appropriate compensation rates shall be paid by the transiting party to the terminating party.
- 18.0 Third Party Originating Traffic from Carriers Using SBC TEXAS' Wholesale Local Switching
- 18.1 For traffic that originates from an end user of a Third party Carrier using SBC TEXAS' Wholesale Local Switching that terminates to CLEC's end user, SBC TEXAS will provide the terminating Category 11-01-XX records to CLEC to identify traffic that originates from an end user being served by a third party telecommunications carrier using an SBC TEXAS non-resale offering whereby SBC TEXAS provides the end office switching on a wholesale basis. Such records will contain the Operating Company Number (OCN) of the responsible LEC that originated the calls which CLEC may use to bill such originating carrier for MOUS terminated on CLEC's network.

ATTACHMENT 13: ANCILLARY FUNCTIONS

1.0 INTRODUCTION

- 1.1 This Attachment 13: Ancillary Functions, and its Appendices set forth the Ancillary Functions that SBC TEXAS agrees to offer to CLECs under this Agreement, and the requirements associated therewith. SBC TEXAS will offer these Ancillary Functions to CLECs on rates, terms and conditions that are just, reasonable, and non-discriminatory and in accordance with the terms and conditions of this Agreement.

2.0 COLLOCATION

- 2.1 Certain provisions applicable to the Parties' rights and obligations pertaining to physical collocation are set forth in Appendix Collocation, attached hereto.

3.0 RIGHTS OF WAY (ROW), CONDUITS AND POLE ATTACHMENTS

- 3.1 The provisions concerning CLEC's access to and use of space on or within a pole, duct, conduit, or right-of-way owned or controlled by SBC TEXAS are set forth in Appendix Poles, Conduits, and Rights-Of-Way, attached hereto.

APPENDIX COLLOCATION

1. SBC TEXAS will provide caged, shared caged, common caged, cageless, and other Physical collocation arrangements within its Eligible Structures, and where space is Legitimately Exhausted inside an Eligible Structure, SBC TEXAS will provide adjacent space for on-site collocation, and interconnection facilities to access unbundled network elements through adjacent off-site collocation, for physical collocation as set forth in Section 5 of the Local Access Service Tariff entitled "Physical Collocation."
2. In addition, in SBC TEXAS' Central Offices and, at SBC TEXAS' other eligible structures (e.g., CEVs, huts and cabinets) where physical collocation space is available, SBC TEXAS will provide Virtual collocation wherein SBC TEXAS maintains and repairs the collocation equipment consistent with the terms of the amended Sections 25 and 26 of the Access Service Tariff, or Virtual collocation wherein CLEC maintains and repairs the virtually collocated equipment consistent with the term of the amended Section 26 of the Access Service Tariff.

#Note for Section 3: In accordance with Texas Public Utilities Commission Staff Recommendation in Docket No. 28821, on an interim basis, SBC Texas will provide DC power consumption billing based on the maximum current carrying capacity of either the A or B feed. The TPUC has ordered the parties to work collaboratively to establish a metering arrangement and present a final solution to the Commission with 60 days of the final order in this proceeding.

3. Tracking and Billing CLEC's Power Usage

- *3.1 At CLEC's option, power measuring units (PMUs) or meters will be installed on the BDFBs in CLEC's collocation space. These PMUs will be used to measure CLEC's actual power usage for the collocation space, for purposes of SBC TEXAS billing.
- *3.2 Measurements of CLEC's actual power usage shall be taken once each quarter at each of CLEC's collocation arrangements. Based upon these measurements, SBC TEXAS shall bill CLEC for collocation power for the following quarter relying on CLEC's actual metered usage and the applicable usage sensitive rate for power in the Pricing Schedule of this Agreement.
- *3.3 CLEC agrees to notify SBC TEXAS in writing when it removes existing equipment or installs new equipment in the collocation space. Upon receipt of that notice, a new measurement will be taken of CLEC's actual power usage to be used for billing for the following quarter. After the actual power usage measurement has been completed, that measurement will be used to calculate the metered power charge for the following three (3) months, or until the next measurement has been taken. CLEC's bill will reflect the new power measurement in the next billing cycle following the completion of the measurement.
- *3.4 Either Party shall have the right, at any time, at its own expense, to verify the accuracy of CLEC's BDFB meter by performing its own meter reading via an alternate method, such as, but not limited to, a clamp-on meter. If the meter readings vary significantly, the Parties agree to perform a joint investigation. If the CLEC BDFB meter is found to be in error, then CLEC agrees to recalibrate, repair, or replace its meter as required. The Parties recognize that the meter readings discussed in this Section 3.4 are instantaneous readings that can experience minor fluctuations due to usage traffic, voltage fluctuations, and calibration of the meters themselves. The readings must vary by more than 10%, or 5 Amps, whichever is greater, before any recalibration, repair, or replacement will be required. If the CLEC BDFB meter is found to be in error, then the Parties will cooperate to calculate the amount of any additional billing due from CLEC for power used, or the amount of any credit due to CLEC for SBC TEXAS over billing for power usage.
- *3.5 If taking a metered power measurement, as described in 3.3 and 3.4 above, requires access to the CLEC collocation space, at CLEC's option, the meter reading will be performed by an authorized contractor hired by CLEC and approved by SBC TEXAS who is subject to the same security screening requirements

imposed on contractors with access to SBC TEXAS areas within the Central Office. CLEC may, solely at its option, agree to allow unescorted access to an authorized SBC TEXAS employee or to an SBC TEXAS contractor for the purpose of meter reading.

- *3.6 Non-recurring charges for the establishment of a metered power usage system and recurring charges for meter reading will be paid by CLEC. No additional charges for power meters and meter reading will be imposed by SBC TEXAS.
- *3.7 In the event CLEC declines to convert to metered power usage, SBC TEXAS will assess charges for power on a per ampere per month basis, using the rated ampere capacity in the CLEC collocated space.

4. Inventory of Contents of SBC TEXAS Approved Storage Cabinet

- 4.1 CLEC may purchase a storage cabinet and hire an SBC TEXAS-approved vendor to install a storage cabinet in a central office where it has requested or obtained virtual collocation pursuant to the terms and conditions set forth in SBC TEXAS collocation tariff. This offering is only available in central office(s) where SBC TEXAS is currently obligated under the referenced Tariff to maintain and/or repair the CLEC's virtually collocated equipment. The storage cabinet dimensions must meet specifications as detailed in the CLEC Handbook by SBC TEXAS. The location of the storage cabinet in the central office will be designated by SBC TEXAS. Upon receipt of a virtual collocation application by CLEC for placement of a storage cabinet, SBC TEXAS will price the request on an ICB. Once a storage cabinet has been placed in a central office by CLEC's approved vendor, CLEC may request an inventory of such storage cabinet, as provided below.
- 4.2 CLEC may request an inventory of its SBC TEXAS approved storage cabinet(s) in an SBC TEXAS central office where CLEC is collocated. CLEC may only request SBC TEXAS to provide such an inventory where CLEC has requested virtual collocation under SBC TEXAS collocation tariff pursuant to Section 2.0 of this Appendix, and where SBC TEXAS has the obligation to maintain and/or repair CLEC's collocated equipment, and is actually performing maintenance and repair of CLEC's collocated equipment. Such request shall be made on a "Priority 4 Ticket." The Mean Time Response Interval (MTRI) for a Priority 4 Ticket is four (4) business days. SBC TEXAS' response interval for such a Ticket in this context is defined as the time from the receipt of the CLEC Storage Cabinet Inventory Request to the Local Operations Center (LOC) serving the geographic area where subject storage cabinet is located, and the sending by a SBC TEXAS technician of an e-mail of the storage cabinet inventory report to the CLEC designated e-mail address.
- 4.3 The following information must be provided by CLEC on its Storage Cabinet Inventory Request to the Local Operations Center (LOC)
 - CLEC's Name
 - Reference number (CLEC's internal tracking number)
 - CLEC's 11 digit CLLI
 - Collocation Circuit ID (if known by CLEC)
 - CLEC's Contact Name
 - E-Mail address to send completed inventory form. CLEC will provide SBC TEXAS one E-mail address to send all completed storage cabinet inventory forms.
 - Identification of all SBC TEXAS approved storage cabinets situated in central office(s) for which CLEC is requesting an inventory. All cabinets within the central office(s) will be inventoried with one request.

- 4.4 CLEC may request a storage cabinet inventory only once in a 12-month period, per central office. If an additional storage cabinet inventory request is received prior to 12 months elapsing since the last inventory was provided by SBC TEXAS for that central office, the request will be rejected and sent back to CLEC, and SBC TEXAS shall be entitled to charge time-sensitive charges, at the State-specific rate set forth in Section 4.5, below, to CLEC for the time spent by SBC TEXAS personnel on the rejected request.
- 4.5 If CLEC requests an inventory in a central office where it does not have an SBC TEXAS approved storage cabinet, the request will be rejected and sent back to the CLEC, and SBC TEXAS shall be entitled to charge, at the Texas-specific rate set forth below, for time spent by SBC TEXAS personnel on the rejected request.

| | | | |
|------|--------------------------|-----------|-------|
| TEXA | Communication Technician | \$26.14 * | NRLJY |
|------|--------------------------|-----------|-------|

*All billing in ½ hour increments, rounded up.

- 4.6 Charges to perform an inventory of the contents of an SBC TEXAS approved storage cabinet under pursuant to this section will be billed per the State-specific rates provided in Section 4.5, above. If CLEC has not supplied information requested by SBC TEXAS at the time SBC TEXAS' technician is ready to begin work at a central office, SBC TEXAS will close out the ticket. CLEC must generate another trouble report to request the inventory and provide all requisite information.

5. COLLOCATION PRICE QUOTES

- 5.1 Each SBC TEXAS price quote, except for ICB quotes, for a collocation arrangement must include, for every individual price component, the applicable USOC, non-recurring charge(s) and monthly recurring charge(s).

6. RESERVATION OF RIGHTS/INTERVENING LAW

- 6.1 The Parties acknowledge and agree that the intervening law language set forth in Section 3 of the General Terms and Conditions of this Agreement shall apply to all the rates, terms and conditions set forth in this Appendix.

