

AT&T Wholesale Agreement

Contract Number: 10880

**ADOPTION OF INTERCONNECTION AGREEMENT
UNDER SECTION 252(i)
OF THE
TELECOMMUNICATIONS ACT OF 1996**

This Agreement (this "MFN Agreement"), is being entered into by and between Southwestern Bell Telephone Company d/b/a AT&T Kansas ("AT&T Kansas") and 365 Wireless, LLC ("CLEC"), (each a "Party" and, collectively, the "Parties"), pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act").

RECITALS

WHEREAS, pursuant to Section 252(i) of the Act, CLEC has requested to adopt the Interconnection Agreement by and between AT&T Kansas and Nextel West Corp for the State of Kansas, which was approved by the Kansas Corporation Commission ("the Commission") under Section 252(e) of the Act on October 12, 1998 in docket number 99-SWBT-172-IAT, including any amendments to such Agreement (the "Separate Agreement"), which is incorporated herein by reference;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CLEC and AT&T Kansas hereby agree as follows:

1.0 Incorporation of Recitals and Separate Agreement by Reference

- 1.1 The foregoing Recitals are hereby incorporated into and made a part of this MFN Agreement.
- 1.2 Except as expressly stated herein, the Separate Agreement (including any and all applicable Appendices, Schedules, Exhibits, Attachments and Amendments thereto) is incorporated herein by this reference and forms an integral part of the MFN Agreement.

2.0 Modifications to Separate Agreement

- 2.1 References in the Separate Agreement to "CLEC" or to "Other" shall for purposes of the MFN Agreement be deemed to refer to CLEC.
- 2.2 References in the Separate Agreement to the "Effective Date," the date of effectiveness thereof and like provisions shall for purposes of this MFN Agreement be deemed to refer to the date upon which the MFN Agreement is approved by the Commission. In addition, this MFN Agreement shall expire on March 1, 2013.
- 2.3 The Notices Section in the Separate Agreement is hereby revised to reflect that Notices should be sent to CLEC under this MFN Agreement at the following address:

NOTICE CONTACT	CLEC CONTACT
NAME/TITLE	Clive Marsh CFO
STREET ADDRESS	1500 Trotter's Cove
CITY, STATE, ZIP CODE	Atlanta, GA 30338
FACSIMILE NUMBER	970-722-6231

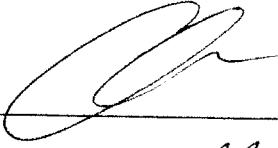
- 2.4 The Notices Section in the Separate Agreement is hereby revised to reflect that Notices should be sent to AT&T Kansas under this MFN Agreement at the following address:

NOTICE CONTACT	<u>AT&T-13STATE</u> CONTACT
NAME/TITLE	Contract Management ATTN: Notices Manager
STREET ADDRESS	311 S. Akard, 9 th Floor Four AT&T Plaza
CITY, STATE, ZIP CODE	Dallas, TX 75202
FACSIMILE NUMBER	214-464-2006

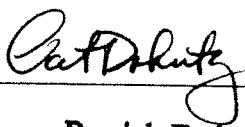
3.0 Clarifications

- 3.1 In entering into this MFN Agreement, the Parties acknowledge and agree that neither Party waives, and each Party expressly reserves, any of its rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in this MFN Agreement (including intervening law rights asserted by either Party via written notice as to the Separate Agreement), with respect to any orders, decisions, legislation or proceedings and any remands by the FCC, state utility commission, court, legislature or other governmental body including, without limitation, any such orders, decisions, legislation, proceedings, and remands which were issued, released or became effective prior to the Effective Date of this MFN Agreement, or which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review.
- 3.2 It is AT&T Kansas' position that this MFN Agreement (including all attachments thereto) and every interconnection, service and network element provided hereunder, is subject to all rates, terms and conditions contained in the MFN Agreement (including all attachments/appendices thereto), and that all of such provisions are integrally related and non-severable.

365 Wireless, LLC

By: Printed: Clive MarshTitle: CFD

(Print or Type)

Date: 2/7/12Southwestern Bell Telephone Company d/b/a AT&T
Kansas by AT&T Services, Inc., its authorized agentBy: Printed: Patrick DohertyTitle: Director - RegulatoryDate: 2-13-12

**AGREEMENT FOR INTERCONNECTION
AND RECIPROCAL COMPENSATION**

by and between

Nextel West Corp.

and

SOUTHWESTERN BELL TELEPHONE COMPANY

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APPENDICES:**PRICING****MTA****DCO****LNP**

AGREEMENT FOR INTERCONNECTION AND RECIPROCAL COMPENSATION

This Agreement, entered into this 25th day of August 1998, is by and between Southwestern Bell Telephone Company, a Missouri corporation and **Nextel West Corp.**.. for interconnection in Kansas.

WHEREAS, SWBT is a Local Exchange Carrier in the State of Kansas.

WHEREAS, Carrier is a Commercial Mobile Radio Service provider operating within the state of Kansas and under the license listed in the Appendix Area. WHEREAS, the Parties desire to enter into an agreement for the interconnection of their networks and reciprocal compensation for the termination of Local Traffic (as defined below) between their respective networks pursuant to the Telecommunications Act of 1996 (the "Act"), and other applicable state laws;

NOW THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS

Definitions of the terms used in this Agreement are listed below. The Parties agree that certain terms may be defined elsewhere in this Agreement, as well. Terms not defined shall be construed in accordance with their customary meaning in the telecommunications industry as of the effective date of this Agreement.

"Act" means the Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended by the Telecommunications Act of 1996, as may be subsequently amended or, as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission having authority to interpret the Act within its state of jurisdiction.

"Area Wide Calling Plan" or "AWCP" means a billing option available to CMRS providers where the CMRS provider compensates SWBT for land to mobile traffic in lieu of toll charges that would normally be billed to SWBT's end user.

"Calling Party Number" or "CPN" is a feature of signaling system 7 ("SS7") protocol whereby the 10 digit number of the calling party is forwarded from the end office.

"Carrier" has the meaning set forth in the preamble.

"Cell Site" means the location of fixed radio transmitting and receiving facilities associated with the origination and termination of wireless traffic to a wireless end user and may be used as a point of interconnection to the landline network.

"Collocation" has the meanings given to the term in the Act, applicable rules of the FCC and Commission, and the Commission's arbitration awards.

“Commercial Mobile Radio Service” or “CMRS” has the meaning given to the term in the Act.

“Commission” or “PUC” or “PSC” means the state administrative agency to which the United States Congress or state legislature has delegated authority to regulate the operations of Local Exchange Carriers (“LECs”) as defined in the Act.

“Common Channel Signaling” or “CCS” means a special network, fully separate from the transmission path of the public switched network, that digitally transmits call set-up and network control data.

“Connecting Facilities” means dedicated facilities provided either under this Agreement or separate contract used to connect Carrier's network and SWBT's network for the purposes of interchanging traffic.

“Conversation Time” means the time (in full second increments) that both Parties' equipment is used for a call, measured from the receipt of answer supervision to disconnect supervision.

“Customer” means, whether or not capitalized, any business, residential or governmental customer of services covered by the Agreement, and includes the term “End User”. More specific meanings of either of such terms are dependent upon the context in which they appear in the Agreement and the provisions of the Act.

“Enhanced Services” means services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.

“End Office” means a local SWBT switching point where SWBT exchange service customer station loops are terminated for purposes of interconnection to each other and to the network.

“End User” means, whether or not capitalized, any business, residential or governmental customer of services covered by the Agreement and includes the term “Customer”. More specific meanings of either of such terms are dependent upon the context in which they appear in the Agreement and the provisions of the Act.

“Exchange Access” has the meaning given the term in the Act.

“FCC” means the Federal Communications Commission.

“Independent Local Exchange Carrier” has the meaning given the term in the Act.

“ISP” means an Internet Service Provider

“ISP Traffic” means calls delivered to telephone numbers used by an ISP that are made available by the ISP for accessing the Internet.

“Interconnection” has the meaning given the term in the Act and refers to the connection of separate pieces of equipment, facilities, or platforms between or within networks for the purpose of transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic.

“Interexchange Carrier” or “IXC” means a carrier other than a CMRS provider or a LEC that provides, directly or indirectly, interLATA and/or intraLATA, for-hire telecommunications service.

“InterLATA” has the meaning given the term in the Act.

“InterMTA Traffic” means all calls which originate in one MTA and terminate in another MTA.

“IntraLATA Toll Traffic” means all IntraLATA calls other than Local Traffic.

“Local Access and Transport Area” or “LATA” has the meaning given to the term in the Act.

“Local Exchange Carrier” or “LEC” has the meaning given to the term in the Act.

“Local Service Provider” means a carrier licensed by the Commission with the appropriate certification (e.g., a Certificate of Authorization or Service Provider Certificate of Authorization).

“Local Traffic”, for the application of reciprocal compensation, means telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area (“MTA”), as defined in 47 CFR Section 24.202(A).

“Mobile Switching Center” or “MSC” means a Carrier's facilities and related equipment used to route, transport and switch Wireless Calls to and from the public switched telephone network.

“Major Trading Area” or “MTA” has the meaning given to the term in 47 CFR Section 24.202(A).

“NXX”, “NXX Code”, “Central Office Code”, or “CO Code” is the 3-digit switch indicator that is defined by the D, E, and F digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 telephone numbers.

“Party” means either SWBT or Carrier, and “Parties” means SWBT and Carrier.

“Reciprocal Compensation” means the arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network of Local Traffic that originates on the network of the other carrier.

“Service Area” means the geographic area, within which Carrier is licensed to provide service.

“Signaling System 7” or “SS7” means a signaling protocol used by the CCS network.

“Signaling Transfer Point” or “STP” means the point where a party interconnects, either directly or through facilities provided by SWBT, or a Third Party Provider, with the CCS/SS7 network.

“SWBT” has the meaning set for in the preamble.

“Synchronous Optical Network” or “SONET” means an optical interface standard that allows inter-networking of transmission products from multiple vendors.

“Tandem” means the following:

“Access Tandem” means a switching system that provides a concentration and distribution function for originating or terminating traffic between end offices, other tandems and Third Party Providers.

“Wireless Tandem” means a switching system that provides a concentration and distribution function for originating and terminating traffic between the wireless MSCs and the landline network and has the software necessary to provide wireless interconnection services.

“Telecommunications” and “Telecommunications Carrier” have the meanings given to those terms in the Act.

“Termination” means the switching of Local Traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party.

“Territory” means the five states of Texas, Missouri, Kansas, Arkansas and Oklahoma in which SWBT was originally given the ability to operate its business following divestiture.

“Third Party Provider” shall mean any other facilities-based telecommunications carrier, including, without limitation, interexchange carriers, independent telephone companies, competitive local exchange carriers, or CMRS providers. The term shall not mean resellers of a LEC's local exchange services or resellers of a CMRS provider's services either of which shall be considered, for purpose of this definition, as part of whose services they resell.. “For example, if a Carrier end user completes a call to a number used by a reseller (not a CLEC or CMRS provider purchasing on a resale basis) of SWBT's service, Carrier will pay terminating compensation to SWBT for that call. Likewise, if a SWBT end user completes a call to a number used by a reseller (not a CLEC or CMRS provider purchasing on a resale basis) of Carrier's service, SWBT will pay terminating compensation to Carrier for that call.”

“Transiting Traffic” means intermediate transport and switching of traffic between two parties, one of which is not a Party to this Agreement, carried by a Party that neither originates nor terminates that traffic on its network while acting as an intermediary.

“Transport” means the transmission (not including tandem switching) of Local Traffic subject to Section 251 (b)(5) of the Act from the interconnection point between two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by Third Party Provider.

“Trunk Group” means a set of trunks of common routing, origin and destinations, and which serve a like purpose or function.

“Trunk Side” means a Party's connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example another SGBT to Carrier switch. Trunk Side connections offer those transmission and signaling features appropriate for the connections of switching entities.

“Technically Feasible” this definition has the meaning given in the Act, as construed by the FCC and appellate courts.

“V and H Coordinates Method” means the computing of airline miles between two points utilizing an established formula which is based on the vertical and horizontal coordinates of the two points used in the rating of calls.

“Wireless Calls” for the application of reciprocal compensation, means all calls originating from or terminating to the Carrier's network.

2. INTERCONNECTION

This Section 2 describes the network architecture with which the Parties to this Agreement may interconnect their respective networks for the transmission and routing of Telephone Exchange Service and Exchange Access as required by Section 251 (c)(2) of the Act.

2.1 Interconnection Facilities

2.1.1 Type 1: One way or two way facilities which provide a trunk side connection (line side treatment) between a SGBT end office and Carrier's Mobile Switching Center (“MSC”) within that end office boundary. Type 1 facilities provide the capability to access all SGBT end offices within the LATA and Third Party Providers.

2.1.2 Type 2A: One way or two way facilities which provide a trunk side connection between Carrier's MSC and a SGBT Wireless Tandem. Type 2A facilities provide the capability to access all SGBT end offices within the LATA and Third Party Providers, excluding IXCs.

- 2.1.3 Type 2B: One-way facilities which provide a trunk side connection from a Carrier's MSC to a SGBT end office. Type 2B facilities provide the capability to access only subscribers served by that end office.
- 2.1.4 Type S: Facilities provisioned to provide out of band signaling between SGBT STPs and Carrier MSCs or STPs.
- 2.1.5 Equal Access Facilities: One-way facilities which provide a trunk side connection between Carrier's MSC and a SGBT Access Tandem. Equal Access Trunks provide the capability to pass interexchange traffic to IXCs.
- 2.1.6 Miscellaneous Facilities: Facilities which provide the transmission and routing of various types of traffic, such as 800/888 traffic, 911/E911 traffic, Operator Services traffic, and Directory Assistance traffic.
- 2.1.7 Carrier may develop additional Points of Presence (POP) other than the actual location of their MSC through the use of either SGBT's Special Access facilities, their own facilities, or facilities of a third party.
- 2.1.8 Carrier shall provide SGBT with an annual forecast of intended mobile to land usage for each point of interconnection. The Parties agree to work cooperatively to determine the number of trunks needed to handle the estimated traffic. Type 1 and Type 2A facilities may be either one-way or two-way when both Parties agree to share the facility; Type 2B facilities are restricted to one-way mobile to land. For one-way, or two-way facilities, terms, conditions, recurring and nonrecurring charges will apply as specified in Section 7 of the applicable interstate or intrastate Special Access Tariffs. When both Parties agree to utilize two-way facilities charges will be shared by the Parties on a proportional (percentage) basis as specified in Appendix PRICING. The Parties shall review actual billed minutes accrued on shared two-way facilities and modify, six (6) months from the Effective Date of this Agreement and every twelve (12) months thereafter, the percentages specified in Appendix PRICING.

2.2 Facility Location

2.2.1 Technically Feasible

- 2.2.1.1 As required by Section 251 of the Act, Carrier may interconnect with SGBT's network at any technically feasible point. The Parties acknowledge for purposes of this requirement that the locations listed in Appendix DCO constitute the technically feasible points of interconnection for the Carrier to pass traffic to SGBT for transport and termination by SGBT on its network or for transport to a Third Party Provider.

2.2.1.2 If Carrier requires interconnection at a location not listed in Appendix DCO, then it shall submit a Special Request pursuant to section 6.1.2.1.

2.2.1.3

The Parties recognize that SWBT, in its sole discretion, may remove any of its designated locations from Appendix DCO in the normal course of its business, thus rendering interconnection at the location technically infeasible; provided, however, that SWBT shall provide Carrier at least 120 days written notice and shall work cooperatively with Carrier to reestablish the interconnection at another SWBT location within the 120 days. SWBT agrees to waive nonrecurring charges associated with SWBT initiated re-homing of facilities; provided, however, that Carrier shall be responsible for any other costs associated with the reconfiguration of the Carrier's network. In addition, SWBT may add to its designated locations on Appendix DCO at any time, and shall notify Carrier of such addition in writing, which shall be considered an amendment to Appendix DCO. SWBT shall notify Carrier of additional locations by providing updated versions of Appendix DCO. If Carrier requests to interconnect at any of those additional locations, such request will not be considered a Special Request.

2.2.2 Per LATA Requirement

Carrier acknowledges that SWBT is restricted in its ability to pass traffic from one LATA to another under the Act. As a result, Carrier agrees to interconnect to at least one SWBT facility in each LATA in which it desires to pass traffic to SWBT for transport and termination within such LATA. This requirement shall remain in effect until SWBT, in its reasonable judgment, notifies Carrier in writing that it is no longer subject to InterLATA restrictions in its Territory.

2.2.3 Incumbent LEC Requirement

The Parties acknowledge that the terms and conditions specified in this Agreement do not apply to the provision of services or facilities by SWBT in those areas where SWBT is not the incumbent LEC.

2.3 **Additional Interconnection Methods Available to Carrier**

2.3.1 Carrier may provide its own facilities and transport for the delivery of traffic from its MSC (or other mutually agreed upon point on Carrier's network) to the interconnection point on SWBT's network. Alternatively, Carrier may purchase a facility and transport from a third party or from SWBT for the delivery of such traffic. Rates for entrance facilities and transport purchased

from SWBT are specified in Section 7 of the applicable interstate or intrastate Special Access Tariffs.

- 2.3.2 Carrier may request virtual collocation from SWBT at the rates, terms and conditions specified in FCC Tariff No. 73, Section 25, and physical collocation as specified in applicable tariff (or in the absence of an applicable tariff, on an individual case basis). Alternatively, Carrier may collocate at a SWBT facility with a third party with whom SWBT has already contracted for collocation. When Carrier collocates at a SWBT facility, it shall provide for the transport of traffic from its network to the appropriate interconnection point on SWBT's network pursuant to section 2.3.1 above. SWBT shall provide collocation space to Carrier only for equipment used for the purposes of interconnecting to SWBT's network. SWBT is not required to permit collocation of equipment used to provide enhanced services. If Carrier causes SWBT to build a collocation cage and then Carrier does not use the facility (or all the facility), Carrier shall reimburse SWBT as if Carrier was using the entire facility.
- 2.3.3 Carrier may request SONET Based Interconnection ("SBI") pursuant to SWBT's tariff terms and conditions in FCC No. Tariff 73, Section 30.
- 2.3.4 Carrier and SWBT may share SWBT's interconnection facilities at the rates specified in Section 7 of the applicable interstate or intrastate Special Access Tariffs. Charges will be shared by the Parties based on their proportional (percentage) use of such facilities as specified in Appendix PRICING.