APPENDIX POLES, CONDUITS, AND RIGHTS-OF-WAY**MASTER AGREEMENT FOR ACCESS
TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY**

This Appendix is made by and between Southwestern Bell Telephone, L.P. d/b/a SBC Texas ("SBC TEXAS") and CLEC, (referred to as "CLEC"). As provided in this Appendix, SBC TEXAS will provide CLEC nondiscriminatory access, in accordance with the Pole Attachment Act, the Telecommunications Act of 1996, and applicable rules, regulations, and commission orders, to poles, ducts, conduits, and rights-of-way owned or controlled by SBC TEXAS and located in this state.

CLEC, having an office at _____, and SBC TEXAS, a Texas Limited Partnership, having an office at 1010 Pine Street, St. Louis, Missouri 63101, (collectively the Parties).

ARTICLE 1: PARTIES

- 1.01 Southwestern Bell Telephone, L.P. d/b/a SBC Texas. Southwestern Bell Telephone, L.P. d/b/a SBC Texas ("SBC TEXAS") is a Texas Limited Partnership. SBC TEXAS' principal office is located at 1010 Pine Street, St. Louis, Missouri 63101.
- 1.02 CLEC. ("CLEC") is a corporation chartered in the State of _____. CLEC maintains an office at _____. CLEC is more fully described in EXHIBIT II ("Identification of CLEC").

ARTICLE 2: PURPOSE OF APPENDIX

The Communications Act of 1934, as amended by the Telecommunications Act of 1996, states that each local exchange carrier has the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier on rates, terms, and conditions that are consistent with the Pole Attachment Act, 47 U.S.C. § 224, as amended by the Telecommunications Act of 1996. The primary purpose of this Appendix is to set forth the basic rates, terms, conditions, and procedures under which CLEC shall have access to SBC TEXAS' poles, ducts, conduits, and rights-of-way. SBC TEXAS shall provide CLEC with nondiscriminatory access to poles, ducts, conduits, or rights-of-way owned solely or in part by it, or controlled by it, as the term "nondiscriminatory access" is defined in the Telecommunications Act of 1996. This Appendix is intended by the parties to implement, rather than abridge, their respective rights and remedies under federal and state law.

- 2.01 Access Ancillary to Arrangements for Interconnection, Collocation, and Access to Unbundled Network Elements. Nothing contained in this Appendix shall be construed as precluding CLEC from having such additional access to SBC TEXAS' poles, ducts, conduits, and rights-of-way as may be necessary to effectuate the terms of other arrangements between CLEC and SBC TEXAS relating to interconnection, collocation, and access to unbundled network elements. To the extent that this Appendix does not provide the access required, additional terms of access may be included in any tariff or agreement between the parties establishing arrangements for interconnection, collocation, or access to unbundled network elements.

ARTICLE 3: DEFINITIONS

- 3.01 Definitions In General. As used in this Appendix, the terms defined in this article shall have the meanings set forth below in Sections 3.02 to 3.48 except as the context otherwise requires.
- 3.02 Anchor. The term "anchor" refers to a device, structure, or assembly which stabilizes a pole and holds it in place. An anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or guy wire which, in turn, is attached to the pole. The term "anchor" does not include the guy stand which connects the anchor to the pole.
- 3.03 Appendix. When capitalized, the term "Appendix" refers to this Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way. The term "Appendix" includes all appendices, attachments, and addenda to this Appendix.
- 3.04 Assigned. When used with respect to pole, duct, conduit, or right-of-way space, the term "assigned" refers to space that is occupied by, or has been designated for occupancy by, either party or by another telecommunications carrier, cable television system, provider of telecommunications services, governmental entity, or other person or entity having occupancy rights. Except as otherwise specifically provided in this Appendix, no person or entity shall have the right to occupy space assigned to another person or entity (other than on a temporary basis in the event of emergency) until the assignment has been released or lapsed. Assignment is further described in Article 8 of this Appendix.
- 3.05 Authorized contractor. "Authorized contractors" are contractors selected by CLEC who may, subject to CLEC's direction and control, perform facilities modification or make-ready work which would ordinarily be performed by SBC TEXAS or persons acting on SBC TEXAS' behalf. As used in this Appendix, the term "authorized contractor" does not refer to contractors performing routine installation, maintenance, or repair work on CLEC's behalf or other contractors who may be selected by CLEC to perform work on CLEC's behalf without SBC TEXAS' approval. More specifically, the term "authorized contractor" refers only to those contractors included on a list of contractors mutually approved by CLEC and SBC TEXAS to perform one or more of the following tasks within a specified SBC TEXAS construction district: (a) installation of those sections of CLEC's ducts or facilities which connect to SBC TEXAS' conduit system as provided in Section 6.08(c); (b) installation of inner duct as provided in Section 10.02(b); (c) excavation work in connection with the removal of retired or inactive (dead) cables as provided in Section 10.02(c); or (d) make-ready work as provided in Sections 10.04 and 10.05. A person or entity approved as an authorized contractor is only an authorized contractor with respect to those tasks for which such person or entity has been approved by both parties and is an authorized contractor only in those SBC TEXAS construction districts agreed to by both parties. Designation of an authorized contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an authorized contractor for other purposes, nor shall approval of an authorized contractor by one SBC TEXAS construction district constitute approval of such authorized contractor for the area served by a different SBC TEXAS construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an authorized contractor shall, for the purposes of that job, be deemed to have been approved by all SBC TEXAS construction districts in which the work is to be performed.
- 3.06 Available. When used with respect to pole, duct, conduit, and right-of-way space, the term "available" refers to space that is not occupied or assigned. In conduit systems owned or controlled by SBC TEXAS, maintenance ducts shall not be considered "available" for assignment. All other unassigned ducts, inner

ducts, sub-ducts, and partitioned conduits in a conduit system owned or controlled by SBC TEXAS shall be deemed available for assignment.

- 3.07 Cables. The term "cable" includes but is not limited to twisted-pair copper, coaxial, and fiber optic cables. Cables are transmissions media which may be attached to or placed in poles, ducts, conduits, and rights-of-way but are not themselves poles, ducts, conduits, or rights-of-way. Nothing contained in this Appendix shall be construed as a grant of access to cables attached to SBC TEXAS' poles or placed in SBC TEXAS' ducts, conduits, or rights-of-way.
- 3.08 Conduit. The term "conduit" refers to all SBC TEXAS conduits subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, conduits are tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. Except as the context otherwise requires, the term "conduit" refers only to conduit owned or controlled by SBC TEXAS, including the re-enterable manholes and handholes used to connect ducts and provide access to the cables, wires, and facilities within the ducts. As used in this Appendix, the term "conduit" refers only to conduit structures (including ducts, manholes, and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other SBC TEXAS structures (such as huts and cabinets) which branch off from SBC TEXAS' conduit.
- 3.09 Conduit occupancy. The term "conduit occupancy" refers to the presence of wire, cable, optical conductors, or other within any part of SBC TEXAS' conduit system.
- 3.10 Conduit system. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Appendix, the term "conduit system" refers only to conduit systems owned, or controlled by SBC TEXAS and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other SBC TEXAS structures (such as huts and cabinets) which branch off from SBC TEXAS' conduit.
- 3.11 Construction District. The term "construction district" refers to the SBC TEXAS organization responsible for outside plant construction in a specified geographic area. The term "construction district" connotes responsibility for handling a function and not to the official name of the organization responsible for outside plant construction matters.
- 3.12 Cost/Cost-based. The terms "cost" and "costs" refer to costs determined in a manner consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders. The term "cost-based" refers to rates, fees, and other charges which are based on costs and determined in a manner consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders.
- 3.13 Duct. The term "duct" refers to all SBC TEXAS ducts subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, a duct is a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities. As used in this Appendix, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels. Except as the context otherwise requires, the term "duct" refers only to ducts owned or controlled by SBC TEXAS and space within those ducts and does not include cables and other telecommunications equipment located within such ducts.

3.14 Exhibit. The capitalized term "EXHIBIT" refers to one of the following exhibits to this Appendix.

| | |
|---------------|--|
| EXHIBIT I: | Pole and Conduit Attachment Rates |
| EXHIBIT II: | Identification of CLEC |
| EXHIBIT III: | Administrative Forms and Notices |
| SW-9433: | Pole Attachments |
| SW-9434: | Access Application and Make-Ready Authorization Work |
| SW-9435: | Conduit Occupancy |
| SW-9436A: | Notification of Surrender or Modification of Pole Attachment License by Licensee |
| SW-9436B: | Notification of Surrender or Modification of Conduit Occupancy License by CLEC |
| SW-9436C: | Notification of Unauthorized Attachments by CLEC |
| EXHIBIT IV: | Insurance Requirements |
| EXHIBIT V: | Nondisclosure Agreement |
| EXHIBIT VII: | Notices to SBC TEXAS |
| EXHIBIT VIII: | Identification of Utility Liaison Supervisor (ULS) |

3.15 Facilities. The terms "facility" and "facilities" refer to any property, equipment, or items owned or controlled by any person or entity.

3.16 FCC. The acronym "FCC" refers to the Federal Communications Commission.

3.17 First Interconnection Order. The term "First Interconnection Order" refers to the First Report and Order adopted by the FCC on September 1, 1996, and released on September 8, 1996, in CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and CC Docket No. 95-185, In the Matter of Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers. Access to poles, ducts, conduits, and rights-of-way is addressed in the First Interconnection Order in Paragraphs 1119-1240.

3.18 Handhole. The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Appendix, the term "handhole" refers only to handholes which are part of SBC TEXAS' conduit system and does not refer to handholes which provide access to buried cables not housed within SBC TEXAS ducts or conduits. As used in this Appendix, the term "handhole" refers only

to handhole structures owned or controlled by SBC TEXAS and does not include cables and other telecommunications equipment located within handhole structures.

- 3.19 Interconnection agreement. The term "interconnection agreement" refers to the interconnection agreement, if any, to which this Appendix has been made an appendix, attachment, or exhibit, or, as the context may require, any other interconnection agreement between the parties.
- 3.20 Jacket. The term "jacket" refers to a single enclosed outer covering containing communications wires, fibers, or other communications media. As used in this Appendix, the term "jacket" refers to the outermost sheath or jacket of a cable.
- 3.21 Joint user. The term "joint user" refers to any person or entity which has entered or may enter into an agreement or arrangement with SBC TEXAS permitting it to attach its facilities to SBC TEXAS' poles or anchors or place its facilities in SBC TEXAS' conduit system.
- 3.22 License. The term "license" refers to a written instrument confirming that SBC TEXAS has afforded CLEC or another joint user access to specific space on or within a pole, duct, conduit, or right-of-way owned or controlled by SBC TEXAS in accordance with applicable federal and state laws and regulations. The term "license" includes licenses issued by SBC TEXAS pursuant to this Appendix and may, if the context requires, refer to licenses issued by SBC TEXAS prior to the date of this Appendix.
- 3.23 Local service provider ("LSP"). The terms "local service provider" and "LSP" refer to telecommunications carriers authorized by applicable federal and state laws and regulations to provide local exchange service. As used in this Appendix, these terms include SBC TEXAS.
- 3.24 Maintenance duct. The term "maintenance duct" generally refers to a full-sized duct (typically three inches in diameter or larger) which may be used by SBC TEXAS and joint users (including CLEC) on a short-term basis for maintenance, repair, or emergency restoration activities. Maintenance ducts will be available, on a nondiscriminatory basis, to all persons and entities (including SBC TEXAS, CLEC, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located for (a) short-term emergency repairs as provided in Article 15 of this Appendix and (b) short-term non-emergency maintenance or repair activities as provided in Articles 12 and 13 of this Appendix. No more than one full-sized duct within any given conduit system cross-section shall be designated by SBC TEXAS as the maintenance duct. In those locations where, on the effective date of this Appendix, there is not a full-sized duct available to be used as a maintenance duct, SBC TEXAS will designate an inner duct, if one is available, as the maintenance duct although such inner duct may be too small to accommodate some of the cables occupying the conduit section in which such inner duct is located. The term "maintenance duct" does not include ducts and conduits extending from a SBC TEXAS manhole to customer premises. Maintenance ducts shall not be considered "available" (as defined in Section 3.06) for assignment to SBC TEXAS, CLEC, or joint users for purposes other than short-term use as contemplated in this section; provided, however, that SBC TEXAS may assign the duct currently designated as a maintenance duct if another suitable full-sized duct will be made available to serve as a replacement maintenance duct and may assign an inner duct currently designated as a maintenance duct if another inner duct will be made available to serve as a replacement maintenance duct. Maintenance duct designations may change from time to time and may or may not be reflected in SBC TEXAS' outside plant records. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.

- 3.25 Make-ready work. The term "make-ready work" refers to all work performed or to be performed to prepare SBC TEXAS' poles, ducts, conduits, and rights-of-way and related facilities for the requested occupancy or attachment of CLEC's facilities. Make-ready work does not include the actual installation of CLEC's facilities. "Make-ready work" includes, but is not limited to, clearing obstructions (e.g., by "rodding" ducts to ensure clear passage), the rearrangement, transfer, replacement, and removal of existing facilities on a pole or in a conduit system where such work is required to accommodate CLEC's facilities (as contrasted from work performed on SBC TEXAS' behalf in furtherance of SBC TEXAS' own business needs, or convenience). "Make-ready work" may require "dig-ups" of existing facilities and may include the repair, enlargement or modification of SBC TEXAS' facilities (including, but not limited to, conduits, ducts, handholes and manholes), or the performance of other work required to make a pole, anchor, duct, conduit, manhole, handhole or right-of-way usable for the initial placement of CLEC's facilities. All splicing and associated wire work related to any make ready request will be completed by the owner of the facilities involved. The cost for performing this work will be paid for by the party requiring the make ready.
- 3.26 Manhole. The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron, cast aluminum, steel, or concrete manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in a conduit. The term "handhole" refers to a structure similar in function to a manhole, but which is usually too small for personnel to enter. As used in this Appendix, the term "manhole" refers only to manhole structures owned or controlled by SBC TEXAS and does not include cables and other telecommunications equipment located within manhole structures.
- 3.27 Occupancy. The term "occupancy" refers to the physical presence of facilities on a pole, in a conduit or duct, or within a right-of-way.
- 3.28 Overlashing. The term "overlashing" refers to the practice of placing an additional cable or inner duct by lashing spinning wire over both existing cables and existing strands supporting those cables or inner ducts.
- 3.29 Person acting on CLEC's behalf. The terms "person acting on CLEC's behalf," "personnel performing work on CLEC's behalf," and similar terms include both natural persons and firms and ventures of every type, including, but not limited to, corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on CLEC's behalf," "personnel performing work on CLEC's behalf," and similar terms specifically include, but are not limited to, CLEC, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by CLEC and its respective officers, directors, employees, agents, and representatives. An authorized contractor selected by CLEC to perform make-ready work shall be deemed to be a person acting on CLEC's behalf while performing such work at the CLEC's request.
- 3.30 Person acting on SBC TEXAS' behalf. The terms "person acting on SBC TEXAS' behalf," "personnel performing work on SBC TEXAS' behalf," and similar terms include both natural persons and firms and ventures of every type, including but not limited to corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on SBC TEXAS' behalf," "personnel performing work on SBC TEXAS' behalf," and similar terms specifically include, but are not limited to, SBC TEXAS, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request or on behalf of SBC TEXAS and its respective officers, directors, employees, agents, and representatives. An authorized contractor selected

by SBC TEXAS to perform make-ready work shall be deemed to be a person acting on SBC TEXAS' behalf while performing such work at SBC TEXAS' request.

- 3.31 Pole. The term "pole" refers to all SBC TEXAS poles subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). Except as the context otherwise requires, the term "pole" refers only to utility poles and anchors which are either owned or controlled by SBC TEXAS and does not include cables and other telecommunications equipment attached to pole structures.
- 3.32 Pole Attachment. As defined in the Pole Attachment Act, 47 U.S.C. § 224(a)(4), the term "pole attachment" refers to "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." In this Appendix, except as the context otherwise requires, the term "pole attachment" refers to any attachment by a cable television system or provider of telecommunications service to a pole (and associated anchors) owned or controlled by SBC TEXAS. The term "pole attachment" includes all such facilities attached to or supported by a SBC TEXAS pole, including but not limited to cables, risers and U-guards, equipment boxes, drop wires, anchors, bolts, clamps, drive rings, guys, hooks, strands, and other hardware affixed to the pole. Groupings of associated pole attachments for billing purposes shall be consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders. Except as otherwise authorized by applicable FCC rules, regulations, or orders, CLEC's pole attachments occupying the same usable space (or otherwise associated with facilities occupying the same usable space on a pole) shall be treated as a single attachment for billing purposes.
- 3.33 Pole Attachment Act. The term "Pole Attachment Act" refers to those provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, now codified as 47 U.S.C. § 224, as those provisions may be amended from time to time.
- 3.34 Pre-license survey. The term "pre-license survey" refers to work and activities performed or to be performed by SBC TEXAS or by persons acting on SBC TEXAS' behalf for the primary purpose of:
- (a) confirming or determining the existing availability and capacity of a pole duct, conduit, or right-of-way and identifying capacity, safety, reliability, or engineering concerns, if any, relating to CLEC's application;
 - (b) confirming or determining the extent, if any, to which modifications to SBC TEXAS' poles, ducts, conduits, or rights-of-way are required to accommodate CLEC's facilities;
 - (c) confirming or determining what make-ready work, if any, will be required to prepare SBC TEXAS' poles, ducts, conduits, or rights-of-way to accommodate CLEC's facilities; and
 - (d) estimating the costs, if any, that the CLEC will be required to pay for any such make-ready work or facilities modifications.
- 3.35 Pre-occupancy survey. The term "pre-occupancy survey" refers to work and activities performed or to be performed by CLEC or persons acting on behalf of CLEC for the primary purpose of enabling CLEC to determine:

- (a) whether SBC TEXAS' poles, ducts, conduits, or rights-of-way, in their existing condition, are suitable for CLEC's intended use;
- (b) the extent, if any, to which modifications of SBC TEXAS' poles, ducts, conduits, or rights-of-way will be proposed by CLEC to expand the capacity of SBC TEXAS' poles, ducts, conduits, or rights-of-way to accommodate CLEC's facilities; and
- (c) what make-ready work, if any, is required to prepare the poles, conduits, or conduit system to accommodate CLEC's facilities.

- 3.36 Primary point of contact. The term "primary point of contact" refers to the persons designated by CLEC and SBC TEXAS, respectively, to coordinate arrangements for CLEC's access to SBC TEXAS' poles, ducts, conduits, and rights-of-way and records relating to such poles, ducts, conduits, and rights-of-way. SBC TEXAS' designated primary point of contact shall be the Utility Liaison Supervisor unless the parties have arranged for that function to be performed by a designated account representative who will serve as an intermediary between CLEC and the Utility Liaison Supervisor.
- 3.37 Rights-of-way. As used in this Appendix, the term "rights-of-way" refers generally to legal rights to pass over or use the land of another for limited purposes as defined in a statute, ordinance, easement, grant or other conveyance. Rights-of-way include, but are not limited to public rights-of-way authorizing SBC TEXAS to locate facilities on, under, or over public lands and roadways servitudes created by private easements or obtained through the exercise of eminent domain authority enabling SBC TEXAS to pass over, place facilities on, and have rights of ingress and egress to the land of another. Rights-of-way also include easements which, at the time of land development or subdivision, were dedicated for use by public or private utilities and are being occupied, in whole or in part, by SBC TEXAS' facilities.
- 3.38 Sheath. The term "sheath" refers to an enclosed covering containing communications wires, fibers, or other communications media. A cable may include both inner and outer sheaths.
- 3.39 Spinning. The term "spinning" refers to a method of attaching a cable or inner-duct to a supporting strand. "Spinning" is sometimes referred to as "lashing."
- 3.40 State. When capitalized, the term "State" (as used in terms such as "this State") refers to the State of Texas.
- 3.41 State Commission. The term "State Commission" refers to the Texas Public Utility Commission.
- 3.42 Strand. The term "strand" refers to support wires, typically stranded together, or other devices attached to a pole and connecting that pole to an anchor or to another pole for the purpose of increasing pole stability or supporting wires, cables, and associated facilities. The term "strand" includes, but is not limited to, strands sometimes referred to as "anchor strands," "anchor/guy strands," "down guys," "guy strands," "pole-to-pole guys," and "messengers."
- 3.43 Telecommunications Act of 1996. The term "Telecommunications Act of 1996" refers to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, enacted February 8, 1996.
- 3.44 Third party. The terms "third party" and "third parties" refer to persons and entities other than the parties to this Appendix (that is, persons and entities other than CLEC and SBC TEXAS).