2.4 **Interconnection Methods Available to SWBT**

- 2.4.1 Carrier locations listed in Appendix DCO constitute the technically feasible points of interconnection Carrier shall provide for SWBT to pass traffic to Carrier for transport and termination on Carrier's network.
- 2.4.2 SWBT may provide its own facilities and transport for the delivery of traffic from its point of interconnection to the interconnection point on Carriers network. Alternately, SWBT may purchase an entrance facility and transport from a third party or from Carrier for the delivery of such traffic. Rates for entrance facilities and transport Carrier and SWBT may share Carrier interconnection facilities at the rates specified in Appendix PRICING. Charges will be shared by the Parties based on a proportional (percentage) basis as specified in Appendix PRICING.
- 2.4.3 LEC may provide its own facilities and transport for the delivery of traffic from its point of interconnection to the interconnection point on Carrier's transport from a third party or from Carrier for at Carrier's sole discretion the delivery of such traffic. Rates for entrance facilities and transport purchased from Carrier are specified in Appendix PRICING.

2.4.4 Carrier and LEC may share Carriers interconnection trunking at the rates specified in Appendix PRICING. Charges will be shared by the Parties based on a proportional (percentage) basis as specified in Appendix PRICING.

2.5 **Technical Requirements and Standards**

2.5.1 Each Party will provide the services in this Agreement to the other Party at a standard at least equal in quality and performance to that which the Party provides itself. Either Party may request, and the other Party will provide, to the extent technically feasible, services that are superior or lesser in quality than the providing Party provides to itself, provided, however, that such services shall be considered Special Requests.

2.5.2 Nothing in this Agreement will limit either Party's ability to modify its network, including, without limitation, the incorporation of new equipment, new software or otherwise. Each Party will provide the other Party written notice of any such modifications to its network which will materially impact the other Party's service consistent with the timelines established by the FCC in the Second Report and Order, CC Docket 96-98. Carrier will be solely responsible, at its own expense, for the overall design of its telecommunications services and for any redesigning or rearrangement of its telecommunications services which may be required because of SWBT modifications, including, without limitation, changes in facilities, operations or procedures, minimum network protection criteria, or operating or maintenance characteristics of facilities.

2.6 **Unbundled Network Elements**

SWBT will provide network elements to Carrier on an unbundled basis in accordance with the Act and applicable State regulations or orders for the provision by Carrier of a wireless telecommunications service

3. **TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE PURSUANT TO SECTION 251(C)(2)**

This Section 3 provides the terms and conditions for the exchange of traffic between the Parties' respective networks for the transmission and routing by the Parties of Local Traffic and Transiting Traffic.

3.1 **Basic Terms**

3.1.1 Mobile to Land Traffic

3.1.1.1 Carrier shall be responsible for the delivery of traffic from its network to the appropriate point of interconnection on its network

for the transport and termination of such traffic by SWBT to a SWBT end user or for delivery by SWBT to a Third Party Provider.

3.1.1.2 Unless Carrier elects to provision its own facilities under section 2.3, SWBT shall provide the physical plant facilities that interconnect Carrier's point of interconnection with SWBT's point of interconnection. SWBT shall provision mobile to land connecting facilities for Carrier under the terms and conditions specified in Section 7 of the applicable interstate or intrastate Special Access Tariffs.

3.1.2 Land to Mobile Traffic

3.1.2.1 SWBT shall be responsible for the delivery of traffic from its network to the appropriate point of interconnection (within the serving wire center boundary of the end office in which the tandem, providing Type 2A Interconnection, is located, or within the serving wire center boundary of the end office providing Type 1 Interconnection) on its network for the transport and termination of such traffic by Carrier to the handset of a Carrier end user.

3.1.2.2 Unless SWBT elects to have Carrier or a third party provision facilities under section 2.4, SWBT shall provide the physical plant facilities that interconnect SWBT's point of interconnection with Carrier's point of interconnection. SWBT shall be responsible for the physical plant facility from its network to the appropriate point of interconnection within the serving wire center boundary of the end office in which the tandem, providing Type 2A Interconnection, is located, or within the serving wire center boundary of the end office providing Type 1 Interconnection on its network.

3.1.3 Traffic To Third Party Providers

Carrier and SWBT shall compensate each other for traffic that transits their respective systems to any Third Party Provider, as specified in Appendix PRICING. In the event that a (originating carrier) sends traffic through the other party's (receiving carrier) network to a Third Party Provider with whom originating carrier does not have a traffic interchange agreement, then originating carrier agrees to indemnify receiving carrier for any termination charges rendered by a Third Party Provider for such traffic.

3.1.4 Transiting Traffic Factor

The Parties have agreed upon the land to mobile transiting traffic factor specified in Appendix PRICING paragraph 5.3, which represents the

percentage of land to mobile minutes which will be considered as transiting minutes. The Parties have agreed to use the factor developed as a reasonable representation of the land to mobile traffic which is originated by a Third Party Provider and transits SWBT's network. This factor will be used to reduce the total minutes delivered to Carrier from SWBT, before the application of the interMTA factor outlined in section 4.2.2, to determine the minutes subject to reciprocal compensation. SWBT agrees to review the factor upon Carrier request, but no more often than once every twelve (12) months after the effective date of this Agreement. SWBT will make the results of the factor development available to Carrier to ensure the Parties are using an accurate transiting traffic factor.

3.1.5 Reciprocal Compensation Factor

Carrier does not anticipate having the capability to measure and bill Land-to-Mobile traffic as of the Effective Date of this Agreement, but anticipates this will be only a temporary situation. So long as this situation is only temporary, LEC is willing to agree to allow Carrier to employ factor billing, in lieu of actual measuring, as an interim measure. Thus, the Parties have agreed that for purposes of reciprocal compensation, Carrier will calculate its base minutes of Land-to-Mobile traffic minutes to be used in calculating reciprocal compensation based on a Reciprocal Compensation Factor specified in Section 5.4 of Appendix Pricing. Those base minutes of Land-to-Mobile minutes will be calculated by multiplying the Reciprocal Compensation Factor times the Mobile-to-Land terminating traffic measured by LEC and provided to Carrier each month. The Parties have agreed to use the Reciprocal Compensation Factor developed as a method of obtaining a reasonable representation of the Land-to-Mobile traffic on which reciprocal compensation owed to Carrier will be based until Carrier has the capability to measure and bill such traffic. The base minutes of Land-to-Mobile traffic will be subject to further adjustment by reduction for the interMTA factor outlined in Section 4.2.2 and then by the Transiting Traffic factor outlined in Section 3.1.4, respectively, to determine the minutes subject to reciprocal compensation.

The parties agree that the Reciprocal Compensation Factor will be reviewed and recalculated based on actual traffic studies within six months of the Effective Date and twelve months thereafter until Carrier can implement measuring and billing of Land-to-Mobile traffic, but in no case beyond November 1, 1999.

3.2 **Reciprocal Compensation**

3.2.1 Rates

The Parties shall provide each other Reciprocal Compensation for the transport and termination of Local Traffic at the rates specified in Appendix PRICING. SWBT shall compensate Carrier for the transport and termination of Local Traffic originating on SWBT's network; Carrier shall compensate SWBT for the transport and termination of Local Traffic originating on Carrier's network. Compensation shall vary based on the method of interconnection used by the Parties, as specified in Appendix PRICING. Additional charges may also apply (on a non-reciprocal basis) as provided for in this Agreement. The Parties acknowledge that the rates set forth in Appendix PRICING are interim and shall be replaced by final rates as adopted by the Commission, based on final and unappealable costing rules adopted by the FCC, as further described below and in Section 14. If either party requests services, facilities or products from the other party that are not covered by this Agreement, the requesting party shall pay for such items in accordance with the normal prices for such items.

3.2.2 True Up

The Parties recognize that rates, among other things, provided for under this Agreement may be affected by subsequent rulings of state or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction. Accordingly, the Parties agree that in the event of such a final, non-appealable ruling, the Parties shall true up the Reciprocal Compensation provided for in this section once such a ruling, decision or other mandate becomes effective, final and non-appealable (the "True Up Date"). The Parties shall complete the true up 60 days after the True Up Date.

3.2.3 Exclusions

Reciprocal Compensation shall apply solely to the transport and termination of Local Traffic, and shall not apply to any other traffic or services, including without limitation:

- 3.2.3.1 interMTA traffic;
- 3.2.3.2 Transiting Traffic;
- 3.2.3.3 traffic which neither originates nor terminates on Carrier's network;
- 3.2.3.4 non-local traffic associated with SWBT's Area Wide Calling Plan; and

3.2.3.5 “Paging Traffic” In the event a judicial or regulatory body of competent jurisdiction should determine that providers of paging traffic should receive reciprocal compensation for paging traffic , this provision 3.2.3.5 will be modified or deleted as necessary to comply with such determination.”

3.2.3.6 “ISP Traffic” “In the event the FCC should rule that ISP Traffic is jurisdictionally local and such rule is final and non-appealable, this provision 3.2.3.6 will be modified or deleted as necessary to comply with such determination.”

3.2.4 Measuring Calls as Local Traffic

In order to measure whether traffic is Local Traffic for purposes of calculating Reciprocal Compensation, the Parties agree as follows; for SWBT, the origination or termination point of a call shall be the end office which serves, respectively, the calling or called party. For Carrier, the origination or termination point of a call shall be the cell site/base station which serves, respectively, the calling or called party at the time the call begins.

3.2.5 Conversation Time

For purposes of billing compensation for the interchange of Local Traffic, billed minutes will be based upon conversation time. Conversation time will be determined from actual usage recordings. Conversation time begins when the terminating Party’s network receives answer supervision and ends when the terminating Party’s network receives disconnect supervision.

3.3 Additional Compensation

In addition to any other charges specified in this Agreement, the following charges may be applicable as specified in this Agreement at the rates listed in Appendix PRICING. Charges listed are in addition to, not exclusive of, any other charges that may be applicable under this Agreement.

3.3.1 Transiting Charge: Each Party shall compensate the other Party for traffic which transits the other Party’s network destined to a Third Party Provider at rates specified in Appendix PRICING.

3.3.2 Facilities Charges: Each Party shall compensate the other (not on a reciprocal, symmetrical basis) for the use of the providing Party’s facilities between Carrier and SWBT points of interconnection, in either direction, as the case may be.

3.3.3 Special Requests: All requests for or the provision of(i) services covered by this Agreement for which facilities do not exist, (ii) facilities, equipment or technologies that the providing Party, in its sole discretion, determines are

not necessary to fulfill a request under this Agreement, or (iii) services not specifically enumerated in this Agreement, shall be handled as a Special Request, as described in Section 6.1.2.2. Special Requests under (ii) may include, without limitation, requests for fiber, microwave, alternate routing, redundant facilities and other non-standard facilities or services.

3.4 **Signaling**

The Parties may interconnect using Signaling System 7 (“SS7”) in order to allow out of band signaling in conjunction with the exchange of traffic between the Parties’ respective networks. SS7 Signaling may be provided in conjunction with Type 1 land to mobile traffic, or with Type 2A interconnecting facilities only. When SWBT provides SS7 Signaling services directly to Carrier, SWBT shall provide such service at the rates specified in Appendix Pricing. This rate is for the use of multiple SWBT STPs in the provisioning of mobile to land traffic. Charges for STP Access Links and Port termination’s used to connect Carrier’s MSC or STP (whichever is applicable) and SWBT’s STP shall be shared by the Parties based on the proportional (percentage) basis as specified in Appendix PRICING and at rates specified in Section 23 of FCC Tariff No. 73.

4. **TRANSMISSION AND ROUTING OF EXCHANGE ACCESS SERVICE PURSUANT TO SECTION 251(C)(2)**

This Section 4 provides the terms and conditions for the exchange of traffic between Carrier’s network and SWBT’s network for switched access to IXCs, thus enabling Carrier end users to access IXCs for the transmission and routing of interMTA and interLATA calls.

4.1 **General**

4.1.1 Carrier may order Equal Access Trunks in order to provide for access to IXC’s through SWBT’s network. Equal Access Trunks shall be used solely for the transmission and routing of Exchange Access to allow Carrier’s end users to access IXC’s, and shall not be used by Carrier for any other purpose.

4.1.2 For as long as SWBT may require, Carrier shall provide SWBT the appropriate call data to allow SWBT to bill IXC’s for Originating Access (as defined below). Such data shall be provided in a form mutually agreed to by the Parties. SWBT shall notify Carrier in writing when it no longer requires Carrier to provide such data.

4.2 **Access Charges**

4.2.1 When Applicable

Carrier shall pay SWBT Switched Access charges (including Carrier Common Line, Local Switching and Transport) for any and all traffic which crosses an MTA boundary as provided herein (as defined by the cell site/base

station at which the call originates or terminates and the SWBT end user's serving wire center at which the call originates or terminates). Switched Access charges are specified in Appendix PRICING paragraph 5.2 as interMTA rates.

Both Parties recognize that legislative and regulatory activities may impact the rates, terms and conditions associated with interstate Switched Access services. The Parties agree that any rate changes associated with interstate Switched Access services will flow through to the interMTA rates specified in Appendix PRICING as stated in Section 14 of this Agreement.

If traffic is handed from SWBT directly to an IXC, from Carrier to an IXC via equal access trunks, or from an IXC directly to SWBT, access charges shall not apply to Carrier.

4.2.2 InterMTA Factor

The Parties have agreed upon the interMTA factor specified in Appendix PRICING, which represents the percent of total minutes to be billed access charges. Carrier represents that the factor is based on a reasonable traffic study conducted by Carrier, and shall make such study available to SWBT upon request. Six months after the effective date of this Agreement, and every twelve (12) months thereafter, Carrier shall conduct a study (available to SWBT on request) to ensure the Parties are using an accurate interMTA factor.

The Parties agree that if the percent of land to mobile interMTA traffic is less than 3 percent of the land to mobile traffic, then such traffic will be deemed as de-minimus and the land to mobile factor will be set at 0%.

4.2.3 Examples

Following are two examples of traffic for which Carrier shall be required to pay access charges. They are examples only and in no way shall be deemed limiting or exhaustive of the applicability of access charges under this Agreement.

4.2.3.1 When a SWBT end user calls a Carrier end user (a land to mobile call), SWBT delivers the call to Carrier, and Carrier transports the call across MTA boundaries (either directly or through an IXC) access charges shall apply to Carrier ("Originating Access").

4.2.3.2 When a Carrier end user calls a SWBT end user (a mobile to land call), the call crosses MTA boundaries, and Carrier transports the call across MTA boundaries, access charges shall apply to Carrier ("Terminating Access").

5. TRANSMISSION AND ROUTING OF OTHER TYPES OF TRAFFIC

This Section 5 provides the terms for the exchange of 800/888 traffic, 911/E911 traffic, and Directory Assistance traffic from an end user on Carrier's network to SGBT's network.

5.1 **800/888 Traffic**

- 5.1.1 Carrier may order from SGBT Miscellaneous Facilities in order to deliver 800/888 Traffic from a Carrier end user to SGBT's network. Such Miscellaneous Facilities shall be used solely for the transmission and routing of 800/888 traffic to allow Carrier's end users to send calls to SGBT for completion to IXCs, LECs other than SGBT, or SGBT.
- 5.1.2 Charges for Miscellaneous Facilities are specified in Section 7 of the applicable interstate or intrastate Special Access Tariffs. Additional charges for services provided on Miscellaneous Facilities may also apply, including, without limitation, charges for directory assistance services and transport as well as other operator services.

5.2 **E911/911 Traffic**

With respect to all matters relating to E911/911 traffic, the Parties shall: (i) continue to handle such services as they do today and (ii) work together to meet any and all applicable requirements mandated under law, including tariffs, and rules and regulations of the FCC. The Parties acknowledge and agree that as applicable requirements are met and implemented, additional charges for E911/911 traffic may apply and shall in no way delay implementation of such requirements.

5.3 **Directory Assistance**

5.3.1 Directory Assistance Service

- 5.3.1.1 SGBT may provide Directory Assistance ("DA") service from directory assistance locations to Carrier's premises. SGBT DA service is provided when Carrier's customers reach a SGBT DA position.
- 5.3.1.2 DA calls will be completed over Type 1 end office connections for NPAs served within the LATA. For NPA 555-1212 calls, Carrier may pass those to IXCs over equal access facilities.
- 5.3.1.3 Carrier may combine DA calls over existing Type 1 connecting circuits or may complete DA calls over a Miscellaneous Facility group.
- 5.3.1.4 Rates listed in Appendix PRICING shall apply.

5.3.2 DA Call Completion

5.3.2.1 General

5.3.2.1.1 DA Call Completion (“DACC”) is a service that provides Carrier’s customers the option of having their local or IntraLATA calls completed when requesting a telephone listing from a SWBT DA operator.

5.3.2.1.2 DACC is available when Carrier has elected to receive the service and has ordered the required dedicated operator service circuits to each of the DA locations within the LATA. DACC, when billed to Carrier, is only available on a fully automated basis.

5.3.2.1.3 In addition to the appropriate charges for DA and DACC, terminating usage charges, rated as Type 2A service, apply for all calls completed using DACC.

5.3.2.1.4 DACC is available under two billing applications, specified in the next sections: multiple rate option, and single rate option.

5.3.2.2 Multiple Rate Option

5.3.2.2.1 Under the multiple rate option, Carrier is billed individually for DA and DACC when provided.

5.3.2.2.2 If Carrier chooses the multiple rate option, a ten digit Automatic Number Identification (“ANI”) field following the called number is required from Carrier as prescribed in SWBT publication DACC Technical Requirements for Cellular Providers.

5.3.2.2.3 Carrier has the option of providing customer specific ANI for the purpose of directly billing for DACC or providing Carrier’s billing number in the ANI field.

5.3.2.3 Single Rate Option

With a single rate option, Carrier is charged a single fixed rate for the DA and DACC portion of a DA call. This rate applies for all DA calls including those where DACC was not requested by Carrier’s customer.

5.3.2.4 Manner of Provisioning

- 5.3.2.4.1 Operator Service Circuits: When Carrier requests DACC service, both DA and DACC services are provided over a dedicated trunk group from each Carrier MSC to the SWBT DA switch in the LATA.
- 5.3.2.4.2 Billing Information Tape: When Carrier chooses the multiple rate option, billing information tapes ("BIT") will be automatically provided on a daily basis detailing the call information associated with the ANI provided by Carrier. Carrier has the option of receiving the call information via a data circuit as detailed in section 5.3.2.4.3. The charge for BIT is listed in Appendix PRICING.
- 5.3.2.4.3 Electronic Data Transmission: Electronic Data Transmission ("EDT") provides Carrier the option of receiving detailed call information via a data circuit instead of the daily BIT. The EDT data circuit is established between SWBT's data center and Carrier's premises of choice. The type EDT data circuit required is dependent upon the volume of billing information and the type terminating equipment provided by Carrier at its premises. While there is no charge for EDT, Carrier is responsible for the data circuit charges.