- 3.45 Utility Liaison Supervisor ("ULS"). The terms "Utility Liaison Supervisor" and "ULS" refer to the person or persons designated by SBC TEXAS to be responsible for handling and processing requests for access to SBC TEXAS' poles, ducts, conduits, and rights-of-way in this State. The term "ULS" connotes responsibility for handling a function and is not a job title. Except as otherwise specifically provided in this Appendix or in the parties' interconnection agreement, if any, the ULS shall serve as CLEC's single point of contact for arranging access to SBC TEXAS' poles, ducts, conduits, and rights-of-way and access to SBC TEXAS' records relating to SBC TEXAS' poles, ducts, conduits, and rights-of-way. The Utility Liaison Supervisor for this State is identified in EXHIBIT VIII.
- 3.46 Vault. The term "vault" includes central office vaults and controlled environment vaults ("CEVs"). Vaults may be connected to, but are not considered part of, SBC TEXAS' conduit system. Access, if any, to vaults (and to ducts, conduits, and risers which serve no purpose other than to provide a means of entry to and exit from such vaults) shall be governed by the tariffs, agreements, or commission orders, if any, establishing arrangements for interconnection, collocation, and access to unbundled network elements, and not by this Appendix.
- 3.47 "Vicinity of" When used in terms such as "vicinity of SBC TEXAS' conduit system," "vicinity of SBC TEXAS' poles," "vicinity of SBC TEXAS' rights-of-way," or "vicinity of SBC TEXAS' poles, ducts, conduits, or rights-of-way," the term "vicinity of ..." includes sites on, within, near to, surrounding, or adjoining SBC TEXAS' poles, ducts, conduits, and rights-of-way. These sites include, but are not limited to, all sites within a distance of 10 feet of any SBC TEXAS pole, duct, conduit, or right-of-way.

ARTICLE 4: NATURE AND SCOPE OF AGREEMENT

- 4.01 Scope of Agreement. This Appendix establishes procedures for grants of non-discriminatory access to SBC TEXAS poles, ducts, conduits, and rights-of-way located within this State, without regard to whether the site is located on public or private property.
- 4.02 No Transfer of Property Rights. Nothing contained in this Appendix or any license issued hereunder shall create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other. The payment of fees and charges as provided by this Appendix and licenses issued hereunder shall not create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other. No use, however extended, of SBC TEXAS' poles, ducts, conduits, or rights-of-way shall create or vest (or be construed as creating or vesting) in CLEC any right, title, or interest in or to any real or personal property owned by SBC TEXAS, and the placement of CLEC's facilities on or in SBC TEXAS' poles, ducts, conduits and rights-of-way shall not create or vest in SBC TEXAS any right, title, or interest in such facilities.
- 4.03 No Effect on SBC TEXAS' Right to Abandon, Convey or Transfer Poles, Ducts, Conduits, or Rights-of-Way. Except as provided in subsections (a)-(b) of this section, nothing contained in this Appendix or any license subject to this Appendix shall in any way affect SBC TEXAS' right to abandon, convey, or transfer to any other person or entity SBC TEXAS' interest in any of SBC TEXAS' poles, ducts, conduits, or rights-of-way.
- (a) SBC TEXAS shall give CLEC no less than 60 days written notice prior to abandoning, conveying, or transferring any pole, duct, conduit, or right-of-way (1) to or in which CLEC has attached or placed facilities pursuant to this Appendix or (2) with respect to which CLEC has been assigned

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

- (b) Transfers or conveyances of poles, ducts, conduits, or rights-of-way to any entity controlling, controlled by, or under common control with SBC TEXAS or to any entity which acquires or succeeds to ownership of substantially all of SBC TEXAS' assets shall be subject to CLEC's rights under this Appendix and licenses subject to this Appendix.

4.04 No Effect on SBC TEXAS' Rights to Manage its Facilities. Except to the extent expressly provided by the provisions of this Appendix and subject to the provisions of the Telecommunications Act of 1996 and other applicable laws, rules, and regulations, nothing contained in this Appendix shall be construed as limiting or interfering with SBC TEXAS' rights to:

- (a) locate, relocate, move, replace, modify, maintain, and operate its own facilities (including but not limited to SBC TEXAS' poles, ducts, conduits and rights-of-way, and any of SBC TEXAS' facilities attached thereto or located therein) at any time and in any manner which SBC TEXAS deems appropriate to serve its own customers, avail itself of new business opportunities, or otherwise meet its own business needs; or
- (b) enter into new agreements or arrangements with other persons or entities permitting them to attach or place their facilities on or in SBC TEXAS' poles, ducts, conduits, or rights-of-way,

provided, however, that such relocations, moves, replacements, modifications, maintenance, and operations or new agreements or arrangements shall not interfere with CLEC's pole attachment, right-of-way, or conduit occupancy use rights provided pursuant to this Appendix.

4.05 No Effect on CLEC's Rights to Manage its Own Facilities. This Appendix shall not be construed as limiting or interfering with CLEC's right to conduct its normal business operations in serving its customers or to avail itself of new business opportunities except to the extent expressly provided by the provisions of this Appendix or by the Telecommunications Act of 1996 or other applicable laws, rules or regulations.

4.06 No Right to Interfere with Facilities of Others. Except to the extent expressly provided by the provisions of this Appendix or by the Telecommunications Act of 1996 or other applicable laws, rules, or regulations, the provisions of this Appendix shall not be construed as authorizing either party to this Appendix, or persons acting on their behalf, to rearrange or interfere in any way with the facilities of the other party or joint users or with the use of or access to such facilities by the other party or joint users.

ARTICLE 5: ACCESS TO RIGHTS-OF-WAY

5.01 Public Rights-of-Way. SBC TEXAS and CLEC agree that neither party has the right to restrict or interfere with the other party's access to public rights-of-way. SBC TEXAS and CLEC shall each be responsible for obtaining their own rights-of-way and permission to use real or personal property owned or controlled by any governmental body, subject to the procedures set forth in Section 5.03 below.

5.02 Private Rights-of-Way Not Owned or Controlled by SBC TEXAS. SBC TEXAS and CLEC agree that neither party has the right to restrict or interfere with the other party's access to private rights-of-way not owned or controlled by SBC TEXAS. Each party shall make its own, independent legal assessment of its right to enter upon or use the land or property of third-party property owners and shall bear all expenses, including

legal expenses, involved in making such determinations, subject to the procedures set forth in Section 5.03 below.

5.03 Access to Associated Rights-of-Way. Each pole attachment and conduit occupancy license made under this Appendix shall include access to and use of all associated rights-of-way, including, but not limited to, rights-of-way required by CLEC for ingress, egress, or other access to any sites where SBC TEXAS' solely or partly owned or controlled poles, manholes, conduit, ducts, or other parts of SBC TEXAS' solely or partly owned or controlled conduit system are located, but only to the extent, if any, that SBC TEXAS has the legal authority to grant such access and use. SBC TEXAS also agrees to provide nondiscriminatory access to rights-of-way containing Controlled Environment Vaults (CEVs), huts, cabinets, and other similar structures to the extent that collocation to such facilities is agreed or required by order of any court or governmental agency having jurisdiction over the subject matter. SBC TEXAS agrees that it shall place no restrictions on CLEC's ability to construct, maintain, and monitor its facilities at these sites that are more restrictive than those SBC TEXAS places on itself.

(a) Although SBC TEXAS shall afford access to rights-of-way owned or controlled by it and permit CLEC to utilize SBC TEXAS' rights-of-way to the extent that SBC TEXAS has legal authority to do so, CLEC acknowledges that SBC TEXAS may not own or control certain rights-of-way to the extent necessary to permit CLEC full access to such rights-of-way. The following general principles shall be applied with respect to access to rights-of-way on third-party real estate:

- (1) CLEC shall first attempt to obtain right-of-way directly from the property owner.
- (2) If SBC TEXAS has legal authority to permit access by CLEC to a right-of-way on third-party property, SBC TEXAS will not restrict CLEC's use of the right-of-way.
- (3) If CLEC has the right of eminent domain under state law, CLEC shall independently attempt to obtain the right-of-way it seeks through the exercise of that right.

(b) SBC TEXAS and CLEC agree that dark fiber and unused four-wire copper cable are not considered "poles, conduits, and rights-of-way".

5.04 Access to Rights-of-Way Incident to the Use of CEVs and Similar Structures. SBC TEXAS will provide CLEC nondiscriminatory access, consistent with the requirements of the Pole Attachment Act and Telecommunications Act of 1996, and as provided in Sections 5.03 above, to rights-of-way containing Controlled Environment Vaults (CEVs), huts, cabinets, and other similar structures. SBC TEXAS will place no restrictions on access to such rights-of-way that are more restrictive than those SBC TEXAS places on itself; provided, however, that neither party shall conduct activities on such rights-of-way which interfere with the facilities of the other party, with the privacy of communications carried over the other party's network, or with the other party's access to and use of its own facilities. This section relates only to access to rights-of-way and shall not be construed as granting access to the CEVs, huts, cabinets, and similar structures located on such rights-of-way. Access, if any, to CEVs, huts, cabinets, and similar structures, and to ducts, conduits, and risers which serve no purpose other than to provide a means of entering or exiting such structures, shall be governed by the tariff, agreement, or order, if any, granting CLEC access to such structures.

ARTICLE 6: SPECIFICATIONS

- 6.01 Compliance with Requirements, Specifications, and Standards. CLEC agrees that the CLEC's facilities attached to SBC TEXAS' poles or occupying space in its ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Appendix.
- 6.02 Design to Minimize the Need for Access to SBC TEXAS' Poles, Ducts, and Conduits. The parties shall each design their facilities to minimize the need for the parties to access SBC TEXAS' poles, ducts, and conduits.
- 6.03 Infrequent Construction Techniques and Connectivity Solutions. Unless precluded by documented engineering criteria or written guidelines SBC TEXAS applied to itself as of January 1, 1996, consistent with considerations of safety, reliability, and or engineering practices, SBC TEXAS agrees to permit CLEC at its own expense to utilize the following techniques to avoid high or unusual expenditures: (a) placement of pole attachments on both the "field" side and "road" side of a pole; (b) placement of extension arms or stand-off brackets on poles; and (c) building conduit branches into SBC TEXAS' conduit systems. CLEC acknowledges that use of the above techniques will be rare, and will be permitted only on a case-by-case basis.
- 6.04 Published Standards. SBC TEXAS and CLEC agree that the following standards equally apply to either party with respect to facilities attached to or placed in SBC TEXAS' poles, ducts, conduits, and rights-of-way and further agree that facilities shall be placed, constructed, maintained, repaired, and removed in accordance with, current (as of the date when such work is performed) editions of the following publications:
- (a) the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book";
 - (b) the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE"); and
 - (c) the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA").
- 6.05 Additional Electrical Design Specifications: Conduit. The parties agree that, in addition to the specifications and requirements referred to in Sections 6.01-6.04 above, facilities placed in SBC TEXAS' conduit system after the effective date of this Appendix shall meet all of the electrical design specifications set forth in this section.
- (a) No facilities shall be placed in SBC TEXAS' conduit system in violation of FCC regulations, including regulations relating to electrical interference. In addition, neither party shall place any facility in SBC TEXAS' conduit system which causes or may cause electrical interference with the facilities of the other party or joint users sufficient to jeopardize network integrity or degrade the quality of any communications services offered by either party or a joint user. If either party is notified by the other party or a joint user that its facilities are causing, or have the potential to cause, unacceptable levels of electrical interference, the party notified shall either correct the problem, remove the facility, or initiate good faith negotiations with the complaining party or joint user to resolve the issue.

- (b) Facilities placed in SBC TEXAS' conduit system shall not be designed to use the earth as the sole conductor for any part of the circuits.
- (c) Facilities placed in SBC TEXAS' conduit system and carrying more than 50 volts AC (rms) to ground or 135 volts DC to ground shall be enclosed in an effectively grounded sheath or shield.
- (d) No coaxial cable shall be placed in SBC TEXAS' conduit system unless such cable meets the voltage limitations of Article 820 of the National Electrical Code.
- (e) Coaxial cable placed in SBC TEXAS' conduit system may carry continuous DC voltages up to 1800 volts to ground where the conductor current will not exceed one-half ampere and where such cable has two separate grounded metal sheaths or shields and a suitable insulating jacket over the outer sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer sheath shall not exceed 200 microamperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.
- (f) CLEC shall not circumvent the corrosion mitigation measures of SBC TEXAS or joint users.

6.06 Additional Physical Design Specifications: Conduit. Facilities placed in SBC TEXAS' conduit system following the effective date of this Appendix shall meet all of the following physical design specifications:

- (a) Except as otherwise specifically agreed in this Appendix or licenses issued hereunder CLEC's facilities shall enter SBC TEXAS' conduit system at locations consistent with the physical design specifications that SBC TEXAS applies to itself (typically through a manhole) or at such other designated locations agreed upon in writing (e.g., through the licensing process) by the parties in accordance with Section 6.03 (infrequent construction techniques and connectivity solutions).
- (b) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in SBC TEXAS' conduit or ducts.
- (c) The integrity of SBC TEXAS' conduit system and overall safety of personnel require that "dielectric cable" be used within SBC TEXAS' conduit system when a cable facility utilizes a duct or route shared in the same trench by any electric transmissions facility such as the facilities of a power utility.
- (d) New construction splices in cables (including but not limited to fiber optic and twisted pair cables) shall be located in manholes, pull boxes or handholes.

6.07 Efficient Use of Conduit. To ensure efficient use of conduits, SBC TEXAS will, when cable diameters permit, install inner ducts in multiples that fully utilize duct space (typically three or four inner ducts in a full four-inch duct) as needed for SBC TEXAS' own business purposes and to accommodate CLEC and other joint users; provided, however, that SBC TEXAS shall not be required to install inner duct in anticipation of potential future requests for access by CLEC and other joint users.

6.08 Specifications Applicable to Connections: Conduit. Except as otherwise specifically agreed in this Appendix or licenses issued hereunder, or as mutually agreed upon by the parties in writing, the following specifications apply to connections of CLEC's conduit to SBC TEXAS' conduit system:

- (a) CLEC shall not bore, make, or enlarge any hole in, or otherwise structurally modify or alter any manhole, handhole, duct, conduit, or other facility which is part of SBC TEXAS' conduit system except as provided in this Appendix or licenses issued hereunder, or as mutually agreed upon by the parties in writing.
- (b) Nothing contained in subsection (a) shall be construed as precluding CLEC or qualified personnel acting on CLEC's behalf from reattaching cable racks or performing similar routine work which is minor in nature and associated with the placing and splicing of cable.
- (c) Where CLEC's duct or facility physically connects with SBC TEXAS' manhole the section of CLEC's facility which connects to SBC TEXAS' manhole shall be installed by SBC TEXAS or its contractor at the CLEC's expense (which shall be SBC TEXAS' actual costs or the price charged SBC TEXAS by the contractor). SBC TEXAS will perform this work in an interval consistent with the intervals SBC TEXAS performs work for itself. If SBC TEXAS' interval for beginning or completing this work does not meet CLEC's needs, CLEC as an authorized contractor may perform the work itself or use subcontractor(s) selected by CLEC from a list of mutually agreeable qualified "bidders" developed by SBC TEXAS and CLEC.
- (d) SBC TEXAS will have the option to monitor the entrance and exit of CLEC's facilities into SBC TEXAS' conduit system and the physical placement of CLEC's facilities in SBC TEXAS' conduit system. Notice requirements for, and expenses associated with, this monitoring are addressed in Section 6.11 of this Appendix.
- (e) If CLEC constructs or utilizes a duct connected to SBC TEXAS' conduit system, the duct and all connections between that duct and SBC TEXAS' conduit system shall be sealed to prevent the entry of gases or liquids into SBC TEXAS' conduit system. If CLEC's duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into SBC TEXAS' conduit system.

6.09 General Requirements Relating to Personnel, Equipment, Materials, and Public Safety. The parties contemplate that the CLEC, its contractors, and other persons acting on its behalf will perform work for CLEC on, within, and in the vicinity of SBC TEXAS' poles, ducts, conduits, and rights-of-way. The provisions of this section are intended to protect the integrity of the networks, facilities and operations of SBC TEXAS, CLEC and joint users, to protect the health and safety of persons working on, within, or in the vicinity of SBC TEXAS' poles, ducts, conduits, and rights-of-way, and to protect the public at large.

- (a) Neither party nor any person acting on such party's behalf shall permit any person to climb on or work on SBC TEXAS' poles or in the vicinity of SBC TEXAS' poles, or enter SBC TEXAS' manholes or work within or in the vicinity of SBC TEXAS' conduit system, unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to the pole or conduit system and to perform the work safely.
- (b) Neither party nor any person acting on such party's behalf shall permit any person acting on its behalf to perform any work on, within, or in the vicinity of SBC TEXAS' poles, ducts, conduits, or rights-of-way without first verifying, to the extent practicable, on each date when such work is to be performed, that conditions at the work site (including but not limited to the physical condition of the pole or any part of SBC TEXAS' conduit system) are sufficiently safe for the work to be performed.

If CLEC or any person acting on CLEC's behalf determines that the condition of the pole, duct, conduit, conduit system, or rights-of-way is not safe enough for the work to be performed, CLEC shall notify SBC TEXAS of the condition of the pole or conduit system in question and shall not proceed with the work until CLEC is satisfied that the work can be safely performed.

- (c) Neither party nor any person acting on such party's behalf shall knowingly permit defective equipment or materials to be used on, within, or in the vicinity of SBC TEXAS' poles, ducts, conduits, or rights-of-way.
- (d) When CLEC or personnel performing work on its behalf are working on, within, or in the vicinity of SBC TEXAS' poles, ducts, conduits, or rights-of-way located within, under, over, adjacent to, or in the vicinity of streets, highways, alleys or other traveled rights-of-way, CLEC and all personnel performing work on CLEC's behalf shall follow procedures which CLEC deems appropriate for the protection of persons and property. CLEC and its contractors shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. CLEC or its designated contractor will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers, and property from danger. CLEC and its contractors shall have sole responsibility for the safety of all personnel performing work on CLEC's behalf, for the safety of bystanders, and for insuring that all operations conform to current OSHA regulations and all other governmental rules, ordinances or statutes.
- (e) Neither party nor any persons acting on such party's behalf shall engage in any conduct which damages public or private property in the vicinity of SBC TEXAS' poles, ducts, conduits, or rights-of-way or creates a hazard or nuisance on such property (including but not limited to a hazard or nuisance resulting from any abandonment of or failure to remove its facilities or any construction debris from the property, failure to erect warning signs or barricades as may be necessary to give notice to others of unsafe conditions on the premises while work performed on its behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).
- (f) CLEC shall promptly suspend activities on, within, or in the vicinity of SBC TEXAS' poles, ducts, or conduits, if notified by SBC TEXAS that such activities create an unreasonable risk of injury to persons or property (including unreasonable risks of service interruptions). CLEC shall not resume such activities on or in the vicinity of CLEC's poles until CLEC is satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified and shall not resume such activities within or in the vicinity of SBC TEXAS' conduit system until both CLEC and SBC TEXAS are satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified. In the event that SBC TEXAS requires CLEC to suspend work activities and it is later determined that there was no reasonable basis for the work suspension, SBC TEXAS agrees to compensate CLEC for the cost resulting from the delay.
- (g) All personnel acting on CLEC's behalf shall, while working on or in SBC TEXAS' poles, ducts, conduits, or rights-of-way, carry with them suitable identification and shall, upon the request of any SBC TEXAS employee or representative, produce such identification.
- (h) CLEC (and any person acting on CLEC's behalf) may report unsafe conditions on, within, or in the vicinity of SBC TEXAS' poles or conduit system to SBC TEXAS.