5.3.2.5 Rate Regulations

- 5.3.2.5.1 Terminating usage charges as found in paragraph 1 of Appendix PRICING, will apply for the duration of a call, and in addition to the DA and DACC rates, for any call completed using DACC.
- 5.3.2.5.2 Under the multiple rate option, the DA rates found in Appendix PRICING apply in addition to the multiple rate option charge in Appendix PRICING.
- 5.3.2.5.3 DACC and associated usage are charged only upon completion of calls under the multiple rate option. DA charges always apply for calls placed to a DA position.
- 5.3.2.5.4 Under the single rate option, the DA charges listed in Appendix PRICING apply to all calls placed to a DA position including those calls where DACC was not requested by Carrier's customer. The associated usage charges only apply when a call has been completed.

5.4 Operator Services

Operator Service (“OS”) calls will be limited to 0+ or 0- calls on a sent paid basis only. The term “sent paid” means that all calls must be paid for by Carrier's end user at the time the call is placed. This can be accomplished by using a telecommunications credit card, placing the call collect or billing the call to a third number. No charges are incurred by Carrier. Sent paid calls can be completed as follows:

- 5.4.1 Fully Automated: when Carrier's end user dials zero (0) plus a seven or ten digit telephone number and the call is completed without the assistance of a SGBT operator.
- 5.4.2 Semi-Automated: when Carrier's end user dials zero (0) plus a seven or ten digit telephone number and the call is completed with assistance of a SGBT operator.
- 5.4.3 Manual: when Carrier's end user dials zero (0) only, then places a call with the assistance of a SGBT operator.

5.5 Area Wide Calling Plan

Area Wide Calling Plan (AWCP) is an optional reverse billing arrangement which may be requested by Carrier. This optional service permits SGBT's end user to call certain Carrier end users from any location within the LATA without incurring an additional charge, i.e., no “toll” charges are applied to the SGBT's end user.

- 5.5.1 Subscribing to the AWCP, Carrier agrees to incur a per minute of use charge for all land to mobile calls, which terminate outside of the local calling scope of the SGBT local exchange, as defined by the Intrastate Local Exchange Tariff, serving the SGBT end user who originated the call. The V&H coordinates associated with the AWCP NXX and the SGBT end office which serves the end user who originated the call will be used in determining the applicability of AWCP per minute of use charges.
- 5.5.2 The charges for this service are as specified in Appendix PRICING. Mileage charges shall be calculated or measured using the V&H Coordinates Method. Mileage will be determined by calculating the airline distance from the calling party's end office to the Carrier point of interconnection.
- 5.5.3 AWCP will be provisioned using a SGBT provided dedicated one-way land to mobile Type 2A Connecting Facility group established solely for the completion of AWCP calls. AWCP will only be provisioned utilizing a NXX code dedicated to this service.
- 5.5.4 No AWCP usage charges will apply for calls which originate and terminate within the local calling scope of the SGBT local exchange as defined by the Intrastate Local Exchange Tariff, serving the SGBT end user who originated

the call. The V&H coordinates associated with the AWCP NXX and the SWBT end office which serves the end user who originated the call will be used in determining the applicability of AWCP per minute of use charges.

5.5.5 Carrier agrees not to charge SWBT for transport and termination of any call associated with an AWCP, when the call is terminated outside of the local calling scope of the SWBT local exchange serving the SWBT end user who originated the call. SWBT will pay compensation for traffic associated with an AWCP when traffic terminates within the local calling scope of the SWBT local exchange, as defined by the Intrastate Local Exchange Tariff, serving the SWBT end user who originated the call.

6. ADDITIONAL ORDERING AND BILLING PROVISIONS

6.1 Ordering

6.1.1 Unless otherwise provided for in this Agreement, this provision shall apply for the ordering of interconnection herein. Each Party shall be responsible for ordering from the other any interconnection or other facilities as specified in this Agreement. The Parties shall mutually agree upon the format for any orders and any required codes or other information that must be included in any particular order. Subject to the paragraph immediately below, orders shall be processed as follows: after the receipt of a request, a Party shall notify the ordering Party, in a timely manner and in agreement with published intervals, of any additional information it may require to determine whether it is technically feasible to meet the request. Within 45 days of its receipt of said information, the Party shall notify the ordering Party ("Notification") if the request is technically feasible. If the request is technically feasible, the Party shall activate the order as mutually agreed to by the Parties after Notification (the "Activation Date").

6.1.2 Special Requests

6.1.2.1 If either Party requires interconnection at a location not listed in Appendix DCO, then it shall submit a Special Request in writing to the other Party specifying (i) the point of interconnection, (ii) an estimated activation date, and (iii) a forecast of intended use. Within 20 days of its receipt of the ordering Party's request (the "Request Date"), the providing Party shall notify the ordering Party of any additional information it may require to determine whether it is technically feasible to meet the request. Within 60 days of its receipt of said information (or 60 days from the Request Date if the providing Party does not ask for additional information), the providing Party shall notify the ordering Party ("Notification") if its request is technically feasible. If the request is technically feasible, the providing Party shall activate the interconnection at any time 15 days after Notification (the

“Activation Date”) as specified by the ordering Party. Upon activation the Parties shall be deemed to have amended Appendix DCO to include the added location. Special Requests for interconnection locations not listed in Appendix DCO may involve additional charges.

- 6.1.2.2 The Parties recognize that Special Requests may be made of the other Party pursuant to section 3.3.3 herein. The providing Party shall have 75 days to notify the ordering Party (“Special Notification”) if the ordering Party's Special Request, in the providing Party's sole discretion, will be fulfilled and what the cost of fulfilling such request will be. If the Special Request will be fulfilled, the providing Party shall activate the order at a time agreed to by the Parties.
- 6.1.2.3 An ordering Party may cancel a Special Request at any time, but will pay the providing Party's reasonable and demonstrable costs of processing and/or implementing the Special Request up to the date of cancellation.

6.2 **Billing**

- 6.2.1 Each Party shall deliver monthly settlement statements for terminating the other Party's traffic based on a mutually agreed schedule. Each Party will record its terminating minutes of use and identify those minutes by terminating trunk group. Bills rendered by either Party shall be paid within thirty (30) days of the bill date or by the next bill date, subject to 3.1.5.

6.2.2 Late Charges

Bills will be considered past due 30 days after the bill date or by the next bill date (i.e., same date as the bill date in the following month), whichever occurs first, and are payable in immediately available funds.

If the amount billed, exclusive of any amount disputed, is received by the billing Party after the payment due date or if any portion of the payment is received by the billing Party in funds which are not immediately available to the billing Party, then a late payment charge will apply to the unpaid balance. The late payment charge will be the lesser of:

The highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily and applied for each month or portion thereof that an outstanding balance remains; or

0.000657 compounded daily and applied for each month or portion thereof that an outstanding balance remains.

6.3 Miscellaneous Nonrecurring Charges

6.3.1 Maintenance of Service Charge

When either Party reports trouble to the other Party for clearance and no trouble is found in the network of the Party which received the trouble report, the reporting Party shall be responsible for payment of a Maintenance of Service Charge for the period of time when personnel of the Party which received the trouble report are dispatched. In the event of an intermittent service problem that is eventually found to be in the network of the Party which received the report, the reporting Party shall receive a credit for any Maintenance of Service Charges applied in conjunction with this service problem.

If either Party reports trouble to the other Party for clearance and personnel of the Party which received the trouble report are not allowed access to the reporting Party's premises, the Maintenance of Service Charge will apply for the time that personnel of the Party which received the trouble report are dispatched; provided that the Parties have arranged a specific time for the service visit.

6.3.2 Additional Engineering Charges

Additional Engineering charges will be billed to one Party when the other Party incurs engineering time to customize its service at the other Party's request.

6.3.3 Additional Labor Charges

Additional labor will be charged when a Party installs facilities outside of normally scheduled working hours at the other Party's request. Additional labor also includes all time in excess of one-half (1/2) hour during which personnel stand by to make installation acceptance test or cooperative test with the other Party to verify facility repair on a given service. The Parties mutually agree to work on billing Additional Labor Charges such that the labor hours billed will be identified on the statement.

6.3.4 Access Order Charge

An Access Order charge applies whenever the Party's request installation, addition, rearrangement, change or move of the interconnection services associated with this agreement.

6.3.5 Design Change Charge

The Parties desire to resolve some disputes arising out of this Agreement without litigation. Accordingly, except for (i) actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement, (ii) federal or state antitrust and/or deceptive trade practices claims, or (iii) suits to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure as their remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach. With regard to claims of \$50,000 or less, a single arbitrator shall hear them; with regard to claims in excess of \$50,000, a three judge panel shall hear them. The Parties agree that arbitration shall be the exclusive remedy only for disputes covered by this paragraph that involve claims for damages or claims related to nonpayment of amounts due pursuant to the terms of this Agreement. As to other matters, this Section does not preclude either Party from seeking equitable remedies or filing a complaint with the Commission.

13.2.1 Resolution of Disputes Between Parties to the Agreement

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement are exempt from discovery and production and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

13.2.2 Arbitration

- 13.2.2.1** If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that Party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories; demands to produce documents; requests for admission.

13.2.2.2 Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in the following cities: if this agreement is for Texas, Dallas; if this agreement is for Arkansas, Little Rock; if this agreement is for Oklahoma, Oklahoma City; if this agreement is for Missouri, St. Louis; and if this agreement is for Kansas, Topeka. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties shall submit written briefs five days before the hearing. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

13.2.2.3 "For any issue already in Dispute Resolution, upon mutual agreement by both parties, arbitration proceedings may be invoked prior to completion of the 60 day Dispute Resolution time period. Once submitted to arbitration, all obligations associated with the arbitration process will be binding upon both Parties."

13.2.3 Costs

Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party for the costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.

14. INTERVENING LAW

- 14.1 This Agreement is entered into as a result of both private negotiation between the Parties, acting pursuant to the Act, and/or other applicable state laws or Commission rulings. If the actions of state or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws or regulations that were the basis for a provision of the contract, the affected provision will be invalidated, modified, or stayed as required by action of the legislative body, court, or regulatory agency. In such event, the Parties shall expend diligent efforts to arrive at an agreement respecting the modifications to the Agreement required. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions will be resolved pursuant to any remedy available to the Parties under law; provided that the Parties may mutually agree to use the dispute resolution process provided for in this Agreement.
- 14.2 In the event a court or regulatory agency of competent jurisdiction should determine that modifications of this Agreement are required to bring the services being

provided hereunder into compliance with the Act, the affected Party shall promptly give the other Party written notice of the modifications deemed required. Upon delivery of such notice, the Parties shall expend diligent efforts to arrive at an agreement respecting such modifications required, and if the Parties are unable to arrive at such agreement within sixty (60) days after such notice, either Party may seek any remedy available to it under law; provided that the Parties may mutually agree to invoke the dispute resolution process set forth in this Agreement.

15. SECTION 252 (i) OBLIGATIONS

If SWBT enters into an agreement approved by the Commission providing for Interconnection and Reciprocal Compensation with another Wireless Telecommunications Carrier in the State of Kansas (a "Third Party Agreement"), then Carrier shall have the option to avail itself of the terms and conditions of the Third Party Agreement in its entirety, without picking and choosing less than all of the provisions of the Third Party Agreement. Carrier acknowledges that other agreements are or will be on file with the Commission and that such agreements are available to the public. If Carrier desires to avail itself of a Third Party Agreement, it shall provide SWBT written notice of such desire, and the Parties shall be deemed to have adopted the Third Party Agreement, in place of this Agreement, sixty (60) days following SWBT's receipt of Carrier's notice.

16. ACCESS TO RIGHTS OF WAY

SWBT will provide Carrier nondiscriminatory access to poles, ducts, conduits and rights-of-way on rates, terms, and conditions that are consistent with the Pole Attachment Act, 47 U.S.C. Section 224. SWBT has prepared a Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way so as to comply with the Pole Attachment Act and applicable rules, regulations and Commission orders, including prior ruling of state commissions in interconnection arbitration proceedings. Carrier may execute the Master Agreement as a stand alone agreement or as an integral part of this Interconnection Agreement. SWBT will continue to negotiate specific contract language with Carrier if Carrier elects to execute the Master Agreement on an interim basis only.

17. CERTIFICATION REQUIREMENTS

Carrier warrants that it has obtained all necessary jurisdictional certification required in those jurisdictions in which Carrier has ordered services pursuant to this Agreement. Upon request by any governmental entity, Carrier shall provide proof of certification to SWBT.

18. MISCELLANEOUS PROVISIONS

18.1 Effective Date

The Parties shall effectuate all the terms of this Agreement upon final approval of this Agreement by the relevant state Commission when it has determined that this Agreement is in compliance with Section 252 of the Act (the "Effective Date"); provided, however, the Parties agree to make arrangements to pay one another for the period from the Effective Date of the Agreement to the date on which both Parties can implement changes in their respective billing systems. The Parties agree that the implementation of changes to billing systems will not exceed sixty (60) days.

18.2 Term and Termination

- 18.2.1** SWBT and Carrier agree to interconnect pursuant to the terms defined in this Agreement for an initial period terminating November 1, 1999, and thereafter the Agreement shall continue in force and effect unless and until terminated as provided herein. Either Party may terminate this Agreement by providing written notice of termination to the other Party, such written notice to be provided at least sixty (60) days in advance of the date of termination; provided, however, that no such termination shall be effective prior to the date one year from the Effective Date of this Agreement. By mutual agreement, SWBT and Carrier may amend this Agreement in writing to modify its terms.
- 18.2.2** Either Party may terminate this Agreement upon thirty (30) days written notice of a material breach of this Agreement by the other Party to this Agreement, which material breach remains uncured for the thirty (30) day period after written notice of the material breach by the non-breaching Party to the breaching Party; provided, however, that so long as the breaching Party is taking diligent, timely, and substantive action towards curing a breach that cannot be cured within such thirty days, then the non-breaching Party may not terminate the Agreement.

18.3 Binding Effect

This Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

18.4 Assignment

Neither Party may assign, subcontract, or otherwise transfer its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to the other Party and with such Party's prior written consent, provided that either party may assign its rights and delegate its benefits, and delegate its duties and obligations under this Agreement without the consent of the other party to a 100 percent owned affiliate of the assigning party, which consent shall not be unreasonably withheld; provided that SWBT may assign its rights and delegate its benefits, and delegate its duties and obligations under this Agreement without the

consent of Carrier to a 100 per cent owned affiliate of SWBT. Nothing in this section is intended to impair the right of either Party to utilize subcontractors.

18.5 Third Party Beneficiaries

This Agreement shall not provide any non-party with any remedy, claim, cause of action or other right.

18.6 Force Majeure

Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable commercial efforts to avoid or remove the cause of non-performance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.

18.7 DISCLAIMER OF WARRANTIES

THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER. ADDITIONALLY, THE PARTIES ASSUME NO RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND/OR USED BY A THIRD PARTY.

18.8 Survival of Obligations

Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, will survive cancellation or termination thereof.

18.9 Waiver

The failure of either Party to enforce or insist that the other Party comply with the terms or conditions of this Agreement, or the waiver by either Party in a particular instance of any of the terms or conditions of this Agreement, shall not be construed as a general waiver or relinquishment of the terms and conditions, but this Agreement shall be and remain at all times in full force and effect.

18.10 Trademarks and Trade Names

Nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever, absent written consent of the other Party.

18.11 Taxes

Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. Purchasing Party may be exempted from certain taxes if purchasing Party provides proper documentation, e.g., reseller certificate, from the appropriate taxing authority.

18.12 Relationship of the Parties

This Agreement shall not establish, be interpreted as establishing, or be used by either Party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party shall have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Agreement, is provided. Nothing in the Agreement shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties. Nothing herein shall be construed as making either Party responsible or liable for the obligations and undertakings of the other Party.

18.13 Services

Each Party is solely responsible for the services it provides to its end users and to other Telecommunications Carriers.

18.14 Notices

In an event any notices are required to be sent under the terms of this Agreement, they shall be sent by registered mail, return receipt requested to:

To SWBT:

Area Manager
Wireless Product Management.
Four Bell Plaza, Rm. 1810.04
Dallas TX, 75002

To Carrier:

Douglas Gillespie
Nextel Communications, Inc.
1768 Old Meadows Road
McLean, Va. 22102

Keith Davis
Sr. Legal Counsel
Southwestern Bell Telephone
One Bell Plaza, Rm. 2900
Dallas, TX 75202-5398

24 Hour Network Management Contact:

For SWBT:

1-800-662-2163 Houston TX
1-800-982-7447 St. Louis, MO
1-800-472-1175 Fort Worth, TX

For Carrier:

1-888-563-9835

18.15 Expenses

Except as specifically set out in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

18.16 Headings

The headings in this Agreement are inserted for convenience and identification only and will not be considered in the interpretation of this Agreement.

18.17 Governing Law

The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of the State in which services are to be provided hereunder, except insofar as federal law may control any aspect of this Agreement, in which case federal law will govern..

18.18 Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which will together constitute but one and the same document.

18.19 Complete Terms

This Agreement together with its appendices and exhibits constitutes the entire agreement between the Parties and supersedes all prior agreements, discussions, representations or oral understandings reached between the Parties. Appendices and exhibits referred to herein are deemed attached hereto and incorporated by reference. Neither Party shall be bound by any amendment, modification or additional terms unless it is reduced to writing signed by an authorized representative of the Party sought to be bound.

If this Agreement is acceptable to Carrier and SWBT, both Parties will sign in the space provided below. This Agreement shall not bind Carrier and SWBT until executed by both Parties.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION.

Carrier: Nextel West Corp.

By: Drew Caplan

Print Name: Drew Caplan
Position/Title Vice President-Engineering

Date: 8/9/98

SWBT

By SBC Telecommunications, Inc., its agent

By: Sandy Kinney

DK
8/24/98
Sandy Kinney
Vice President & General Manager
Industry Markets

Date: 8-25-98

KANSAS

APPENDIX PRICING

1.0 **Mobile to Land Interconnection Rates Per Minute of Use**

Type 2A	Type 1	Type 2B	Transiting
\$.01	\$.01	\$.004	\$.004

2.0 **Land to Mobile Interconnection Rates Per Minute of Use**

All Interconnection	
Types	Transiting
\$.01	\$.004

3.0 **Carrier facilities will be provided at rates, terms, and conditions developed on an individual case basis.**4.0 **Shared Facility (1)(2)**

4.1	Shared Facility Factor - Carrier	.80
4.2	Shared Facility Factor - LEC	.20

5.0 **Inter MTA / Transiting Traffic**

5.1	Inter MTA Traffic Factor (2)	1%
5.2	Inter MTA Rates (to be paid to LEC by Carrier on applicable Inter MTA calls)	
	Land to Mobile (originating)	\$.022463
	Mobile to Land (terminating)	\$.022463
5.3	Transiting Traffic Factor	2%
5.4	Reciprocal Compensation Factor	20%

- (1) These factors represent the percentage of the facility rate that each Party will pay for each shared connecting facility.
- (2) This is an interim factor agreed to by Carrier and LEC. This factor is to be verified within six (6) months of the Effective Date of this Agreement.