6.10 Specific Requirements Relating to Personnel, Equipment, Materials, and Construction Practices Within or in the Vicinity of SBC TEXAS' Conduit Systems. When SBC TEXAS or CLEC, their contractors, and other persons acting on their behalf perform work on, within, or in the vicinity of SBC TEXAS' ducts, conduits, and rights-of-way where such ducts or conduits are located, they will be guided by the following:

- (a) Except as may be mutually agreed upon by the parties in writing, CLEC shall not "rod" or clear any duct or inner duct in SBC TEXAS' conduit system other than a duct or inner duct assigned to CLEC. Following the assignment of a specific duct or inner duct to CLEC, CLEC may request that SBC TEXAS rod or clear the duct or inner duct. If the duct or inner duct cannot be cleared, SBC TEXAS shall assign to CLEC the next available duct or inner duct. CLEC's request for assignment of the next available duct shall be in writing, may be transmitted to SBC TEXAS via fax or other transmission media mutually agreed upon by the parties, and shall be processed within the same intervals applicable to the processing of similar requests by SBC TEXAS' own personnel.
- (b) Personnel performing work within SBC TEXAS' conduit system on either party's behalf shall not climb on, step on, or otherwise disturb the cables, air pipes, equipment, or other facilities located in any manhole or other part of SBC TEXAS' conduit system.
- (c) Personnel performing work within or in the vicinity of SBC TEXAS' conduit system (including any manhole) on either party's behalf shall, upon completing their work, make reasonable efforts to remove all tools, unused materials, wire clippings, cable sheathing and other materials brought by them to the work site.
- (d) All of CLEC's facilities shall be firmly secured and supported in accordance with Telcordia and industry standards and any applicable construction standards adopted by SBC TEXAS and applicable to SBC TEXAS' own facilities.
- (e) CLEC's facilities shall be plainly identified with CLEC's name in each manhole with a firmly affixed permanent tag that meets the identification standards set by SBC TEXAS for its own facilities.
- (f) Manhole pumping and purging required in order to allow work operations to proceed shall be performed in accordance with the requirements of Sections 6.14 and 6.15.
- (g) Planks or other types of platforms shall be supported only by cable racks.
- (h) Any leak detection liquid or device used by CLEC or personnel performing work on CLEC's behalf within or in the vicinity of SBC TEXAS' conduit system shall be of a type approved by SBC TEXAS and included on SBC TEXAS' then-current list of approved types of leak-detection liquids and devices; provided, however, that the CLEC may use any type of leak detection liquid or device which meets Telcordia's published standards if SBC TEXAS has not provided CLEC SBC TEXAS' list of approved types of leak detection liquids or devices at least 60 days in advance of CLEC's work.
- (i) CLEC and its contractors shall be responsible for providing proper ventilation while work is being performed in SBC TEXAS' conduit system on CLEC's behalf. Except for protective screens, no temporary cover shall be placed over an open manhole unless it is at least four feet above the surface level of the manhole opening.

- (j) Smoking or the use of any open flame is prohibited in manholes, in any other portion of the conduit system, or within 10 feet of any open manhole entrance.
- (k) Artificial lighting, when required by CLEC, will be provided by CLEC. Only explosion-proof lighting fixtures shall be used.
- (l) Neither SBC TEXAS nor CLEC nor personnel performing work on its behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in SBC TEXAS' conduit system (including any manhole) during work operations performed within or in the vicinity of SBC TEXAS' conduit system.
- (m) All parties shall abide by any laws, regulations, and ordinances regarding the use of spark producing tools, equipment, or devices (including but not limited to such tools as electric drills and hammers, meggers, breakdown sets, induction sets, and the like) in manholes or in any other portions of the conduit system.
- (n) Cable lubricants used in conduit systems shall be of a type or types approved by SBC TEXAS and included on SBC TEXAS' then-current list of approved types of cable lubricants; provided, however, that the CLEC may use any type of cable lubricant which meets Telcordia's published standards if SBC TEXAS has not provided CLEC SBC TEXAS' list of approved types of cable lubricants at least 60 days in advance of CLEC's work.

6.11 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of SBC TEXAS' manholes and access to SBC TEXAS' conduit system.

- (a) CLEC will notify SBC TEXAS not less than 5 business days in advance before entering SBC TEXAS' conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the parties. The notice shall state the general nature of the work to be performed.
- (b) The parties contemplate that the CLEC may need to perform operations in SBC TEXAS' conduit system other than during normal business hours and may occasionally require access to manholes on shorter notice than contemplated in subsection (a) above. Under these circumstances, CLEC shall notify SBC TEXAS as soon as is reasonably possible of its intent to enter and perform work in the conduit system and SBC TEXAS shall not, without due cause and justification, insist on literal compliance with the scheduling requirements of subsection (a) in such circumstances. SBC TEXAS will establish procedures enabling SBC TEXAS to receive notices from CLEC under this subsection 24 hours a day, seven days a week.
- (c) Each party must obtain any necessary authorization from appropriate authorities to open manholes for such party's own conduit work and operations therein.
- (d) Where CLEC personnel, certified based on industry standards, perform installation, maintenance and similar routine work at SBC TEXAS sites, SBC TEXAS may, at its option, send one or more employees to review such work. CLEC and SBC TEXAS shall share the cost of a single SBC TEXAS employee reviewing the work during emergency and non-emergency situations. SBC TEXAS will not be compensated by CLEC for any additional employees reviewing the work. The SBC TEXAS employees assigned for review and inspection of CLEC personnel work must be

available during all normal business hours for such assignments to minimize inconvenience to CLEC. If the work at SBC TEXAS sites is performed by a contractor agreed upon by CLEC and SBC TEXAS, SBC TEXAS shall be responsible for the costs of its employees sent to inspect the contractor's work. However, if CLEC personnel perform work at the site of an interconnection point where the participation of SBC TEXAS personnel is integral for the successful completion of the work, CLEC is responsible for paying the costs of SBC TEXAS personnel reasonably needed for such work.

6.12 OSHA Compliance. Each party agrees:

- (a) its facilities attached to SBC TEXAS' poles or placed in SBC TEXAS' ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the Occupational Safety and Health Act (OSHA) and all rules and regulations promulgated thereunder and
- (b) all persons shall, when working on, within, or in the vicinity of SBC TEXAS' poles or conduit system, comply with OSHA and all rules and regulations thereunder.

6.13 Environmental Contaminants in SBC TEXAS' Conduit System. CLEC acknowledges that, from time to time, environmental contaminants may enter SBC TEXAS' conduit system and accumulate in manholes or other conduit facilities.

- (a) CLEC may, at its expense, perform such inspections and tests at the site of any pole, duct, conduit, or right-of-way occupied by or assigned to CLEC as CLEC may deem necessary to determine the presence at such sites of environmental contaminants. SBC TEXAS will assist CLEC, at the CLEC's request and expense, in the performance of such inspections and tests.
- (b) SBC TEXAS makes no representations to CLEC or personnel performing work on CLEC's behalf that SBC TEXAS' poles, ducts, conduits, or rights-of-way will be free from environmental contaminants at any particular time. Before entering a manhole or performing any work within or in the vicinity of SBC TEXAS' conduit system or any other site subject to access under this Appendix, CLEC or personnel acting on CLEC's behalf shall independently determine, to their satisfaction, whether such contaminants are present and conduct their work operations accordingly.
- (c) Each party shall promptly notify the other of environmental contaminants known by such party to be present on, within or in the vicinity of poles, ducts, conduits, or rights-of-way occupied by or assigned to CLEC if, in the sole judgment of such party, such environmental contaminants create a serious danger to (1) the health or safety of personnel working within or in the vicinity of the conduit or (2) the physical condition of the other party's facilities placed or to be placed within the conduit.
- (d) Nothing contained in this Appendix (including but not limited to the acknowledgments and representations set forth in this section) shall relieve either party from its responsibility to comply with all applicable environmental laws or its responsibility for any liability arising out of such party's failure to comply with such laws.

- 6.14 Compliance with Environmental Laws and Regulations. CLEC and SBC TEXAS agree to comply with the following provisions relating to compliance with environmental laws and regulations.
- (a) All persons acting on CLEC's or SBC TEXAS' behalf, including but not limited to CLEC's or SBC TEXAS' employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of SBC TEXAS' poles, ducts, conduits, or rights-of-way, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.
- 6.15 Compliance with Other Governmental Requirements (Including Aeronautical Navigation Safeguards). CLEC and SBC TEXAS agree that their facilities attached to SBC TEXAS' poles or placed in SBC TEXAS' ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter (including but not limited to any valid ordinances, rules, and regulations requiring permits, certificates, licenses or the like). CLEC and SBC TEXAS shall comply with all statutes, ordinances, rules, regulations, and other laws requiring the marking and lighting of aerial wires, cables, and other structures to ensure that such wires, cables, and structures are not a hazard to aeronautical navigation.
- 6.16 Responsibility for Condition of Facilities. Each party will be responsible at all times for the condition of its facilities (including but not limited to those extending from SBC TEXAS' poles, ducts, conduits, or rights-of-way directly to any other location) and for its compliance with the requirements and specifications of this article and all applicable laws, rules, regulations, and ordinances.

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

- 7.01 Designation of Primary Points of Contact. Each party will, at the request of the other party, designate a primary point of contact to facilitate communications between the parties and the timely processing of CLEC's applications for access to SBC TEXAS' poles, ducts, conduits, and rights-of-way located within this State. Designations of primary points of contact will be made by written notices including the name, title, address, phone number, and fax number of the person designated as the primary point of contact; provided, however, that unless and until a different designation is made, SBC TEXAS' primary point of contact shall be the Utility Liaison Supervisor identified in EXHIBIT VIII. Designation of primary points of contact pursuant to this section shall not affect notice requirements or other legal requirements set forth in other provisions of this Appendix or the parties' interconnection agreement.
- 7.02 Determinations by CLEC of Suitability and Availability. CLEC shall make its own, independent assessment of the suitability of SBC TEXAS' poles, ducts, conduits, and rights-of-way for CLEC's intended purposes.
- 7.03 Access to Records Relating to SBC TEXAS' Poles, Ducts, Conduits, and Rights-of-Way. This section establishes procedures through which certain records and information relating to SBC TEXAS' poles, ducts, conduits, and rights-of-way will be made available to CLEC. Access to such records and information shall be conditioned on CLEC's execution of a nondisclosure agreement equivalent in substance to the Nondisclosure Agreement (SBC TEXAS Pole, Duct, Conduit, and Rights-of-Way) attached to this Appendix as Exhibit V or such other nondisclosure agreement as shall be mutually acceptable to the parties, and no person acting on CLEC's behalf shall be granted access to such records and information without first signing such a nondisclosure agreement. CLEC shall reimburse SBC TEXAS for all reasonable costs

incurred by SBC TEXAS in granting CLEC's requests for access to records and information under this section.

- (a) CLEC shall, after the effective date of this Appendix, have reasonable access to review SBC TEXAS' pole and conduit maps and records. CLEC shall be permitted to examine these records during regular business hours at a location where copies of such records are maintained or at such other location as may be mutually agreed upon by the parties. Access to such maps and records shall be by appointment only, and SBC TEXAS shall make such maps and records available for inspection by CLEC on two business days notice.
- (b) The access described in subsection (a) shall include the right to make copies, at the CLEC's expense. In all instances, such access shall include the ability to take notes and make drawings with references to those maps and records. No references to cable counts or circuit information may be included in any such copies, notes, or drawings. With respect to customer-specific information, CLEC copies, notes, or drawings may include only such information as needed for bona fide engineering and construction purposes. CLEC's copies, notes, and drawings may include estimates regarding the physical characteristics (such as size and weight) of cables when necessary to make engineering determinations regarding the capacity, safety, reliability, or suitability of SBC TEXAS' poles, ducts, conduits, and rights-of-way for CLEC's intended uses.

SBC TEXAS shall provide CLEC the best information available from SBC TEXAS' current pole and conduit maps and records. SBC TEXAS represents that such records reflect approximate geographical locations of the facilities depicted and may not accurately reflect information such as:

- (1) the exact location of the facilities depicted;
- (2) the physical size, characteristics, or condition of the facilities depicted;
- (3) the ducts or inner ducts presently occupied, assigned, or available within any particular conduit segment or manhole;
- (4) the arrangement of facilities attached to a pole, the position of facilities suspended between poles or their relationship to each other and to the ground, or the positioning of cables and other facilities housed within ducts, conduits, manholes or other portions of SBC TEXAS' conduit system; and
- (5) other information which must be assessed before it can be determined that space is available on or in a pole, duct, or conduit for the attachment or occupancy of CLEC's facilities or that the pole, duct, or conduit depicted is suitable for CLEC's intended use.

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

- (a) After the effective date of this Agreement, SBC TEXAS shall permit CLEC to view specified poles, ducts, conduits, and rights-of-way on a pre-occupancy basis. Nothing contained in this section shall preclude CLEC from visually inspecting SBC TEXAS' poles, ducts, conduits, or rights-of-way from any vantage point lawfully accessible to CLEC without SBC TEXAS' permission.

- (b) CLEC shall not enter any SBC TEXAS manhole for the purpose of performing a pre-occupancy inspection without complying with all applicable requirements set forth in Article 6 of this Appendix, including but not limited to the provisions of Section 6.11 relating to the opening of manholes.

ARTICLE 8: POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

- 8.01 Selection of Space. SBC TEXAS will select or approve CLEC's selection of the location for all attachments on poles, in ducts and conduit, and in rights-of-way. The selection or approval will be based on safety, reliability or general engineering principles using the same criteria SBC TEXAS applies to itself. In conduit systems owned or controlled by SBC TEXAS, maintenance ducts (as defined in Section 3.24) shall not be considered available for CLEC's use except as specifically provided elsewhere in this Appendix. All other ducts, inner ducts, sub-ducts, and partitioned conduits which are not assigned or occupied shall be deemed available for use by SBC TEXAS, CLEC, and third parties entitled to access under the Pole Attachment Act.
- 8.02 Pole, Duct, and Conduit Space Assignments. Pole, duct, and conduit space will be assigned to CLEC as provided in this section. Information received by SBC TEXAS in connection with this section shall be subject to the provisions of Article 27 of this Appendix (Confidentiality of Information).
- (a) On receipt of CLEC's application for a pole attachment or conduit occupancy license the associated pole, duct, and conduit space shall be assigned to CLEC for a pre-occupancy period not to exceed 12 months, beginning with the date of such assignment. The assignment (and date and time) of assignment shall be logged and recorded in the appropriate SBC TEXAS records.
- (b) CLEC's obligation to pay semi-annual pole attachment or conduit occupancy fees shall commence from the date the assignment is logged and recorded in the appropriate SBC TEXAS records.
- (c) During the 12-month assignment period following the date space is assigned to CLEC and entered into the appropriate SBC TEXAS record, SBC TEXAS shall not occupy or use such space without CLEC's permission, shall not assign such space to any party other than CLEC, and shall not knowingly permit any party other than CLEC to occupy or use such space without CLEC's permission except as otherwise specifically provided in this Appendix. The assignment to CLEC shall automatically lapse 12 months after the date the assignment has been entered into the appropriate SBC TEXAS record if CLEC has not occupied such assigned space within such 12-month period; provided, however, that if CLEC's failure to occupy the space within such 12-month period results from SBC TEXAS' failure to perform make-ready work on schedule, the parties shall negotiate a single extension of the assignment period, which extension shall not extend the assignment period beyond three months from the date of completion of SBC TEXAS' make-ready work; and, provided further, that if CLEC can demonstrate that its failure to occupy the space within such 12-month period results from the actions of SBC TEXAS or third parties other than persons acting on CLEC's behalf, or from acts of God, the assignment may be extended for a period no longer than three months from the date CLEC is first able to commence construction activities at the site involved. Assignments to third parties shall be subject to the same rules applicable to CLEC under this subsection. Extensions permitted under this subsection must be requested in writing before expiration of the original 12-month period and shall be recorded on the appropriate SBC TEXAS records available for inspection under Section 7.03.

- (d) SBC TEXAS may assign space to itself by making appropriate entries in the same records used to log assignments to CLEC and third parties. If SBC TEXAS assigns pole, duct, or conduit space to itself, such assignment shall automatically lapse 12 months after the date the assignment has been entered into the appropriate SBC TEXAS record if SBC TEXAS has not occupied such assigned space within such 12-month period; provided, however, that if SBC TEXAS' failure to occupy the space within such 12-month period results from the actions of CLEC or third parties other than persons acting on SBC TEXAS' behalf, or from acts of God, SBC TEXAS' assignment may be extended for a period no longer than three months from the date SBC TEXAS is able to commence construction at the site involved. Extensions permitted under this subsection must be recorded before expiration of the original 12-month period on the appropriate SBC TEXAS records available for inspection under Section 7.03.
- (e) If facilities modifications, capacity expansions, or other make-ready work are required due to the assignment of space to CLEC or SBC TEXAS under this section, the party to whom such space has been assigned shall reimburse the person or entity incurring the costs for such facilities modifications, capacity expansions, or make-ready work, if the party to whom such space has been assigned fails to occupy the assigned space within the 12-month assignment period or any extension thereof.
- (f) Except as provided in subsections (c)-(d) above, assignments shall not be extended, renewed, or sequentially repeated in any manner (other than by actual occupancy) that enables CLEC, SBC TEXAS, or any joint user to preclude access by others to unused pole attachment or conduit occupancy space for any period greater than 12 months after the date of initial assignment.

8.03 Immediate Occupancy. This section implements the parties' stipulation (Stipulation CLEC 62, made a part of the Arbitration Award in Texas PUC Docket No. 16226) that SBC TEXAS "make available to CLEC for immediate occupancy any duct, conduit, or pole space that is not currently assigned to a local service provider, or other entity" in a manner consistent with the parties' stipulations (Stipulations CLEC 59, 60, and 66 made a part of the Arbitration Award in Texas PUC Docket No. 16226) dealing with the performance of make-ready work, inner duct installation, and removal of retired or inactive cables. SBC TEXAS shall, within 60 days after the effective date of this Appendix, adopt interim procedures which will provide CLEC the ability to attach or place facilities on or in SBC TEXAS' poles, ducts, conduits, and rights-of-way on an immediate basis when such space is available for CLEC's use and no make-ready work or infrequent construction techniques or connectivity solutions are required. SBC TEXAS may, on 60 days advance notice to CLEC, revise or terminate such interim procedures if they prove to be unworkable, in which event CLEC may seek renegotiation of this Appendix or challenge SBC TEXAS' decision in accordance with procedures available to CLEC under applicable federal and state laws, regulations, and commission orders. The special procedures established under this section shall supplement, rather than replace, the regular assignment and licensing procedures set forth in Articles 8-10 of this Appendix, are intended to be used only under special circumstances (e.g., when the regular procedures allow insufficient time to meet customer service commitments or resolve non-routine construction or network contingencies), shall not be used on a routine basis, and shall be consistent with subsections (a)-(f) below.

- (a) Upon giving SBC TEXAS the notice required by this subsection, CLEC may immediately occupy space assigned or provisionally assigned to CLEC pursuant to Section 8.02 of this Appendix. The notice shall be contained in either a notice of intent to occupy as provided in Section 8.02(b) or a license application under Section 9.02. CLEC shall not give such notice or occupy such space

without first reviewing SBC TEXAS' records and determining that the records reflect that the space sought is available.

- (b) CLEC shall not occupy space which has not been assigned or provisionally assigned to CLEC. The assignment must be recorded on the appropriate SBC TEXAS records, as provided in Section 8.02, prior to CLEC's occupancy. If CLEC subsequently determines that the records are inaccurate and that the space assigned to CLEC is not available, or that the space assigned is not suitable for CLEC's intended use, CLEC shall, within one business day, notify SBC TEXAS in writing that it no longer intends to occupy the space earlier assigned and is releasing the assignment. Except as otherwise provided in this subsection, CLEC shall not occupy other space on the pole or in the duct or conduit without first obtaining an assignment or provisional assignment of the space which CLEC will occupy. To avoid high or unusual expenditures resulting from unanticipated conditions at the site, CLEC may occupy space not assigned to CLEC subject to the following terms and conditions.
- (1) CLEC may occupy the next available space shown on SBC TEXAS' records as available at the time of CLEC's last review of the records. CLEC shall not knowingly occupy space occupied by or assigned to SBC TEXAS or any third party without consent of the party to whom the space has been assigned.
 - (2) Within one business day after occupying such space, CLEC shall submit to SBC TEXAS a written notice of intent to occupy or an application for the space occupied showing the reason for CLEC's use of the space occupied.
 - (3) CLEC shall bear the risk that space occupied by CLEC pursuant to this section was assigned to SBC TEXAS or a third party during the period between CLEC's last review of the records and CLEC's occupancy of such space. After occupying space not previously assigned to CLEC, CLEC shall review the records and promptly notify the affected party if CLEC determines that it has occupied space assigned to such party. At the request of the party to whom such space has been assigned, CLEC shall, within 24 hours, or within such other period of time mutually agreed to by the parties affected, remove its facilities from the space in question if the parties affected cannot reach an acceptable alternative solution. SBC TEXAS and CLEC anticipate that all parties affected will act in good faith to work out acceptable solutions and that the parties affected will not insist on strict adherence to the 24-hour removal requirement unless there is a legitimate business need for compelling removal within such time period.
 - (4) SBC TEXAS shall be entitled to recover from CLEC actual costs, if any, directly incurred by SBC TEXAS as a result of CLEC's decision under this subsection to occupy space subject to a valid prior assignment to SBC TEXAS. CLEC shall indemnify, on request defend, and save SBC TEXAS harmless from any injury, loss, damage, liability, or claim asserted against SBC TEXAS by any third-party resulting from CLEC's decision under this subsection to occupy space assigned to such third party.
- (c) Nothing in this section authorizes CLEC to place its facilities on or in any pole, duct, or conduit space already occupied by the facilities of SBC TEXAS or a third party, even if the presence of such facilities is not reflected on SBC TEXAS' records.