KANSAS

APPENDIX PRICING (Continued)

6.0 Directory Assistance

6.1 Directory Assistance Rates (1)

Per Call	\$.3548
Transport Per Call	
0 - 1 mile	\$.0039
>1 to 25 miles	\$.0060
>25 to 50 miles	\$.0263
>50 miles	\$.0562

6.2 Directory Assistance Call Completion

6.2.2 Per Completed Call

6.2.3 Operator Service Circuits

In addition to the Per Call Rates, Carrier must establish facilities between the Carrier's MSC and LEC's TOPS tandem. Prices can be found in Section 7 of the applicable interstate or intrastate Access Services Tariffs.

7.0 Area Wide Calling Plan (AWCP)

7.1 AWCP Rates Per Minute of Use

Local Switching		\$.011833
Local Transport		
	0 - 1 mile	\$.0060
	>1 to 25 miles	\$.0091
	>25 to 50 miles	\$.0399
	>50 miles	\$.0853
Carrier Common Line		\$.01697

7.2 A nonrecurring charge of \$6450.00 applies to arrange a new AWCP NXX Code or to convert an existing NXX Code to an AWCP

8.0 Signaling System 7 (“SS7”) Transport

Rate per million octets

(1) If the Carrier chooses the Single Rate Option, then a rate of \$.50 shall apply for every DA call. With the Single Rate Option, DACC may be utilized by the Carrier's end user at no additional charge to the Carrier.

KANSAS**APPENDIX PRICING (Continued)**

9.0 Selective Class of Call Screening	Per Month	Nonrecurring Charge
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Per BAN per month	\$21.00	\$272.00
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10.0 Miscellaneous Nonrecurring Charges
--

Maintenance of Service

Basic Time	1st 1/2 hr. \$ 26.24	Ea. add'l. 1/2 hr. \$ 21.32
Overtime	1st 1/2 hr. \$ 31.65	Ea. add'l. 1/2 hr. \$ 26.73
Premium Time	1st 1/2 hr. \$ 31.65	Ea. add'l. 1/2 hr. \$ 26.73

Access Order Charge	Switched Services \$ 17.00
	Special Services \$ 14.00

Design Change	\$ 32.96
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Service Date Change	\$ 14.77
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ACNA Change	\$ 22.00 per trunk group
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BAN Change	\$22.00 per Billing Account Number
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CKT ID Change	\$ 22.00 per trunk group
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Additional Engineering

Basic Time	1st 1/2 hr. \$ 34.59	Ea. add'l. 1/2 hr. \$ 24.97
Overtime	1st 1/2 hr. \$ 41.37	Ea. add'l. 1/2 hr. \$ 31.75

Additional Labor Rates

Installation

Basic Time	1st 1/2 hr. \$ 36.35	Ea. add'l. 1/2 hr. \$ 26.73
Overtime	1st 1/2 hr. \$ 41.77	Ea. add'l. 1/2 hr. \$ 32.15

Testing & Mtce.

Basic Time	1st 1/2 hr. \$ 30.93	Ea. add'l. 1/2 hr. \$ 21.32
Overtime	1st 1/2 hr. \$ 36.35	Ea. add'l. 1/2 hr. \$ 26.73

Supersede

Switched Services	\$ 17.00
Special Services	\$ 14.00

KANSAS

APPENDIX PRICING (Continued)

10.0 Miscellaneous Nonrecurring Charges (Continued)

Cancellation Charge	No. of business days from order application through the order cancellation multiplied by the average daily charge of the service ordered, plus the Access Order Charge.
Rollover Charges	A rollover is a Carrier initiated move that involves a change of a Point of Termination from an existing service within the same Carrier premises. The nonrecurring charge associated with the installation of that service applies when Carrier requests a rollover.
Conversion Charge	A nonrecurring charge of \$120.00 per end office applies when changing a Type 1 service arrangement to a Type 2A, where retranslations are required.

11.0 Carrier-Provided Facilities and Services

Prices for Carrier-provided facilities and services, not otherwise provided for in this Appendix Pricing shall be negotiated upon request by SGBT for such facilities or services and Carrier agreements, at its sole discretion, to provide such facilities or services.

State	LATA	MTA	Nextel Appendix MTA & License Areas		CLLI	Type of Switch
			CLLI Address	V/H		
Kansas	534	46 & 34	925 D Iowa Street, Lawrence KS 66044	07097/04293	LWRNKSIA2MD	Alcatel 1630
	534	46 & 34	330 NW Railroad, Topeka KS 66608	07110/04379	TPKAHKSHD1MD	Alcatel 1630
	524	34	7007 College Blvd, Overland Park KS 66211	07068/04203	KSCYKSCV1MD	Alcatel 1630
	532	46 & 34	9401 E. Kellogg, Wichita KS 67207		WCHUUKSFI1MD	Alcatel 1630

APPENDIX DCO
SWBT Kansas EO POIs

CLLI	EXCHANGE	EQ TYPE	LATA	V-COORD	H-COORD	STREET AD
CFVLKS10DS0	COFFEYVILLE	DGTL/D100	532	7507	4190	214 W 10TH
CHNTKSSSDS0	CHANUTE	DGTL/D100	532	7367	4218	20 S STEUB
CNCRKSBRDS0	CONCORDIA	DGTL/D1/2	534	7132	4722	1004 BROAD
DDCYKS01DS0	DODGE CITY	DGTL/D1/2	532	7641	4958	208 GUNSM
EMPRKS08DS0	EMPORIA	DGTL/D100	532	7271	4394	28 W 8TH, E
FTSCKS01DS0	FORT SCOTT	DGTL/D100	532	7285	4114	23 W 1ST, F
GRCYKS07DS0	GARDEN CITY	DGTL/D100	532	7647	5112	409 N 7 ST,
GRTBKSTSDS0	GREAT BEND	DGTL/D100	532	7442	4803	1300 STONE
HAYSKS11DS0	HAYS	DGTL/D1/2	534	7374	4932	126 W 11TH,
HTSNKS02DS0	HUTCHINSON	DGTL/D1/2	532	7453	4644	101 E 2ND S
INDPKSMADS0	INDEPENDENCE	DGTL/D100	532	7475	4219	200 E MAPLE
KSCYKS10CG0	KC DREXEL	1SPC/1AAP	524	7028	4212	901 N 10TH,
KSCYKSBSDS0	KC BONNER SPRING	DGTL/5ES	524	7056	4246	163 NETTLE
KSCYKSCBDS0	KC CORPORATEWOOD	DGTL/5ES	524	7068	4203	8686 W COL
KSCYKSJOCG0	KC HEDRICK	1SPC/1AAP	524	7049	4210	7400 JOHNS
KSCYKSJODS0	KC HEDRICK	DGTL/D1/2	524	7049	4210	7400 JOHNS
KSCYKSLEDS0	KC LENEXA	DGTL/5ES	524	7067	4215	9400 PFLUM
KSCYKSNACG0	KC DUPONT	1SPC/1AAP	524	7060	4201	9444 NALL S
KSCYKSOLDS0	KC OLATHE	DGTL/5ES	524	7086	4220	114 N WATE
KSCYKSPADS0	KC BETHEL	DGTL/5ES	524	7032	4228	6425 PARAL
KSCYKSSHDS0	KC SHAWNEE	DGTL/5ES	524	7055	4220	6120 PFLUM
KSCYKSSTDS0	KC STANLEY	DGTL/D100	524	7082	4195	14969 METC
LBRLKS04DS1	LIBERAL	DGTL/D100	532	7839	5053	20 E 4 ST, LI
LWOKSSHDS0	LEAVENWORTH	DGTL/D100	524	7006	4273	615 SHAWN
LWRNKSVEDS0	LAWRENCE	DGTL/5ES	534	7097	4293	732 VERMO
MNHTKSFADS0	MANHATTAN	DGTL/D100	534	7141	4522	1640 FAIRCH
NWTNKS05DS0	NEWTON	DGTL/D100	532	7418	4550	131 W 5TH S
PRSSKSWADS0	PARSONS	DGTL/D1/2	532	7422	4159	1631 WASHI
PSBGKSLQDS0	PITTSBURG	DGTL/D100	532	7370	4076	611 N LOCU
SALNKSTADS0	SALINA	DGTL/D1/2	534	7275	4656	137 S 7TH S
SALNKSTADS1	SALINA	DGTL/5ES	534	7275	4656	137 S 7TH S
TPKA KS37DS0	TOPEKA AMHERST	DGTL/D100	534	7120	4366	420 W 37TH,
TPKA KSFADS0	TOPEKA CRESTWOOD	DGTL/D100	534	7118	4378	1825 FAIRLA
TPKA KSJACG0	TOPEKA CENTRAL	1SPC/1AAP	534	7110	4369	812 JACKSO
TPKA KSJADS0	TOPEKA CENTRAL	DGTL/D1/2	534	7110	4369	812 JACKSO
TPKA KSNODS0	TOPEKA NORTH	DGTL/D100	534	7095	4374	635 NW 43R
WCHTKS47DS0	WC JACKSON	DGTL/5ES	532	7505	4513	400 E 47TH,
WCHTKSAGDS0	WC AUGUSTA	DGTL/D100	532	7469	4462	1156 STATE,
WCHTKSAHDS0	WC ROCK ROAD	DGTL/D100	532	7470	4510	8442 E 3RD
WCHTKSAMCG0	WC AMHERST	1SPC/1AAP	532	7489	4520	153 N TOPE
WCHTKSAMDS0	WC AMHERST	DGTL/D1/2	532	7489	4520	153 N TOPE
WCHTKSANDS0	WC ANDOVER	DGTL/D100	532	7479	4487	665 S 160TH
WCHTKSBRDS0	WC HT TDM	DGTL/D1/2	532			154 N. BROA
WCHTKSCEDS0	WC PARKVIEW	DGTL/D100	532	7496	4541	10329 W CE
WCHTKSDEDS0	WC DERBY	DGTL/D100	532	7512	4499	1102 N BUCK
WCHTKSKEDS0	WC KECHI	DGTL/D100	532	7464	4519	217 W KECHI
WCHTKSNWDS0	WC WHITEHALL	DGTL/D100	532	7492	4529	341 N W ST,
WCHTKSOLCG0	WC MURRAY	1SPC/1AAP	532	7486	4511	118 S OLIVE

SWBT APPENDIX DCO
TANDEM POIs

LATA/SECTOR	VCOORD	HCOORD	CLLI	TYPE
532 - DODGE CITY	7641	4958	DDCYKS0107T	DMS100/200
532 - HUTCHINSON	7453	4644	HTSNKS0207T	DMS100/200
532 - PARSONS	7422	4159	PRSSKSWA07T	DMS100/200
532 - WICHITA	7489	4520	WCHTKSBR07T	DMS200
534 - HAYS	7374	4932	HAYSKS1107T	DMS100/200
534 - SALINA	7275	4656	SALNKSTA07T	DMS100/200
534 - TOPEKA	7110	4379	TPKAKSJA07T	DMS100/200

524-

APPENDIX - NUMBER PORTABILITY

Southwestern Bell Telephone Company (SWBT) will provide Local Number Portability ("LNP"; also referred to in the Tariff as "Service Provider Number Portability" or "SPNP") to Carrier pursuant to the LNP-related rights and obligations established by pertinent law, and by the FCC, in accordance with FCC Tariff No. 73 ("the Tariff"), which is incorporated herein to the extent pertinent to LNP, and as provided herein.

1. The Parties will cooperate in conducting testing to ensure interconnectivity between their networks. Each Party will inform the other of any network updates that may affect the other's network and will, at the other's request, perform tests to validate the operation of the network.
2. The Parties agree to comply with such industry guidelines as may be established for the treatment of vacant telephone numbers, including provisions for number pooling, where available.
3. Carrier shall be charged, for any LNP queries SWBT is required to perform for Carrier, the default rates provided in the Tariff unless Carrier has pre-arranged for the handling of its LNP queries by SWBT by purchasing the SPNP Query - Prearranged. As part of that purchase, Carrier must advise SWBT of the entry point(s) of queries to the SWBT network and provide a query forecast containing Carrier's total number of LNP queries expected monthly and a busy hour forecast by Metropolitan Statistical Area, 11 digit CLLI code of your switch and 11 digit CLLI code of the SWBT switch where interconnection occurs for each entry point. A sample form that can be used to provide this data is included as page 3 of this appendix. SWBT reserves the right to designate the STP to which such prearranged queries will be directed.
4. Carrier will adhere to the industry-defined Local Service Request (LSR) format and PNP due date intervals. These standards can be found on the NPAC website, which is currently located at www.npac.com.
5. SWBT will port any reserved numbers for which payment is being received (e.g., DID numbers).
6. When a ported telephone number becomes vacant, e.g., the telephone number is no longer in service by the original end user, the ported telephone number will be released back to the carrier owning the switch in which the telephone number's NXX is native.
7. Industry guidelines will be followed regarding all aspects of porting numbers from one network to another. The Parties agree to implement PNP in compliance with applicable FCC or Commission orders.
8. Telephone numbers can be ported only within SWBT toll rate centers as approved by State Commissions.

9. Telephone numbers in the following SWBT NXXs will not be ported: SWBT Official Communications Services (OCS) NXXs and wireless NXXs until date set forth by the FCC for Wireless Number Portability (WNP).

PAGE _____ of _____

NAME OF COMPANY _____

SINGLE POINT OF CONTACT FOR INTRACOMPANY TESTING:

NAME _____
TELEPHONE NUMBER _____

MSA _____

11 digit CLLI Code

Your Switch

SWB End Office
or Tandem

Number of LNP Queries

Per Busy Hour

Return to: **Jacquie Roberts**

Four Bell Plaza, Room 1860.02
Dallas, Texas 75202
(214) 858-0775 (Fax)

AMENDMENT NO. 1

This Amendment is entered into by and between Southwestern Bell Telephone Company ("SWBT"), and Nextel West Corp. ("Nextel") (collectively, the "Parties").

WHEREAS, the Parties entered into an Interconnection Agreement August 25, 1998 and August 9, 1998 ("Interconnection Agreement"), and

WHEREAS, the Parties now wish to amend that Interconnection Agreement to revise usage rates for the transport and termination of Local and Transiting Traffic in the Appendix Pricing,

NOW, THEREFORE, the parties hereby agree as follows:

- I. The parties agree that the Interconnection Agreement shall be amended by substituting the rates described in Paragraph II below for the rates in Paragraphs 1 and 2 of Appendix Pricing, and that the rates described in Paragraph II below shall be those observed and enforced from and after the effective date of the Parties' first post-Act interconnection agreement, which effective date was October 10, 1998.
- II. Carrier and SWBT agree that the rates for the transport and termination of Local and Transiting Traffic in Paragraphs 1 and 2 of Appendix Pricing shall be replaced with the following:

1.0 Usage rates for the transport and termination of Local and Transiting mobile to land traffic - Per Minute of Use

<u>Type 2a</u>	<u>Type 1</u>	<u>Type 2B</u>	<u>Transiting</u>
\$0.003673	\$0.003673	\$0.001310	\$0.002363

2.0 Usage rates for the transport and termination of Local and Transiting land to mobile traffic - Per Minute of Use

<u>All Interconnection Types</u>	<u>Transiting</u>
\$0.003673	\$0.002363

- III. The above rates result from the application of rate elements established through negotiations pursuant to the Act, which led to a partial agreement that was then submitted to an arbitration conducted pursuant to orders of the Federal Communications Commission (FCC) which adopted rules implementing the Act. The FCC rules and the state commission orders in that arbitration are and/or may be the subject of various appeals. The parties recognize and agree that, in the event of any administrative, regulatory, legislative or judicial order, rule, opinion or other legal action which revises

or modifies the Parties' rights and/or obligations pertaining to any matter contained in the underlying arbitrated interconnection agreement, including particularly the rate elements used to develop the prices listed in Paragraph II above, the relevant provisions of the revised Appendix Pricing shall likewise be revised or modified to be consistent with such subsequent development. To the extent necessary to implement such subsequent development, the parties will expend diligent efforts to implement such changes.

IV. Except as modified herein, the Interconnection Agreement remains unchanged and the Parties reaffirm the terms and provisions thereof.

In witness whereof each Party has caused this Agreement to be executed by its duly authorized representative.

Nextel West Corp.

By: _____

Print Name: _____

Title: _____

Date: _____

SWBT

By SBC Telecommunications, Inc., its agent

By: _____

Print Name: _____

Title: President – Industry Markets

Date: _____

AMENDMENT

to

**AGREEMENT FOR INTERCONNECTION AND RECIPROCAL
COMPENSATION**

between

SOUTHWESTERN BELL TELEPHONE COMPANY

and

NEXTEL WEST CORP.

The Agreement for Interconnection and Reciprocal Compensation ("the Agreement") approved on October 12, 1998 in the state of Kansas, by and between SBC Southwestern Bell ("SBC") and Nextel West Corp. ("Carrier") (jointly referred to as "the Parties"), is hereby amended as follows:

- (1) The Area Wide Calling Plan billing option, described in Section 5.5 and described in Appendix Pricing, Section 7.0 of the Agreement, shall be discontinued and unavailable as an option to Carrier after September 30, 2002. The Parties agree to cooperate and take all steps necessary to effectuate this provision.
- (2) Section 18.2 Term and Termination of the Agreement is amended to reflect a one-year extension and now reads as follows:

18.2.1 This Agreement shall be in effect until November 1, 2003, and thereafter the Agreement shall continue in force and effect unless and until terminated as provided herein. Either Party may terminate this Agreement by providing written notice of termination to the other Party, such written notice to be provided at least sixty (60) days in advance of the date of termination; provided, however, that no such termination shall be effective prior to the date one year from the Effective Date of this Agreement. By mutual agreement, SWBT and Carrier may amend this Agreement in writing to modify its terms.
- (3) **EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS IN THE UNDERLYING AGREEMENT REMAIN UNCHANGED**, and all such terms and conditions are hereby incorporated by reference and the Parties hereby reaffirm the terms and provisions thereof.