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

ARTICLE 9: APPLICATIONS AND PRE-LICENSE SURVEYS

9.01 Licenses Required. CLEC shall apply in writing for and receive a license before attaching facilities to specified SBC TEXAS poles or placing facilities within specified SBC TEXAS ducts or conduits manholes, or handholes. License applications and information received by SBC TEXAS in connection with such applications shall be subject to the provisions of Article 27 of this Appendix (Confidentiality of Information).

9.02 Application Form. To apply for a pole attachment or conduit occupancy license under this Appendix, CLEC shall submit to SBC TEXAS two signed copies of the appropriate application forms. SBC TEXAS represents that the forms specified in subsections (a) and (b) are forms in use prior to the effective date of this Appendix and that SBC TEXAS plans to revise such forms to conform to the provisions of this Appendix and to streamline the application process. The parties therefore agree that the forms specified in subsections (a) and (b) shall be interim forms only. SBC TEXAS reserves the right to change the format and content of these forms upon 60 days written notice to CLEC.

- (a) To apply for a pole attachment license, CLEC shall submit to SBC TEXAS two signed copies of SBC TEXAS' Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9433. An application for a pole attachment license shall not be complete or subject to processing by SBC TEXAS until these forms have been submitted to SBC TEXAS; provided, however, that such forms shall be deemed to be substantially complete if they contain the information specified in subsections (c)-(g) below, as applicable. Copies of Forms SW-9433 and SW-9434, are attached to this Appendix as parts of Exhibit III.
- (b) To apply for a conduit occupancy license, CLEC shall submit to SBC TEXAS two signed copies of SBC TEXAS' Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9435 ("Conduit Occupancy"). An application for a conduit occupancy license shall not be complete or subject to processing by SBC TEXAS until these forms have been submitted to SBC TEXAS; provided, however, that such forms shall be deemed to be substantially complete if they contain the information specified in subsections (c)-(g) below, as applicable. Copies of Forms SW-9434 and SW-9435, are attached to this Appendix as parts of Exhibit III.
- (c) Each application for a license under this Appendix shall include the following information, at a minimum:

- (1) the poles, ducts, and conduits (including all manholes) along CLEC's proposed route to or within which CLEC desires to attach or place its facilities, as well as a route maps and manhole detailed butterfly drawings;
 - (2) a description of the facilities to be attached to SBC TEXAS' poles and a description of the facilities to be placed within each component of SBC TEXAS' conduit system (including but not limited to ducts, conduits, manholes, and handholes) along the proposed route; and
 - (3) for poles, the proposed points of attachment.
 - (4) if applicable, a conspicuous notation that the space requested is not to be assigned (or billed) to CLEC until SBC TEXAS has received CLEC's written instruction to make such assignment or issued a license authorizing CLEC to occupy the space requested; and
 - (5) if applicable, a conspicuous statement (e.g., the words "immediate occupancy" in capital letters) or indication that the CLEC intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Appendix.
- (d) Facilities descriptions which apply to multiple pole attachments or conduit occupancies need only be described once on any form. Facilities descriptions shall include, at a minimum, the following information:
- (1) the number and types of cables, including the physical size (diameter) and weight (weight per foot);
 - (2) the number and types of strands, if any, which will be used to support the cables, including the rated holding capacity expressed in thousand pound increments (e.g., 2.2M) of such strands; and,
 - (3) sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to SBC TEXAS' poles or placed in SBC TEXAS' conduit system.
- (e) When it appears to CLEC that facilities modification, capacity expansion, or make-ready work, may be required to accommodate CLEC's access requests, CLEC shall describe the facilities modification, capacity expansion or make-ready work which CLEC proposes. CLEC shall also describe its intent to use any infrequent construction techniques or connectivity solutions under Section 6.03 to avoid high or unusual expenditures and its reasons for the utilization of such techniques or solutions.
- (f) CLEC acknowledges that the poles along a particular pole line or route may include poles owned by firms (such as electric utilities) other than SBC TEXAS, that it may be necessary for SBC TEXAS to rearrange its facilities or perform other make-ready work on poles other than poles it owns or controls in order to accommodate CLEC's request for access to SBC TEXAS' poles and that, at the time an application is submitted, CLEC shall identify all poles utilized by SBC TEXAS

(without regard to ownership) along the proposed route. If CLEC does not identify all poles, CLEC may contract with SBC TEXAS to do so, at the CLEC's expense.

- (g) Each application for a license under this Appendix shall be accompanied by a construction schedule showing CLEC's projected dates for beginning and completing construction at the sites specified in the application. Information on this schedule may be used by SBC TEXAS' engineering and outside plant construction personnel in scheduling work required to process CLEC's applications and scheduling such capacity expansions, make-ready work, and facilities modifications, if any, as may be necessary to accommodate CLEC's facilities.

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

- (a) Before submitting a formal written application for access to SBC TEXAS' poles, ducts, conduits, and rights-of-way, CLEC shall make a good faith determination that it actually plans to attach facilities to or place facilities within the poles, ducts, conduits, or rights-of-way specified in the application. Applications shall not be submitted for the purpose of holding or reserving space which CLEC does not plan to use or for the purpose of precluding SBC TEXAS or any other provider of telecommunications services from using such poles, ducts, conduits, or rights-of-way.
- (b) CLEC shall only submit applications for access to poles, ducts, conduits, and rights-of-way which it plans to use within one year following the date access is granted and will use its best efforts to submit applications in an orderly manner in accordance with CLEC's needs. If CLEC contemplates the need to submit more than 10 applications within any 45-day period with respect to poles, ducts, conduits, and rights-of-way within the territory of any single SBC TEXAS construction district, CLEC shall give SBC TEXAS 30 days notice with a priority list as noted in 9.04.
- (c) No more than 300 poles (and their associated anchors and anchor/guy strands) shall be the subject of any single pole attachment license application.
- (d) No more than 20 manholes shall be the subject of any single conduit occupancy license application.

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

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

- (a) A field inspection of the pre-license survey detailing the work that will be necessary to accommodate CLEC's facilities must be conducted before SBC TEXAS can respond to the request for access. All parties currently attached to the SBC structure must be notified, where ordered by a commission and allowed to participate in the survey if desired. The make ready survey does not guarantee structure integrity or that there will be available capacity to accommodate CLEC's request.
- (b) The administrative processing portion of the pre-license survey (which includes processing the application and reviewing records) will be performed by SBC TEXAS.
- (c) Before performing any portion of the pre-license survey, SBC TEXAS shall obtain CLEC's written authorization to perform such work. Authorization may be given, when possible, when the application is submitted.

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

10.01 Response Within 45 Days. Within 45 days of CLEC's submission of a license application pursuant to Section 9.02 of this Appendix, or within such other period of time as may be mutually agreed upon in writing by the parties, SBC TEXAS shall respond to the application. The response shall state whether the application is being granted or denied. If denial is anticipated, or if SBC TEXAS personnel involved in the processing of CLEC's request for access become aware of hazardous substances at the site requested by CLEC, SBC TEXAS shall promptly advise CLEC and shall, at the CLEC's request, discuss alternatives to denial and issues associated with the presence of such hazardous substances.

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

assigned, not designated as the maintenance duct, and not subject to applicable make-ready requirements. Availability shall be based on the appropriate SBC TEXAS records to be maintained by SBC TEXAS but which will be made available for viewing by CLEC on two business days notice as provided in Section 7.03 of this Appendix. CLEC will bear all risks resulting from the possibility that space which appears from the records to be available is not in suitable condition to be used by CLEC.

- (e) If SBC TEXAS fails to respond in writing within 30 days of SBC TEXAS' documented receipt of a license application pursuant to Section 9.02 of this Appendix, or within such other period of time as may be mutually agreed upon in writing by the parties, CLEC may by written notice inquire whether SBC TEXAS intends to deny CLEC's request for access. After such notice has been given and receipt by SBC TEXAS of a properly submitted license application has been confirmed, SBC TEXAS' failure to respond in writing within 15 days after receipt of the notice shall be deemed to constitute approval of the request for access. In such event, CLEC shall be entitled to occupy the space requested without the formality of a license; provided, however, that nothing contained in this subsection shall authorize CLEC to occupy space already occupied or subject to a prior valid space assignment to SBC TEXAS or any third-party; and provided further that nothing in this subsection authorizes CLEC, without first obtaining SBC TEXAS' written authorization, to (1) place its facilities on any pole or in any duct or conduit that requires make-ready work (other than third-party make-ready work arranged directly by CLEC) or (2) utilize any infrequent construction technique or connectivity solution described in Section 6.03.

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

- (a) SBC TEXAS agrees to modify its outside plant facilities to the extent that the CLEC agrees to pay for the modification at cost, such as but not limited to cable consolidations, as long as such modifications are consistent with capacity, safety, reliability, and engineering considerations which SBC TEXAS would apply to SBC TEXAS if the work were performed for its own benefit. SBC TEXAS may recover from CLEC the costs of modifying its outside plant facilities for CLEC's space. SBC TEXAS will require payment of the full amount in advance, subject to the true-up of the estimated costs with the actual costs. Reimbursement for the Creation or Use of Additional Capacity - If any additional capacity is created as a result of make-ready work performed to accommodate CLEC's facilities, CLEC shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to SBC TEXAS for the use of such additional capacity. If SBC TEXAS utilizes additional space or capacity created at the CLEC's expense, SBC TEXAS will reimburse CLEC on a pro-rata basis for SBC TEXAS' share, if any, of CLEC's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. SBC TEXAS will notify the CLEC if any entity, including SBC TEXAS, attaches facilities to additional capacity on SBC TEXAS' Structure created at the CLEC's expense. SBC TEXAS shall not be required to collect or remit any such