(4) This Amendment shall be filed with and is subject to approval by the Public Utility Commission and shall become effective ten (10) days following approval by such Commission.

This Amendment to the Agreement for Interconnection and Reciprocal Compensation was exchanged in triplicate on this 26th day of March, 2002, by SBC, signing by and through its duly authorized representative, and Carrier, signing by and through its duly authorized representative.

Nextel West Corp.

Signature: 

Name: Drew Caplan
(Print or Type)

Title: VP, National Netw. Svcs.

Date: March 21, 2002

***Southwestern Bell Telephone Company**

By: **SBC Telecommunications, Inc.,**
Its authorized agent

Signature: 

Name: David Kerr
(Print or Type)

Title: President-Industry Markets

Date: MAR 26 2002

*On January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999) (and on remand *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999). In addition, on July 18, 2000, the United States Court of Appeals for the Eighth Circuit issued its opinion in *Iowa Utilities Board v. FCC*, No. 96-3321, 2000 Lexis 17234 (July 18, 2000), which is the subject of a pending appeal before the Supreme Court. In addition, on November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999), which is the subject of a pending request for reconsideration and a pending appeal. By executing this amendment, SBC does not waive any of its rights, remedies or arguments with respect to any such decisions or proceedings and any remands thereof, including its right to seek legal review or a stay of such decisions and its rights contained in the Interconnection Agreement. SBC further notes that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the "ISP Intercarrier Compensation Order.") By executing this Amendment and carrying out the intercarrier compensation rates, terms and conditions herein, SBC does not waive any of its rights, and expressly reserves all of its rights, under the ISP Intercarrier Compensation Order, including but not limited to its right to exercise its option at any time in the future to invoke the Intervening Law or Change of Law provisions and to adopt on a date specified by SBC the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions.

**AMENDMENT TO
INTERCONNECTION AGREEMENT
BY AND BETWEEN
SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC KANSAS
AND
NEXTEL WEST CORP.**

Southwestern Bell Telephone, L.P.¹ d/b/a SBC Kansas, as the Incumbent Local Exchange Carrier in Kansas, (hereafter, "ILEC") and Nextel West Corp., as a Commercial Mobile Radio Service ("CMRS") provider in Kansas, (referred to as "CARRIER"), in order to amend, modify and supersede any affected provisions of their Interconnection Agreement with ILEC in Kansas ("Interconnection Agreement"), hereby execute this Reciprocal Compensation Amendment for ISP-Bound Traffic and Federal Telecommunications Act Section 251(b)(5) Traffic (Adopting FCC's Interim ISP Terminating Compensation Plan) ("Amendment"). A CMRS provider is not a "LEC."

1.0 Scope of Amendment

- 1.1 ILEC made an offer to all telecommunications carriers in the state of Kansas (the "Offer") to exchange traffic on and after June 1, 2004 under Section 251(b)(5) of the Act pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan of 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") which was remanded but not vacated in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002).
- 1.2 The purpose of this Amendment is to include in CARRIER's Interconnection Agreement the rates, terms and conditions of the FCC's interim ISP terminating compensation plan for the exchange of ISP-Bound traffic lawfully compensable under the FCC ISP Compensation Order ("ISP-Bound Traffic") and traffic lawfully compensable under Section 251(b)(5) ("Section 251(b)(5) Traffic").
- 1.3 This Amendment is intended to supersede any and all contract sections, appendices, attachments, rate schedules, or other portions of the underlying Interconnection Agreement that set forth rates, terms and conditions for the terminating compensation for all ISP-Bound Traffic and all Section 251(b)(5) Traffic exchanged between ILEC and CARRIER. Any inconsistencies between the provisions of this Amendment and provisions of the underlying Interconnection Agreement shall be governed by the provisions of this Amendment.

2.0 Rates, Terms and Conditions of FCC's Interim Terminating Compensation Plan for ISP-Bound Traffic and Section 251(b)(5) Traffic.

- 2.1 ILEC and CARRIER hereby agree that the following rates, terms and conditions shall apply to ISP-Bound Traffic and Section 251(b)(5) Traffic exchanged between the Parties on and after the date this Amendment becomes effective pursuant to Section 4.1 of this Amendment.
- 2.2 Reciprocal Compensation Rate Schedule for ISP-Bound Traffic and Section 251(b)(5) Traffic:
 - 2.2.1 The rates, terms, conditions in this section apply only to the termination of ISP-Bound Traffic and Section 251(b)(5) Traffic, and ISP-Bound Traffic is subject to the growth caps in Section 2.3, the new market restrictions in Section 2.4 and rebuttable presumption in Section 2.6. Notwithstanding anything contrary

¹ On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc. (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership. Southwestern Bell Telephone, L.P. is now doing business in Kansas as SBC Kansas.

(in this Amendment, the growth caps in Section 2.3, the new market restrictions in Section 2.4 and the rebuttable presumption in Section 2.6 only apply to LECs and ILEC.

2.2.2 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.

2.3 ISP-Bound Traffic Minutes Growth Cap

2.3.1 On a calendar year basis, as set forth below, LEC and ILEC agree to cap overall compensable Kansas ISP-Bound Traffic minutes of use in the future based upon the 1st Quarter 2001 ISP-Bound Traffic minutes for which LEC was entitled to compensation under its Kansas Interconnection Agreement(s) in existence for the 1st Quarter of 2001, on the following schedule.

Calendar Year 2001	1st Quarter 2001 compensable ISP-Bound minutes, times 4, times 1.10
Calendar Year 2002	Year 2001 compensable ISP-Bound minutes, times 1.10
Calendar Year 2003	Year 2002 compensable ISP-Bound minutes
Calendar Year 2004 and on	Year 2002 compensable ISP-Bound minutes

Notwithstanding anything contrary herein, in Calendar Year 2004, LEC and ILEC agree that ISP-Bound Traffic exchanged between LEC and ILEC during the entire period from January 1, 2004 until December 31, 2004 shall be counted towards determining whether LEC has exceeded the growth caps for Calendar Year 2004.

2.3.2 ISP-Bound Traffic minutes that exceed the applied growth cap will be Bill and Keep. "Bill and Keep" refers to an arrangement in which neither of two interconnecting Parties charges the other for terminating traffic that originates on the other network.

2.4 Bill and Keep for ISP-Bound Traffic in New Markets

2.4.1 In the event LEC and ILEC have not previously exchanged ISP-bound Traffic in any one or more Kansas LATAs prior to April 18, 2001, Bill and Keep will be the reciprocal compensation arrangement for all ISP-bound Traffic between LEC and ILEC for the remaining term of this Agreement in any such Kansas LATAs.

2.4.2 Wherever Bill and Keep is the traffic termination arrangement between LEC and ILEC, both Parties shall segregate the Bill and Keep traffic from other compensable local traffic either (a) by excluding the Bill and Keep minutes of use from other compensable minutes of use in the monthly billing invoices, or (b) by any other means mutually agreed upon by the Parties.

2.5 The Growth Cap and New Market Bill and Keep arrangement applies only to ISP-Bound Traffic, and does not include Optional Calling Area traffic, IntraLATA Interexchange traffic, or InterLATA Interexchange traffic.

2.6 ISP-Bound Traffic Rebuttable Presumption

In accordance with Paragraph 79 of the FCC's ISP Compensation Order, LEC and ILEC agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between LEC and ILEC exceeding a 3:1 terminating to originating ratio is presumed to be ISP-Bound Traffic subject to the compensation and growth cap terms in this Section 2.0. 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, LEC and ILEC will remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in Section 2.2.2 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.

3.0 Reservation of Rights

3.1 The Parties reserve the right to raise the appropriate treatment of Voice Over Internet Protocol ("VoIP") and traffic utilizing in whole or part Internet Protocol technology under the Dispute Resolution provisions of this Agreement, including but not limited, to any rights they may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (Rel. April 21, 2004). The Parties acknowledge that there is an on-going disagreement between LECs and ILEC over whether or not, under the law, VoIP traffic or traffic utilizing in whole or part IP technology is subject to reciprocal compensation or switched access charges. The Parties therefore agree that neither one will argue or take the position before any regulatory commission or court that this Amendment constitutes an agreement as to whether or not reciprocal compensation or switched access charges apply to that traffic or a waiver by either party of their position or their rights as to that issue. The Parties further agree that they each have reserved the right to advocate their respective positions relating to the treatment and compensation for VoIP traffic and traffic utilizing in whole or part Internet Protocol technology before any state commission or the Federal Communications Commission ("FCC") whether in bilateral complaint dockets, arbitrations under Section 252 of the Act, state commission or FCC established rulemaking dockets, or before any judicial or legislative body.

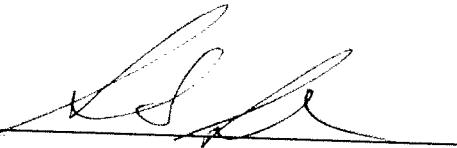
4.0 Miscellaneous

- 4.1 If this Amendment is executed by CARRIER and such executed Amendment is received by ILEC on or before June 28, 2004, this Amendment will be effective as of June 1, 2004, subject to any necessary state commission approval; provided, however, the rates will not be implemented in ILEC's billing system until after any necessary state commission approval, at which time the rates billed by the Parties beginning on June 1, 2004 will be subject to a true-up. If this Amendment is executed by CARRIER but such executed Amendment is not received by ILEC until after June 28, 2004, this Amendment will become effective ten (10) days following the date such Amendment is approved or is deemed to have been approved by the applicable state commission.
- 4.2 This Amendment is coterminous with the underlying Interconnection Agreement and does not extend the term or change the termination provisions of the underlying Interconnection Agreement.
- 4.3 EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING INTERCONNECTION AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
- 4.4 Every rate, term and condition of this Amendment is legitimately related to the other rates, terms and conditions in this Amendment. Without limiting the general applicability of the foregoing, the change of law provisions of the underlying Interconnection Agreement, including but not limited to the "Intervening Law" or "Change of Law" or "Regulatory Change" section of the General Terms and Conditions of the Interconnection Agreement and as modified in this Amendment, are specifically agreed by the Parties to be legitimately related to, and inextricably intertwined with this the other rates, terms and conditions of this Amendment.
- 4.5 In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via

written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC, et al.*, 535 U.S. 467 (2002); *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including this and any other amendments to the Agreement), SBC Kansas shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CARRIER's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (rel. April 21, 2004). The Parties acknowledge and agree that SBC Kansas has exercised its option to adopt the FCC ISP terminating compensation plan ("FCC Plan") in Kansas and as of the date of that election by SBC Kansas, the FCC Plan shall apply to this Agreement, as more specifically provided for in this Amendment. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

IN WITNESS WHEREOF, this Reciprocal Compensation Amendment for ISP-Bound Traffic and Federal Telecommunications Act Section 251(b)(5) Traffic (Adopting FCC Interim Terminating Compensation Plan) to the Interconnection Agreement was exchanged in triplicate on this 5 day of July, 2004, by SBC Kansas, signing by and through its duly authorized representative, and CARRIER, signing by and through its duly authorized representative.

Nextel West Corp.

Signature: 

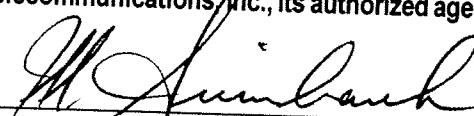
Name: Steve Sack
(Print or Type)

Title: Director, Telco Cost Mgmt
(Print or Type)

Date: May 28, 2004

FACILITIES-BASED OCN # 6232
ACNA NXT

Southwestern Bell Telephone, L.P. d/b/a SBC Kansas
by SBC Telecommunications, Inc., its authorized agent

Signature: 

Name: Mike Auinbauh
(Print or Type)

Title: For/ President - Industry Markets

Date: MM 05 2004

**AMENDMENT TO
CELLULAR/PCS INTERCONNECTION AGREEMENT
BY AND BETWEEN
SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC KANSAS
AND
NEXTEL WEST CORP.**

This Amendment is entered into this _____ day of _____, 2004 by and between Southwestern Bell Telephone, L.P. d/b/a SBC Kansas¹ ("Telco") and Nextel West Corp. ("Carrier") (collectively, the "Parties").

WHEREAS, Telco and Carrier (collectively, the "Parties") have entered into an Agreement known as "Cellular/PCS Interconnection Agreement by and between Nextel West Corp. and Southwestern Bell Telephone, L.P. d/b/a SBC Kansas" effective in the state of Kansas ("Interconnection Agreement"); and

WHEREAS, the Parties desire to amend, as set forth herein, the Interconnection Agreement;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Telco and Carrier agree as follows:

1. Add the Stand-Alone Agreement for Access to SBC's Structure (Poles, Conduits, and Rights of Ways), the Appendix 1 (Rates) Structure Access Standalone and the Guidelines for Access to SBC Communications and Operating Companies Structure, and attached hereto, as an appendix to the Interconnection Agreement.
2. This Amendment shall be filed with and is subject to approval by the State Commission and shall become effective ten (10) days following approval by such Commission or the date this Amendment is deemed to have been approved by such Commission.
3. This Amendment shall not modify or extend the Effective Date or Term of the Agreement but rather shall be coterminous with the underlying Interconnection Agreement.
4. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING INTERCONNECTION AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
5. In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC, et. al.*, 535 U.S. 467 (2002); *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including any amendments to this Agreement), SBC Kansas has no obligation to provide unbundled network elements (UNEs) to Carrier and shall have no obligation to provide UNEs beyond those that may be required by the Act, if

¹ On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc. (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership. Southwestern Bell Telephone, L.P. is now doing business in Texas as SBC Kansas.

any, including the lawful and effective FCC rules and associated FCC and judicial orders. Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (rel. April 21, 2004). Notwithstanding anything to the contrary in the Agreement and this Amendment and except to the extent that SBC Kansas has adopted the FCC ISP terminating compensation plan ("FCC Plan") in Kansas, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC Kansas' right to exercise its option at any time to adopt on a date specified by SBC Kansas the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this 13th day of September, 2004, by Telco, signing by and through its duly authorized representative, and Carrier, signing by and through its duly authorized representative.

Nextel West Corp.

By: C.W. Guel

Name: Magnus Ojert
(Print or Type)

Title: VP of Site Development
(Print or Type) Logistics

Date: 8/30/04

Southwestern Bell Telephone, L.P. d/b/a SBC Kansas
by SBC Telecommunications, Inc., its authorized agent

By: M. Auinbauh

Name: Mike Auinbauh
(Print or Type)

Title: For/ Senior Vice President - Industry
Markets and Diversified Businesses

Date: SEP 13 2004

FACILITIES-BASED OCN #

ACNA

AGREEMENT FOR ACCESS
TO SBC KANSAS' STRUCTURE
(POLES, CONDUITS, AND RIGHTS OF WAYS)

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13-STATE STRUCTURE ACCESS AGREEMENT TO POLES, CONDUITS, AND RIGHTS-OF-WAY

This Agreement dated _____, 2004 is made by and between the "Parties," identified as Southwestern Bell Telephone, L.P. d/b/a SBC Kansas¹, hereinafter referred to as defined below, and Nextel West Corp., a Delaware corporation, hereinafter referred to as "Attaching Party".

This Agreement shall apply to the state of Kansas.

1. INTRODUCTION

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

¹ On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc. (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership, now doing business as SBC Kansas.

1.9 **SBC SOUTHWEST REGION 5-STATE** - As used herein, **SBC SOUTHWEST REGION 5-STATE** means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma and Texas.

2. DEFINITIONS

2.1 **Definitions in general.** As used in this Agreement, the terms defined in this article shall have the meanings set forth below in Sections 2.1 to 2.14 except as the context otherwise requires.

2.2 **Conduit.** The term "conduit" refers to tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. As used in this Agreement, the term "conduit" refers only to conduit structures (including ducts, manholes and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other **SBC-13STATE** structures (such as huts and cabinets) which branch off from or are connected to **SBC-13STATE**'s conduit.

2.3 **Conduit system.** The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Agreement, the term "conduit system" does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other **SBC-13STATE** structures (such as huts and cabinets) which branch off from or are connected to **SBC-13STATE**'s conduit.

2.4 **Duct.** The term "duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Agreement, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels, but does not include cables and other telecommunications equipment located within such ducts.

2.5 **Handhole.** The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Agreement, the term "handhole" refers only to handholes which are part of **SBC-13STATE**'s conduit system and does not refer to handholes which provide access to buried cables not housed within **SBC-13STATE** ducts or conduits. As used in this Agreement, the term "handhole" refers only to handhole structures owned or controlled by **SBC-13STATE** and does not include cables and other telecommunications equipment located within handhole structures.

2.6 **Occupancy Permit.** The term "occupancy permit" refers to a written instrument confirming that **SBC-13STATE** has granted the structure access request of Attaching Party or a third party for access to pole, duct, conduit, or right-of-way space.

2.7 **Maintenance Duct.** The term "maintenance duct" generally refers to a full-sized duct (typically three inches in diameter or larger) for use, on a short-term basis, for maintenance, repair, or emergency restoration activities. The term "maintenance duct" does not include ducts and conduits extending from an **SBC-13STATE** manhole to customer premises. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.

2.8 **Make-ready work.** The term "make-ready work" refers to all work performed or to be performed to prepare **SBC-13STATE**'s poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Attaching Party's facilities.

2.9 **Manhole.** The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in ducts or conduits which are parts of SBC-13STATE's conduit system. As used in this Agreement, the term "manhole" does not include cables and other telecommunications equipment located within manhole structures.

2.10 **Other User.** The term "Other User" refers to entities, other than the Attaching Party, with facilities on an SBC-13STATE pole, duct, conduit or right-of-way to which the Attaching Party has obtained access. Other Users may include SBC-13STATE, other attaching parties, municipalities or other governmental entities, and electric utilities (which may own interests in SBC-13STATE's poles, ducts, conduits or rights-of-ways).

2.11 **Overlashing.** The term "Overlashing" refers to the practice of placing an additional cable by lashing such cable with spinning wire over an existing cable and strand.

2.12 **Pole.** The term "pole" refers to poles (and associated anchors) which are owned or controlled by SBC-13STATE and does not include cables and other telecommunications equipment attached to pole structures.

2.13 **Rights-of-way.** The term "rights-of-way" refers to SBC-13STATE owned or controlled legal rights to pass over or through property of another party and used by SBC-13STATE for its telecommunications distribution system. For purposes of this Agreement, "rights-of-way" includes property owned by SBC-13STATE and used by SBC-13STATE for its telecommunications distribution facilities. Rights-of-way does not include:

- 2.13.1 cables and other telecommunications equipment buried or located on such rights-of-way,
- 2.13.2 public rights of way (which are owned by and subject to the control of governmental entities), or
- 2.13.3 any space which is owned and controlled by a third-party property owner and occupied by SBC-13STATE with permission from such owner rather than as a matter of legal right.

2.14 **Structure.** The term "Structure" refers collectively to poles, ducts, conduits and rights-of-way.

3. SCOPE OF AGREEMENT

3.1 This Agreement establishes the rates, terms, conditions, and procedures by which SBC-13STATE shall provide non-discriminatory access to SBC-13STATE's Structure. Separate tariffs, appendix, or agreements shall govern Attaching Party's access, if any, to the following facilities, which require special security, technical, and construction arrangements outside the scope of this Agreement:

- 3.1.1 SBC-13STATE's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from SBC-13STATE's central offices;
- 3.1.2 controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
- 3.1.3 ducts and conduits located within buildings owned by SBC-13STATE; and
- 3.1.4 ducts, conduits, equipment rooms, and similar spaces located in space leased by SBC-13STATE from third-party property owners for purposes other than to house cables and other equipment in active service as part of SBC-13STATE's network distribution operations.

3.2 **No Transfer of Property Rights to Attaching Party.** Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other.

3.3 **No Effect on SBC-13STATE's Right to Abandon, Convey or Transfer Structure.** Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall in any way affect **SBC-13STATE's** right to abandon, convey, or transfer to any other person or entity **SBC-13STATE's** interest in any of **SBC-13STATE's** Structure. **SBC-13STATE** shall give Attaching Party at least 60 days written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or right-of-way is to be conveyed or transferred.

4. EFFECTIVE DATE, TERM, AND ELECTIVE TERMINATION

4.1 **Effective Date.** This Agreement shall be effective as of the _____ day of _____, 2004, or, if this Agreement has been entered into as an appendix, attachment, or exhibit to an interconnection agreement between the parties, the date of approval by the State Commission of the interconnection agreement, whichever date first occurs (hereinafter, the, "Effective Date").

4.2 **Initial Term.** Unless sooner terminated as herein provided, the initial term of this Agreement (hereinafter, the "Initial Term") shall run from the effective date until the fifth anniversary date following the Effective Date. In the event this Agreement is entered into as a part of an Interconnection Agreement, this Agreement shall terminate upon the termination of the Interconnection Agreement of which this is apart.

4.3 **Automatic Renewal.** Unless sooner terminated as herein provided, this Agreement shall be automatically renewed for successive one (1) year terms (each a "Renewal Term") beginning on the first day following the expiration of the Initial Term and, thereafter, on the anniversary date of each Renewal Term thereafter.

4.4 **Elective Termination.** Either party may terminate this Agreement by giving the other party at least six months prior written notice as provided in this section; provided, however **SBC-13STATE** may not terminate this Agreement for the sole purpose of increasing any rates, charges or fees in a manner inconsistent with or amounts not permissible under the applicable federal or state statutes, regulations and orders of such federal or state regulatory commissions or agencies, or courts having jurisdiction over the regulation, review and authorization of such rates, charges or fees. The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current Term of this Agreement or six months after the date the notice is given.

4.5 **Elective Termination by SBC-13STATE.** Attaching Party shall, within 60 days after the effective date of the elective termination by **SBC-13STATE**, either initiate negotiations for continued access to **SBC-13STATE's** poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Section 28 of this Agreement.

4.6 **Effect of Elective Termination.** Elective termination of this Agreement by Attaching Party, as permitted under Section 4 of this Agreement, shall not affect Attaching Party's liabilities and obligations incurred under this Agreement prior to the effective date of termination and shall not entitle Attaching Party to the refund of any advance payment made to **SBC-13STATE** under this Agreement. Elective termination of this Agreement by **SBC-13STATE** shall not affect **SBC-13STATE's** obligations to afford access to **SBC-13STATE's** poles, ducts, conduits, and rights-of-way owned or controlled by **SBC-13STATE** as required by the Pole Attachment Act, the Telecommunications Act of 1996, and other applicable laws, regulations, and commission orders.

5. GENERAL PROVISIONS

- 5.1 Entire Agreement. This Agreement, together with the interconnection agreement, if any, of which this Agreement is a part, and the Guidelines for Access to SBC-13STATE Structure, attached hereto and incorporated herein by reference, sets forth the entire understanding and agreement of the parties.
- 5.2 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Attaching Party and SBC-13STATE relating to the placement and maintenance of Attaching Party's facilities on and within SBC-13STATE's poles, ducts, and conduits within this State.
- 5.3 Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.
- 5.4 Survival of Obligations. Any liabilities or obligations of either party for acts or omissions prior to the termination of this Agreement, any obligations of either party under provisions of this Agreement relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, will survive the termination of this Agreement.
- 5.5 Multiple Counterparts. This Agreement may be executed in multiple counterparts.
- 5.6 Effect on Licenses or Occupancy Permits Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy permits granted to Attaching Party shall, on the effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.
- 5.7 Force Majeure. Except as otherwise specifically provided in this Agreement, neither party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the party claiming excusable delay or other failure to perform; provided, however, that Force Majeure will not include acts of any governmental authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs, the party whose performance fails or is delayed because of such Force Majeure condition will give prompt notice to the other party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.
- 5.8 Severability. If any article, section, subsection, or other provision or portion of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement as to either party, the invalidity of such provision shall not render this entire Agreement unenforceable and this Agreement shall be administered as if it did not contain the invalid provision.
- 5.9 Choice of Law. Except to the extent that federal law controls any aspect of this Agreement, the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties will be governed by the laws of the State in which the relevant SBC-13STATE poles, ducts and conduit are located, applied without regard to the provisions of this State's laws relating to conflicts-of-laws.

5.10 Changes in the Law. The parties agree to negotiate in good faith changes to this Agreement to conform to changes applicable law pertaining to access to poles, ducts, conduits and rights-of-way, including the Pole Attachment Act.

5.11 The parties shall at all times observe and comply with, and the provisions of this Agreement are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties.

6. DISCLAIMER OF WARRANTIES

SBC-13STATE MAKES NO REPRESENTATIONS AND DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, THAT SBC-13STATE'S POLES, DUCTS, CONDUITS AND WARRANTIES ARE SUITABLE FOR THE ATTACHING PARTY'S INTENDED USES OR ARE FREE FROM DEFECTS. THE ATTACHING PARTY SHALL IN EVERY INSTANCE BE RESPONSIBLE TO DETERMINE THE ADEQUACY OF SBC-13STATE'S POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY FOR THE ATTACHING PARTY'S INTENDED USE.

7. DISPUTE RESOLUTION

7.1 In the event that a dispute arises under this agreement pertaining to the rights of the parties relating to SBC-13STATE's poles, ducts, conduits and rights-of-way in one or more of the states identified in the preamble of the agreement, the dispute resolution provisions of the relevant Interconnection Agreement between the respective operating affiliates of SBC-13STATE and Attaching Party shall apply to disputes under this agreement.

8. INDEMNIFICATION

8.1 Definitions. The term "Claims" as used in Section 8 shall mean any suit, claim, demand, loss, damage, liability, fee, fine, penalty, or expense, of every kind and character.

8.2 Indemnities Excluded. Except as otherwise specifically provided in this article, neither party (as an "indemnifying party") shall be required to indemnify or defend the other party (as an "indemnified party") against, or hold the indemnified party harmless from, any Claims arising out of:

- 8.2.1 any breach by the indemnified party of any provision of this Agreement or any breach by the indemnified party of the parties' interconnection agreement, if any;
- 8.2.2 the violation of any law by any employee of the indemnified party or other person acting on the indemnified party's behalf;
- 8.2.3 willful or intentional misconduct or gross negligence committed by any employee of the indemnified party or by any other person acting on the indemnified party's behalf; or
- 8.2.4 any negligent act or acts committed by any employee of the indemnified party or other person acting on the indemnified party's behalf, if such negligent act or acts are the sole producing cause of the injury, loss, or damage giving rise to the Claim for which indemnity is requested.

8.3 Workplace Injuries. Except as expressly provided in this Agreement to the contrary, each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any injury, loss, or damage suffered by any person, which arises out of or in connection with the personal injury or death of any employee of the indemnifying party (or other person acting on the indemnifying party's behalf) if such injury or death results, in whole or in part, from any occurrence or condition on, within, or in the vicinity of SBC-13STATE's Structure.

8.4 Other Claims Brought Against Either Party by Employees and Other Persons Acting on the Other Party's Behalf. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims (other than workplace injury claims subject to Section 8.3 above) made, brought, or sought against the indemnified party by any employee, contractor, or subcontractor of the indemnifying party or by any other person acting on the indemnifying party's behalf.

8.5 THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 8.3-8.4 SHALL ARISE EVEN IF THE INJURY, SICKNESS, DISEASE, OR DEATH WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.

8.6 Claims Brought Against Either Party by Vendors, Suppliers and Customers of the Other Party. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims (other than workplace injury claims subject to Section 8.3, or other claims subject to Section 8.4) made, brought, or sought against the indemnified party by any vendor, supplier, or customer of the indemnifying party.

8.7 Injuries to Third Parties and Third party Property Owners Resulting from the Parties' Conduct. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with the personal injury or death of any third party or physical damage to real or personal property owned by a third party, arising, in whole or in part, out of or in connection with the conduct of employees of the indemnifying party or other persons acting on the indemnifying party's behalf.

8.8 Indemnification for Environmental Claims.

8.8.1 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the violation or breach, by any employee of the indemnifying party or other person acting on the indemnifying party's behalf, of

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

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

8.8.2 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of the indemnifying party, or by any person acting on the indemnifying party's behalf, while present on, within, or in the vicinity of any SBC-13STATE pole, duct, conduit, or right-of-way.

8.8.3 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the removal or disposal of any hazardous substances by the indemnifying party or by any person acting on the indemnifying party's behalf, or arising out of or in connection with the subsequent storage, processing or other handling of such hazardous substances by any person or entity after they have been removed by the indemnifying party or persons acting on the indemnifying party's behalf from the site of any SBC-13STATE pole, duct, conduit, or right-of-way.

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

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

8.9.1 claims for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on SBC-13STATE due to the placement or presence of Attaching Party's facilities on or within SBC-13STATE's poles, ducts, conduits, or rights-of-way; or

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

8.10 Attaching Party's General Indemnity Obligations to SBC-13STATE. This section applies only in those situations not expressly covered by Sections 8.3-8.9 and does not apply to any Claims resulting from Attaching Party's enforcement of its rights against SBC-13STATE pursuant to this Agreement or other provisions in the parties' interconnection agreement, if any. Except as otherwise expressly provided in this Agreement to the contrary, and subject to the exclusions set forth in Section 8.2, Attaching Party shall indemnify, on request defend, and hold SBC-13STATE harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with Attaching Party's access to or use of SBC-13STATE's poles, ducts, conduits, or rights-of-way, Attaching Party's performance of any acts authorized under this Agreement, or the presence or activities of Attaching Party's employees or other personnel acting on Attaching Party's behalf on, within, or in the vicinity of SBC-13STATE's poles, ducts, conduits, or rights-of-way.

8.11 SBC-13STATE's General Indemnity Obligations to Attaching Party. This section applies only in those situations not expressly covered by Sections 8.3-8.9 and does not apply to any Claims resulting from SBC-13STATE's enforcement of its rights against Attaching Party pursuant to this Agreement or other provisions in the parties' interconnection agreement, if any. Except as otherwise expressly provided in this Agreement to the contrary, SBC-13STATE shall indemnify, on request defend, and hold Attaching Party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with SBC-13STATE's access to or use of SBC-13STATE's poles, ducts, conduits, or rights-of-way, SBC-13STATE's performance of any acts authorized under this Agreement, or the presence or activities of SBC-13STATE's employees or other personnel acting on SBC-13STATE's behalf on, within, or in the vicinity of SBC-13STATE's poles, ducts, conduits, or rights-of-way.

9. LIABILITIES AND LIMITATIONS OF LIABILITY

9.1 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION LIMITS EACH PARTY'S LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE

DAMAGES ARISING OUT OF OR IN CONNECTION WITH NEGLIGENT (INCLUDING GROSSLY NEGLIGENT) ACTS OR OMISSIONS OF SUCH PARTY BUT DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR INTENTIONAL MISCONDUCT.

9.2 **SBC-13STATE Not Liable to Attaching Party for Acts of Third Parties or Acts of God.** By affording Attaching Party access to SBC-13STATE Structure SBC-13STATE does not warrant, guarantee, or insure the uninterrupted use of such facilities by Attaching Party. Attaching Party assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to Attaching Party's facilities attached to SBC-13STATE's poles or placed in SBC-13STATE's Structure and SBC-13STATE shall not be liable to Attaching Party for any damages to Attaching Party's facilities. In no event shall SBC-13STATE be liable to Attaching Party under this Agreement for any death of person or injury, loss, or damage resulting from the acts or omissions of (1) any Other User or any person acting on behalf of an Other User, (2) any governmental body or governmental employee, (3) any third-party property owner or persons acting on behalf of such property owner, or (4) any permit, invitee, trespasser, or other person present at the site or in the vicinity of any SBC-13STATE pole, duct, conduit, or right-of-way in any capacity other than as a SBC-13STATE employee or person acting on SBC-13STATE's behalf. In no event shall SBC-13STATE be liable to Attaching Party under this Agreement for injuries, losses, or damages resulting from acts of God (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on SBC-13STATE's behalf, cable cuts by persons other than SBC-13STATE's employees or persons acting on SBC-13STATE's behalf, or other causes beyond SBC-13STATE's control which occur at sites subject to this Agreement.

9.3 **Damage to Facilities.** Each party shall exercise due care to avoid damaging the facilities of the other or of Other Users and hereby assumes all responsibility for any and all loss from damage caused by the party and persons acting on the party's behalf. A party shall make an immediate report to the other of the occurrence of any damage and hereby agrees to reimburse the other party, and/or Other Users for any property damaged caused by the party or persons acting on the party's behalf.

9.4 **No Limitations of Liability in Contravention of Federal or State Law.** Nothing contained in this article shall be construed as exempting either party from any liability, or limiting such party's liability, in contravention of federal law or in contravention of the laws of the State in which the relevant SBC-13STATE poles, conduits and ducts are located.

10. INSURANCE

10.1 At all times in which the Attaching Party has attachments to SBC-13STATE poles, or is occupying SBC-13STATE conduit or right-of-way, Attaching Party shall keep and maintain in force, at its own expense, the minimum insurance coverage and limits set for below. Such insurance and coverage shall not only cover the Attaching Party, but it must cover all contractors, subcontractors and/or any other person acting on Attaching Party's behalf, that are providing services under this Agreement.

10.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee.

10.1.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit, with a \$4,000,000 umbrella; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$4,000,000 umbrella and with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations.

10.1.3 Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired and non-owned vehicles.

10.2 Attaching Party agrees to name SBC-13STATE as an Additional Insured on the Commercial General Liability policy and Commercial Automobile Liability Policy.

10.3 SBC-13STATE agrees to accept the Attaching Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:

10.3.1 Workers' Compensation and Employers Liability: Attaching Party submit to SBC-13STATE its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and

10.3.2 Automobile liability: Attaching Party shall submit to SBC-13STATE a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and

10.3.3 General liability: Attaching Party must provide evidence acceptable to SBC-13STATE that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.

10.4 All insurance required in accordance with this section must be in effect before SBC-13STATE will issue pole attachment or conduit occupancy permits under this Agreement.

10.5 Attaching Party agrees to provide SBC-13STATE with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

11. ASSIGNMENT OF RIGHTS

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

11.1.1 SBC-13STATE may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with SBC-13STATE or which acquires or succeeds to ownership of substantially all of SBC-13STATE's assets.

11.1.2 Attaching Party may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without SBC-13STATE's consent, to any entity controlling, controlled by, or under common control with Attaching Party; provided, however, Attaching Party may not assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement to an unaffiliated third party which acquires or succeeds to ownership of substantially all of Attaching Party's assets without SBC-13STATE's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

11.1.2 Overlashing of Attaching Party's facilities on SBC-13STATE poles by a third party will be allowed under the following conditions:

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

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

11.1.2.3 The Overlashing party must submit a written request for access to structure, and indicate on the request that the request is for Overlashing of an existing attachment of the Attaching Party.

11.1.2.4 The Overlashing entity is responsible for paying the fees for Overlashing in APPENDIX I and/or APPENDIX PRICING, which are separate and in addition to the fees paid by the Attaching Party.

11.1.3 Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without SBC-13STATE's consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Agreement, subject to the express terms of this Agreement. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire Attaching Party's assets through public or private sale or through an Agreement with Attaching Party, Attaching Party's lender or the third party acquiring Attaching Party's rights under this Agreement shall assume all outstanding obligations of Attaching Party under the Agreement and provide proof satisfactory to SBC-13STATE that such lender or third party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Attaching Party under the Agreement, including liability to SBC-13STATE for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third party succeeds to the rights of Attaching Party under the Agreement, as applicable.

11.1.4 No assignment or transfer by Attaching Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this article, secured SBC-13STATE's prior written consent to the assignment or transfer, if necessary, and given SBC-13STATE notice of the assignment or transfer pursuant to Section 11.1.2.

11.1.5 Notwithstanding any thing to the contrary contained in this Agreement, Attaching Party may assign, mortgage, pledge, hypothecate or otherwise transfer, with 30 days advance written notice, its interest in this Agreement to any financing entity, or agent of any financing entity to whom Attaching Party (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

11.2 Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article.

11.3 Assignment Shall Not Relieve Attaching Party of Prior Obligations. Except as otherwise expressly agreed by SBC-13STATE in writing, no assignment permitted by SBC-13STATE under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 8 of this Agreement or the interconnection agreement, if any.

11.4 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. Except as otherwise provided in Section 11.1.3 above, SBC-13STATE may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Attaching Party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement, which approval shall not be unreasonably withheld or delayed.

11.5 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting Attaching Party the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or occupancy permits subject to this Agreement to any third party. Except as otherwise expressly permitted in this Agreement, Attaching Party shall not allow third party to attach or place facilities to or in pole or conduit space occupied by or assigned to Attaching Party or to utilize such space.

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

12.1 Termination Due to Non-Use of Facilities or Loss of Required Authority. This Agreement and all occupancy permits subject to this Agreement shall terminate if Attaching Party ceases to have authority to do business or ceases to do business in the State where the relevant SBC-13STATE poles, ducts and conduits are located, ceases to have authority to provide or ceases to provide cable television services in the State where the relevant SBC-13STATE poles, ducts and conduits are located (if Attaching Party is cable television system having access to SBC-13STATE's poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in the State where the relevant SBC-13STATE plant facilities are located (if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in this State), or ceases to make active use of SBC-13STATE's poles, ducts, conduits, and rights-of-way.

12.2 Individual occupancy permits subject to this Agreement shall terminate if (a) Attaching Party ceases to utilize the pole attachment or conduit or right of way space subject to such occupancy permit or (b) Attaching Party's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated, or local governmental authority or third-party property owner having authority to revoke, deny, or terminate such use or access.

12.3 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Attaching Party's access to SBC-13STATE's Structure shall not materially interfere with or impair service over any facilities of SBC-13STATE or any Other User, cause material damage to SBC-13STATE's plant or the plant of any Other User, impair the privacy of communications carried over the facilities of SBC-13STATE or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of SBC-13STATE's poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, SBC-13STATE may limit, terminate or refuse access if Attaching Party violates this provision.

- 12.4 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either party, the aggrieved party may give written notice of such claimed breach.
- 12.5 The complaining party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given, and
 - 12.5.1 the breaching party fails to cure the breach within 30 days of such notice, if the breach is one which can be cured within 30 days, or
 - 12.5.2 the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure.
- 12.6 Remedies for Breach. Subject to the provisions of this article, either party may terminate this Agreement in the event of a material breach by the other party or exercise any other legal or equitable right, which such party may have to enforce the provisions of this Agreement. In any action based on an alleged breach of this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred by such party, including but not limited to, reasonable attorneys' fees.

13. FAILURE TO ENFORCE

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

14. CONFIDENTIALITY OF INFORMATION

- 14.1 Information Provided by Attaching Party to SBC-13STATE. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Attaching Party to SBC-13STATE in connection with this Agreement (including but not limited to information submitted in connection with Attaching Party's applications for occupancy permit shall be deemed to be "confidential" or "proprietary" information of Attaching Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for or review of records or its inquiry about SBC-13STATE facilities. This article does not limit the use by SBC-13STATE of aggregate information relating to the occupancy and use of SBC-13STATE's Structure by firms other than SBC-13STATE (that is, information submitted by Attaching Party and aggregated by SBC-13STATE in a manner that does not directly or indirectly identify Attaching Party).
- 14.2 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Attaching Party to SBC-13STATE in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons other than those who have a need to know such information for the limited purposes set forth in this Section 14.
- 14.3 Permitted Uses of Attaching Party's Confidential Information. Notwithstanding the provisions of Sections 14.1 and 14.2 above, SBC-13STATE and persons acting on SBC-13STATE's behalf may utilize Attaching Party's confidential or proprietary information for the following purposes:
 - 14.3.1 posting information, as necessary, to SBC-13STATE's outside plant records;

- 14.3.2 placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SBC-13STATE's Structure and any SBC-13STATE facilities located on, within, or in the vicinity of such Structure;
- 14.3.3 performing SBC-13STATE's obligations under this Agreement and similar agreements with third parties;
- 14.3.4 determining which of SBC-13STATE's Structure are (or may in the future be) available for SBC-13STATE's own use, and making planning, engineering, construction, and budgeting decisions relating to SBC-13STATE's Structure;
- 14.3.5 preparing cost studies;
- 14.3.6 responding to regulatory requests for information;
- 14.3.7 maintaining SBC-13STATE's financial accounting records; and
- 14.3.8 complying with other legal requirements relating to Structure.

14.4 Defense of Claims. In the event of a dispute between SBC-13STATE and any person or entity, including Attaching Party, concerning SBC-13STATE's performance of this Agreement, satisfaction of obligations under similar agreements with third parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, SBC-13STATE may utilize confidential or proprietary information submitted by Attaching Party in connection with this Agreement as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that SBC-13STATE shall not disclose Attaching Party's proprietary or confidential information without first, at SBC-13STATE's option:

- 14.4.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
- 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
- 14.4.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

14.5 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding SBC-13STATE from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that SBC-13STATE shall not disclose Attaching Party's proprietary or confidential information without first, at SBC-13STATE's option:

- 14.5.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
- 14.5.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
- 14.5.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

15. ACCESS TO RIGHTS-OF-WAY

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

16. SPECIFICATIONS

- 16.1 Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities attached to SBC-13STATE's poles or occupying space in SBC-13STATE's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Agreement and the Administrative Guide.
- 16.2 Published Standards. Attaching Party's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:
 - 16.2.1 the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book";
 - 16.2.2 the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE");
 - 16.2.3 the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA");

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

16.2.5 the SBC-13STATE Structure Access Guidelines

16.3 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of SBC-13STATE's manholes and access to SBC-13STATE's conduit system.

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

16.3.2 An authorized employee or representative of SBC-13STATE may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within SBC-13STATE's conduit system. Attaching Party shall reimburse SBC-13STATE for costs associated with the presence of SBC-13STATE's authorized employee or representative.

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

17. ACCESS TO RECORDS

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

17.2 Maps, records or information are and remain the proprietary property of SBC-13STATE, are provided to the Attaching Party solely for the purpose of enabling the Attaching Party to obtain access to SBC-13STATE's Structure, and may not be resold, reproduced or disseminated by the Attaching Party, unless required for purpose of compliance with applicable federal or state laws, regulations, commission orders or orders of courts of competent jurisdiction.

17.3 SBC-13STATE will provide information currently available on the SBC-13STATE's maps and/or records regarding:

17.3.1 the location of Structure and street addresses for manholes and poles as shown on SBC-13STATE's maps;

17.3.2 the footage between manholes or lateral ducts lengths, as shown on SBC-13STATE's maps;

17.3.3 the footage between poles, if shown on SBC-13STATE's maps;

17.3.4 the total capacity of the Structure;

17.3.5 the existing utilization of the Structure.

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

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

18. APPLICATIONS AND PRE-OCCUPANCY PERMIT SURVEYS

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

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

18.3 Make-Ready Survey. A Make-Ready survey must be completed by SBC-13STATE or the Attaching Party before an occupancy permit is issued. The primary purposes of the make ready survey will be to enable SBC-13STATE to

18.3.1 confirm or determine the modifications, capacity expansion, and make-ready work, if any, necessary to accommodate Attaching Party's attachment of facilities to SBC-13STATE structures;

18.3.2 plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare SBC-13STATE's poles, ducts, conduits, rights-of-way, and associated facilities for Attaching Party's proposed attachments or occupancy; and

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

18.4 Application Fee. Attaching party to remit with each application an upfront advanced payment to cover the initial costs of verification, engineering and processing of each application in the amount of \$500.00.

19. POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

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

19.2 Pole, Duct, and Conduit Space Assignments.

19.2.1 After Attaching Party's application for a pole attachment or conduit occupancy permit has been approved by SBC-13STATE, the pole, duct, and conduit space selected and/or approved by SBC-13STATE in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed twelve (12) months.

19.2.2 **SBC CALIFORNIA**: The pole, duct, and conduit space selected and/or approved by SBC-13STATE in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed nine (9) months in SBC CALIFORNIA only as detailed by the California Public Utility Commission.

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

19.2.4 SBC CALIFORNIA: Space assignment is 9 months in California.

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

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

20.1 Response Within 45 Days. Within 45 days of Attaching Party's submission of a request for access to SBC-13STATE Structure, SBC-13STATE shall provide a written response to the application. The response shall state whether the request is being granted or denied, and if the request is denied, provide the reasons why the request is being denied. If denial of access is proposed, SBC-13STATE will meet with the Attaching Party and explore in good faith reasonable alternatives to accommodate the proposed attachment. The Attaching Party must request such meeting within ten (10) business days of receipt of a notice of denial. SBC-13STATE will schedule the meeting within ten (10) business days of receipt of the Attaching Party's written request for a meeting.

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

20.2.1 what modifications, capacity expansions, or make-ready work, if any, will be required to prepare SBC-13STATE's Structure, and

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

20.3 Make-ready Work. If it is determined that make ready work will be necessary to accommodate Attaching Party's facilities, Attaching Party shall have 45 days (the "acceptance period") to either

20.3.1 submit payment for the estimate authorizing SBC-13STATE or its contractor to complete the make-ready work; or

20.3.2 advise SBC-13STATE of its willingness to perform the proposed make-ready work itself if permissible in the application area.

20.4 Make-ready work performed by Attaching Party, or by an authorized contractor selected by Attaching Party, shall be performed in accordance with SBC-13STATE's specifications and in accordance with the same standards and practices which would be followed if such work were being performed by SBC-13STATE or SBC-13STATE's contractors. Neither Attaching Party nor authorized contractors selected by Attaching Party shall conduct such work in any manner, which degrades the integrity of SBC-13STATE's Structures or interferes with any existing use of SBC-13STATE's facilities or the facilities of any Other User.

20.5 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. Attaching Party shall make arrangements with the Other Users with facilities attached to SBC-13STATE's poles or occupying space in SBC-13STATE's conduit system regarding reimbursement for any expenses incurred by the Other Users in transferring or rearranging the Other Users' facilities to accommodate the attachment or placement of Attaching Party's facilities to or in SBC-13STATE's poles, ducts, conduits and rights of ways.

20.6 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 Attaching Party's facilities, Attaching Party 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-13STATE for the use of such additional capacity. If SBC-13STATE utilizes additional space or capacity created at Attaching Party's expense, SBC-13STATE will reimburse Attaching Party on a pro-rata basis for SBC-13STATE's share, if any, of Attaching Party's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. SBC-13STATE will notify the Attaching Party if any entity, including SBC-13STATE, attaches facilities to additional capacity on SBC-13STATE's Structure created at the Attaching Party's expense. SBC-13STATE shall not be required to collect or remit any such amounts to Attaching Party, to resolve or adjudicate disputes over reimbursement between Attaching Party and Other Users.

20.7 If Attaching Party utilizes space or capacity on any SBC-13STATE Structure created at SBC-13STATE's expense after February of 1996, the Attaching Party will reimburse Attaching Party on a pro-rata basis for the Attaching Party's share, if any, of SBC-13STATE's capacity creation costs.

20.8 Occupancy Permit and Attachment. After all required make-ready work is completed, SBC-13STATE will issue an occupancy permit confirming that Attaching Party may attach specified facilities to SBC-13STATE's Structure.

20.9 The Attaching Party must occupy the assigned space within a period not to exceed twelve (12) months from the issuance of the occupancy permit. If the Attaching Party does not occupy the assigned space within the twelve (12) month period, the Occupancy Permit will lapse and the space will be considered available for use by SBC-13STATE or Other User.

*SBC CALIFORNIA only: Space assignment shall not exceed nine (9) months in California.

20.10 The Attaching Party's obligation to pay semiannual pole attachment or conduit occupancy fees will commence on the date the Occupancy Permit is provided by SBC-13STATE to the Attaching Party.

21. CONSTRUCTION OF ATTACHING PARTY'S FACILITIES

21.1 Responsibility for Attaching and Placing Facilities. The Attaching Party shall be responsible for the actual attachment of its facilities to SBC-13STATE's poles and the placement of such facilities in SBC-13STATE's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities.

21.2 Construction Schedule. After the issuance of an occupancy permit, Attaching Party shall provide SBC-13STATE with a construction schedule and thereafter keep SBC-13STATE informed of anticipated changes in the construction schedule.

22. USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY'S FACILITIES

22.1 Routine Maintenance of Attaching Party's Facilities. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within SBC-13STATE's poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner, which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party's occupancy permit.

22.2 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed 30 days) non-emergency maintenance or repair activities by any entity with facilities in the conduit section in which the maintenance

duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by SBC-13STATE. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify SBC-13STATE of such use and must either vacate the maintenance duct within 30 days or, with SBC-13STATE's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies which may occur while the maintenance duct is occupied.

23. MODIFICATION OF ATTACHING PARTY'S FACILITIES

- 23.1 Notification of Planned Modifications. Attaching Party shall notify SBC-13STATE in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities already attached to a SBC-13STATE Structure. The notice shall contain sufficient information to enable SBC-13STATE to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Attaching Party's present occupancy permit or requires a new or amended occupancy permit.
- 23.2 Replacement of Facilities and Overlashing Additional Cables. Attaching Party may replace existing facilities with new facilities occupying the same SBC-13STATE Structure, and may lash additional cables to its own existing facilities; provided, however, that such activities shall not be considered to be routine maintenance and shall be subject to the requirements of this article.

24. REQUIRED REARRANGEMENTS OF ATTACHING PARTY'S FACILITIES

- 24.1 Required Rearrangement of Attaching Party's Facilities. Attaching Party agrees that Attaching Party will cooperate with SBC-13STATE and other users in making rearrangements to SBC-13STATE Structure as may be necessary, and that costs incurred by Attaching Party in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the parties in accordance with then applicable law.
- 24.2 Whenever feasible, SBC-13STATE shall give Attaching Party not less than 30 days prior written notice of the need for Attaching Party to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Attaching Party shall complete such rearrangements within the time prescribed in the notice. If Attaching Party does not rearrange facilities within noted time, SBC-13STATE will rearrange at Attaching Party's expense.

25. EMERGENCY REPAIRS AND POLE REPLACEMENTS

- 25.1 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such party to make such repairs.
 - 25.1.1 Nothing contained in this Agreement shall be construed as requiring either party to perform any repair or service restoration work of any kind with respect to the other party's facilities or the facilities of joint users.
 - 25.1.2 Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that an entity using the maintenance duct for emergency repair activities will notify SBC-13STATE within 12 hours of the current business day (or first business day following a non-business day) that such entity is entering the SBC-13STATE conduit system and using the maintenance duct

for emergency restoration purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance ducts will be used to restore the highest priority services, as defined in Section 2.7, first. Existing spare ducts may be used for restoration purposes providing the spare ducts are restored after restoration work is complete. Any spare ducts not returned will be included be assigned to the user of the duct and an occupancy permit issued.

25.1.3 The Attaching Party shall either vacate the maintenance duct within 30 days or, with SBC-13STATE's consent, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner-duct, a suitable replacement inner-duct) is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance ducts. Entities not vacating the maintenance duct must provide an immediate maintenance duct at the entity's cost.

25.2 Designation of Emergency Repair Coordinators and Other Information. For each SBC-13STATE construction district, Attaching Party shall provide SBC-13STATE with the emergency contact number of Attaching Party's designated point of contact for coordinating the handling of emergency repairs of Attaching Party's facilities and shall thereafter notify SBC-13STATE of changes to such information.

25.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, SBC-13STATE, Attaching Party, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties present in accordance with the following principles.

25.3.1 Emergency service restoration work requirements shall take precedence over other work operations.

25.3.2 Except as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, national security and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.

25.3.3 SBC-13STATE shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by SBC-13STATE on a nondiscriminatory basis in accordance with the principles set forth in this section.

25.4 Emergency Pole Replacements.

25.4.1 When emergency pole replacements are required, SBC-13STATE shall promptly make a good faith effort to contact Attaching Party to notify Attaching Party of the emergency and to determine whether Attaching Party will respond to the emergency in a timely manner.

25.4.2 If notified by SBC-13STATE that an emergency exists which will require the replacement of a pole, Attaching Party shall transfer its facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to an SBC-13STATE replacement pole, the transfer shall be in accordance with SBC-13STATE's placement instructions.

25.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise SBC-13STATE and thereby authorize SBC-13STATE (or any Other User sharing the pole with SBC-13STATE) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on Attaching Party's behalf.

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

25.5.1 Each party shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such party's facilities.

25.5.2 Attaching Party shall reimburse SBC-13STATE for the costs incurred by SBC-13STATE for work performed by SBC-13STATE on Attaching Party's behalf in accordance with the provisions of this article.

26. INSPECTION BY SBC OF ATTACHING PARTY'S FACILITIES

26.1 Post-Construction Inspections. SBC-13STATE will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of facilities to SBC-13STATE's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. SBC-13STATE will provide the Attaching Party advance written notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany SBC-13STATE on the post-construction inspection.

26.2 Right to Make Periodic or Spot Inspections. SBC-13STATE shall have the right, but not the obligation, to make periodic or spot inspections of all facilities attached to SBC-13STATE's Structure. These inspections will not be made more often than once every 2 years unless in SBC-13STATE's judgement such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Agreement.

26.3 If Attaching Party's facilities are in compliance with this Agreement, there will be no charges incurred by the Attaching Party for the periodic or spot inspection. If Attaching Party's facilities are not in compliance with this Agreement, SBC-13STATE may charge Attaching Party for the inspection. The costs of Periodic Inspections will be paid by those Attaching Parties with 2% or greater of their attachments in violation. The amount paid by the Attaching Party shall be the percentage that their violations bear to the total violations of all Attaching Parties found during the inspection.

26.4 If the inspection reflects that Attaching Party's facilities are not in compliance with the terms of this Agreement, Attaching Party shall bring its facilities into compliance within 30 days after being notified of such noncompliance. If any make ready or modification work to SBC-13STATE's Structures is required to bring Attaching Party's facilities into compliance, the Attaching Party shall provide notice to SBC-13STATE and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment.

27. TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

27.1 Facilities to Be Marked. Attaching Party shall tag or otherwise mark all of Attaching Party's facilities placed on or in SBC-13STATE's Structure in a manner sufficient to identify the facilities as those belonging to the Attaching Party.

27.2 **Removal of Untagged Facilities.** SBC-13STATE may, without notice to any person or entity, remove from SBC-13STATE's poles or any part of SBC-13STATE's conduit system the Attaching Party's facilities, if SBC-13STATE determines that such facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on SBC-13STATE's poles or in SBC-13STATE's conduit system.

27.3 **Notice to Attaching Party.** If any of Attaching Party's facilities for which no occupancy permit is presently in effect are found attached to SBC-13STATE's poles or anchors or within any part of SBC-13STATE's conduit system, SBC-13STATE, without prejudice to other rights or remedies available to SBC-13STATE under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Attaching Party advising Attaching Party that no occupancy permit is presently in effect with respect to the facilities and that Attaching Party must, within 30 days, respond to the notice as provided in Section 27.6 of this Agreement.

27.4 **Attaching Party's Response.** Within 60 days after receiving a notice under Section 27.3 of this Agreement, Attaching Party shall acknowledge receipt of the notice and submit to SBC-13STATE, in writing, an application for a new or amended occupancy permit with respect to such facilities.

27.5 **Approval of Request and Retroactive Charges.** If SBC-13STATE approves Attaching Party's application for a new or amended occupancy permit, Attaching Party shall be liable to SBC-13STATE for all fees and charges associated with the unauthorized attachments as specified in Section 27.6 of this Agreement. The issuance of a new or amended occupancy permit as provided by this article shall not operate retroactively or constitute a waiver by SBC-13STATE of any of its rights or privileges under this Agreement or otherwise.

27.6 Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from SBC-13STATE's poles, conduit system or rights of way or until a new or amended occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party and its predecessors had continuously complied with all applicable SBC-13STATE licensing requirements. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. In addition, the Attaching Party shall be liable for an unauthorized attachment fee in the amount of 5 times the annual attachment and occupancy fees in effect on the date Attaching Party is notified by SBC-13STATE of the unauthorized attachment or occupancy. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Attaching Party shall rearrange or remove its unauthorized facilities at SBC-13STATE's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to SBC-13STATE or another Other User, and shall pay SBC-13STATE for all costs incurred by SBC-13STATE in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities.

27.7 **Removal of Unauthorized Attachments.** If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized facilities within the specified period of time, SBC-13STATE shall by written notice advise Attaching Party to remove its unauthorized facilities not less than 60 days from the date of notice and Attaching Party shall remove the facilities within the time specified in the notice. If the facilities have not been removed within the time specified in the notice, SBC-13STATE may, at SBC-13STATE's option, remove Attaching Party's facilities at Attaching Party's expense.

27.8 **No Ratification of Unpermitted Attachments or Unauthorized Use of SBC-13STATE's Facilities.** No act or failure to act by SBC-13STATE with regard to any unauthorized attachment or occupancy or unauthorized use of SBC-13STATE's Structure shall be deemed to constitute a ratification by SBC-13STATE of the unauthorized attachment or occupancy or use, nor shall the payment by Attaching Party of fees and charges for unauthorized pole attachments or conduit occupancy exonerate Attaching Party from liability for any trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities.

28. REMOVAL OF ATTACHING PARTY'S FACILITIES

- 28.1 When Applicant no longer intends to occupy space on a SBC-13STATE pole or in a SBC-13STATE duct or conduit, Applicant will provide written notification to SBC-13STATE that it wishes to terminate the occupancy permit with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Applicant's facilities, the occupancy permit shall terminate and the space shall be available for reassignment.
 - 28.1.1 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from SBC-13STATE's Structure.
 - 28.1.2 Except as otherwise agreed upon in writing by the parties, Applicant must, after removing its facilities, plug all previously occupied ducts at the entrances to SBC-13STATE's manholes.
 - 28.1.3 Applicant shall be solely responsible for the removal of its own facilities from SBC-13STATE's Structure.
- 28.2 At SBC-13STATE's request, Attaching Party shall remove from SBC-13STATE's Structure any of Attaching Party's facilities, which are no longer in active use. Upon request, the Attaching Party will provide proof satisfactory to SBC-13STATE that an Attaching Party's facility is in active service. Attaching Party shall not abandon any of its facilities by leaving such facilities on or in SBC-13STATE's Structure.
- 28.3 Removal Following Termination of Occupancy permit. Attaching Party shall remove its facilities from SBC-13STATE's poles, ducts, conduits, or rights-of-way within 60 days after termination of the occupancy permit.
- 28.4 Removal Following Replacement of Facilities. Attaching Party shall remove facilities no longer in service from SBC-13STATE's Structures within 60 days after the date Attaching Party replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit.
- 28.5 Removal to Avoid Forfeiture. If the presence of Attaching Party's facilities on or in SBC-13STATE's Structure would cause a forfeiture of the rights of SBC-13STATE to occupy the property where such Structure is located, SBC-13STATE will promptly notify Attaching Party in writing and Attaching Party shall not, without due cause and justification, refuse to remove its facilities within such time as may be required to prevent such forfeiture. SBC-13STATE will give Attaching Party not less than 60 days from the date of notice to remove Attaching Party's facilities unless prior removal is required to prevent the forfeiture of SBC-13STATE's rights. At Attaching Party's request, the parties will engage in good faith negotiations with each other, with Other Users, and with third-party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of Attaching Party's facilities.
- 28.6 Removal of Facilities by SBC-13STATE; Notice of Intent to Remove. If Attaching Party fails to remove its facilities from SBC-13STATE's Structure in accordance with the provisions of Sections 28.1-28.5 of this Agreement, SBC-13STATE may remove such facilities and store them at Attaching Party's expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to Attaching Party for any injury, loss, or damage resulting from such actions. SBC-13STATE shall give Attaching Party not less than 60 days prior written notice of its intent to remove Attaching Party's facilities pursuant to this section.
- 28.7 Removal of Facilities by SBC-13STATE. If SBC-13STATE removes any of Attaching Party's facilities pursuant to this article, Attaching Party shall reimburse SBC-13STATE for SBC-13STATE's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.

29. RATES, FEES, CHARGES, AND BILLING

- 29.1 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees outlined in this Agreement will be set forth in APPENDIX I of the Stand-Alone Agreement. All rates, charges and fees shall be subject to all applicable federal and state laws, rules, regulations, and commission orders.
- 29.2 Changes to Rates, Charges and Fees. Subject to applicable federal and state laws, rules, regulations and orders, SBC-13STATE shall have the right to change the rates, charges and fees outlined in this Agreement. SBC-13STATE will provide the Attaching Party 60 days written notice, advising the Attaching Party of the specific changes being made and the effective date of the change. If the changes outlined in the notice are not acceptable to the Attaching Party, Attaching Party may either (1) seek renegotiation of this Agreement, (2) terminate this Agreement, or (3) seek relief through the dispute resolution process in the General Terms and Conditions of this Agreement.
- 29.3 Wireless Carriers. Antenna attachments which render space on adjacent poles no longer useable or the creation of any additional guying/anchoring will be billed to the attaching party. This payment does not provide access on these adjacent piles to the attaching party or permit them to make further attachments without prior written approval from SBC-California.

30. PERFORMANCE AND PAYMENT BONDS

- 30.1 Bond May Be Required. SBC-13STATE may require Attaching Party, authorized contractors, and other persons acting on Attaching Party's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of the Attaching Party's obligations arising out of or in connection with this Agreement.
 - 30.1.1 If a bond or similar form of assurance is required of Attaching Party, an authorized contractor, or other person acting on Attaching Party's behalf, Attaching Party shall promptly submit to SBC-13STATE adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing SBC-13STATE 60 days written notice.
- 30.2 Payment and Performance Bonds in Favor of Contractors and Subcontractors. Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, materialmen and other persons or entities performing work or providing materials in connection with Attaching Party's performance under this Agreement. In the event any lien, claim or demand is made on SBC-13STATE by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, SBC-13STATE may require, in addition to any security provided under Section 30.1 of this Agreement, that Attaching Party execute payment or performance bonds, or provide such other security, as SBC-13STATE may deem reasonable or necessary to protect SBC-13STATE from any such lien, claim or demand.

31. NOTICES

- 31.1 Notices to Attaching Party. All written notices required to be given to a party shall be delivered or mailed to the party's duly authorized agent or attorney, as designated in this section.
 - 31.1.1 Such notice may be delivered to the party's duly authorized agent or attorney in person or by agent or courier-receipted delivery.
 - 31.1.2 Such notice may be mailed to the party's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon

deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.

31.1.3 Notices to a party shall be sent to the authorized agent or attorney designated below:

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

NOTICE CONTACT	ATTACHING PARTY	SBC-LEC CONTACT
NAME/TITLE	Bob Edgerly	Contract Management ATTN: Notices Manager
STREET ADDRESS	2001 Edmund Halley Drive	311 S. Akard, 9 th Floor Four SBC Plaza
CITY, STATE, ZIP CODE	Reston, VA 20191	Dallas, TX 75202-5398
TELEPHONE NUMBER	703-264-4949	214-464-1933
FACSIMILE NUMBER	703 264-4246	214-464-2006

32. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

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

APPENDIX 1 (RATES)
STRUCTURE ACCESS STAND-ALONE
5/23/2002

STATE	Service	Rate Elements	USOCs	Recurring Rate	Nonrecurring Rate First	Nonrecurring Rate Additional
KS	Poles and Duct (Structure)		Poles (\$/attachment/yr.)*	\$ 1.75		
			Per Foot Conduit Occupancy Fees			
			Full Duct (\$/ft/yr.)	\$ 0.59		
			Half Duct (\$/ft/yr)	\$ 0.30		
			Contract Administration Fee		\$125.00	
			Administrative Record-Keeping Fee		\$125.00	

* For(1) each one foot of usable space, or fraction thereof, occupied and (2) each additional one foot of space, or fraction thereof, rendered unusable by the attachment's presence.

GUIDELINES FOR ACCESS TO SBC COMMUNICATIONS INC. and OPERATING COMPANIES STRUCTURE

This document details the policy and guidelines which govern the process by which Attaching Parties gain access to poles, ducts, conduit, and rights-of-way (Structure) which is owned or controlled by SBC Communication and SBC Operating Companies hereafter referred to as SBC-13STATE.

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1. APPLICABILITY OF GUIDELINES

1.1 General

- 1.1.1 These guidelines are issued to provide operating procedures for parties attaching to SBC Communications Inc. (SBC) Structure.
- 1.1.2 **SBC Communications Inc. (SBC)** means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.
- 1.1.3 **SBC-2STATE** - As used herein, **SBC-2STATE** means **SBC CALIFORNIA** and **SBC NEVADA**, the applicable SBC-owned ILEC(s) doing business in California and Nevada.
- 1.1.4 **SBC-13STATE** - As used herein, **SBC-13STATE** means **SBC SOUTHWEST REGION 5-STATE**, **SBC MIDWEST REGION 5-STATE**, **SBC-2STATE** and **SBC CONNECTICUT** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.1.5 **SBC CALIFORNIA** - As used herein, **SBC CALIFORNIA** means Pacific Bell Telephone Company d/b/a SBC California, the applicable SBC-owned ILEC doing business in California.
- 1.1.6 **SBC MIDWEST REGION 5-STATE** - As used herein, **SBC MIDWEST REGION 5-STATE** means Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.
- 1.1.7 **SBC NEVADA** - As used herein, **SBC NEVADA** means Nevada Bell Telephone Company d/b/a SBC Nevada, the applicable SBC-owned ILEC doing business in Nevada.
- 1.1.8 **SBC CONNECTICUT** - As used herein, **SBC CONNECTICUT** means The Southern New England Telephone Company, the applicable above listed ILEC doing business in Connecticut.
- 1.1.9 **SBC SOUTHWEST REGION 5-STATE** - As used herein, **SBC SOUTHWEST REGION 5-STATE** means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

1.1.10 These guidelines apply to all parties, including SBC affiliates who attach to SBC structure.

1.2 Limitation

In the event of any conflict or difference between the provisions of these guidelines and any federal or state rules, regulations, and tariffs or provisions of any legally executed interconnection, license or other agreement of the Company, the provisions of the rules, regulations, tariffs or agreements shall apply. State requirements may vary, and the Guidelines should be reviewed in conjunction with state tariffs, where the latter exist.

2. DEFINITIONS

- 2.1 **Authorized Contractor** - Contractors who are mutually approved by both Attaching Party and SBC.
- 2.2 **Attaching Party** - Parties authorized by SBC to attach facilities to SBC structure. Primary Points of Contact will provide specifics for each geographic area as outlined in Appendix 1 to these guidelines.
- 2.3 **Conduit** - Tubes or structures which are owned or controlled by SBC which contains one or more ducts and/or innerducts used to enclose cables, wires, and associated transmission equipment. The term "conduit" refers only to the conduit structures (including ducts, manholes, and hand holes) and space within those structures, and it does not include:
 - 2.3.1 Cables and other telecommunications equipment located within conduit structures
 - 2.3.2 Controlled environmental vaults
 - 2.3.3 Telephone equipment closets
 - 2.3.4 Remote terminals
 - 2.3.5 Cross-connect cabinets, panels or boxes
 - 2.3.6 Equipment cabinets
 - 2.3.7 Pedestals, or terminals
 - 2.3.8 Any other infrastructure used by SBC, which branches off from or is connected to conduit structures.
- 2.4 **Make-Ready Survey** - A physical check of Structure to determine availability of space for placing the Attaching Party's facilities.
- 2.5 **Make-Ready Work** - Any work necessary to prepare Structure for attachment or occupancy by an Attaching Party.
- 2.6 **Poles** - Poles refers only to poles (and associated anchors) which are owned, jointly owned, or controlled by SBC and does not include cables and other telecommunications equipment attached to a pole.
- 2.7 **Rights-of-Way** - The right to use the land or other property of another Party to place poles, conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. Rights-of-way may run under, on, or above public or private property (including air space above public or private property) and may include the right to use defined space in buildings, building complexes or other locations.
- 2.8 **Structure** - Refers to the poles, ducts, conduit, and rights-of-way that are owned or controlled by SBC.
- 2.9 **Universal Maintenance Spare** - A full sized duct typically 3 inches or larger which may be used, on a short-term basis, for maintenance, repair, or emergency restoration activities. In those locations where there is not a full-sized duct, SBC will designate an inner duct, if one is available.

3. PRIMARY POINTS OF CONTACT

SBC has established several Primary Points of Contact depending on where an Attaching Party will want to attach to SBC structure. The Points of Contact for each geographic region of SBC are outlined in Appendix 1 of these guidelines. A Primary Point of Contact will administer access to SBC structure by:

- 3.1 Answering Attaching Party questions
- 3.2 Processing and coordinating Information Access Requests
- 3.3 Processing and coordinating Structure Access requests, including coordination of Make Ready Survey and Make Ready activities
- 3.4 Issuing Occupancy Permits

4. GENERAL POLICIES

4.1 Priority Queue

- 4.1.1 The priority for right of access to existing capacity in SBC Structure will be determined by the actual time that a valid Structure Access Request is received by the SBC Primary Point of Contact. The Attaching Party should contact the Structure Access Manager for the status of the request. The requirements for a valid Structure Access Request are outlined in Section 5.2 of these guidelines.
- 4.1.2 To maintain position in the queue it is strongly recommended that attaching parties follow each and every step as stated within these guidelines. Not doing so could render the request incomplete thereby losing position in the queue.
- 4.1.3 Changes in Structure Access Requests may only be deemed a new request and result in a new date being established for the priority queue when such changes result in different routes, e.g., addition of poles or conduit.

4.2 Universal Maintenance Spare

- 4.2.1 The universal maintenance spare may be used by all Attaching Parties with Attachments in the conduit section for maintenance and emergency use.
- 4.2.2 Access to a universal maintenance spare for maintenance purposes must be requested through the SBC Primary Point of Contact 5 days in advance of proposed work.
- 4.2.3 Any party utilizing a universal maintenance spare must vacate it or provide an equivalent spare within 30 days. An additional 30 days may be requested in unique or special circumstances.
- 4.2.4 For emergency use of the maintenance spare, refer to section 8.

4.3 Available Capacity

4.3.1 Ducts and Conduit

- 4.3.1.1 Unoccupied duct and/or innerduct space is assumed available for use by an Attaching Party, excluding the ducts and/or innerducts reserved for the universal maintenance spare, municipal use, or which are subject to a prior request.

4.3.1.2 Based on the information from Structure Records, and the completed Make Ready Survey, SBC will determine if the requested access to SBC Structure can be provided to the Attaching Party.

4.3.2 Poles

Available pole capacity is unoccupied, useable space on a pole. This excludes space which is subject to a prior request.

4.3.3 Not in Service

Ducts or innerducts with Attachments that have not been in service for any continuous period of 12 months will be considered vacant and useable by SBC or other Attaching Parties. SBC will notify the current attachment owner a minimum of sixty (60) days prior to the removal of their facilities. SBC or new Attaching Party will not be able to place their facilities until the current owner has been notified. After the 60-day notice has expired, SBC may remove the facilities at the current attachment owner's expense.

4.3.4 Requirements to build Structure

If Attaching Party requests access to an SBC right-of-way where SBC has no existing Structure, SBC shall not be required to construct new poles, conduits or ducts, or to bury cable for Attaching Party. However, if SBC desires to extend its own attachments, SBC may construct structure to accommodate Attaching Party's attachments.

4.4 No Available Capacity

4.4.1 If, after taking reasonable steps (including review of the following alternatives: modification of existing attachments or replacement of poles, where such modifications and/or replacements are not precluded on the basis of safety, reliability or engineering concerns), SBC cannot accommodate the Attaching Party's request due to capacity, safety, reliability or engineering concerns, the SBC Primary Point of Contact will provide a detailed, written response. The response will outline the reasons why the request cannot be accommodated within forty-five (45) days of submitting a valid Structure Access Request, or as otherwise negotiated. The Attaching Party has ten (10) business days to request a meeting.

4.4.2 If additional information is discovered while performing Make Ready Work that prohibits SBC from accommodating the Attaching Party's request, the SBC Primary Point of Contact will provide a detailed, written response within forty-five (45) days after discovery outlining the reasons why the request can no longer be accommodated.

4.4.3 If an Attaching Party's request cannot be accommodated for any reason, SBC will meet with the Attaching Party, at their written request, and explore reasonable alternatives to accommodate the proposed attachment. SBC will schedule the meeting within ten (10) business days of receipt of the Attaching Party's written request for a meeting.

4.5 Capacity Reservation

4.5.1 No party, including SBC, will be allowed to reserve space in or on SBC's Structure for future needs.

4.5.1.1 SBC or attaching party must occupy their assigned space within a period not to exceed twelve (12) months. If SBC or attaching party does not occupy their assigned space within the twelve (12) month period, it will be considered a reservation of space, the assignment will be removed and the space will become available for use by SBC or another Attaching Party.

4.5.1.2 The (12) twelve-month period shall begin at issuance of the Occupancy Permit.

4.5.1.3 **SBC CALIFORNIA ONLY:** The reservation of space and/or assignment shall not exceed a timeframe of nine (9) months as outlined by the California Public Utility Commission.

4.6 Location of Attachments

4.6.1 Ducts and Conduit

4.6.1.1 With approval, the preferred entrances and exits of SBC's conduit system for Attaching Parties will be at established openings. These openings are building entrances, points at which cable enters the SBC's underground conduit facilities, stubbed-off ducts and preformed manhole lateral knockouts.

4.6.1.2 If the preferred entrances or exits are not available, entrance to an SBC manhole may be created by core boring the manhole wall, unless such engineered access to the manhole is denied by SBC for reasons of safety, reliability or uniformly applied engineering principles.

4.6.2 Poles

Pole attachments will be placed in the space on the pole designated for communications use. This space is generally located below electric supply circuits and excludes the neutral space between the electrical and communication space.

4.6.3 Selection

SBC will select or approve 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.

4.7 Franchises, Permits and Consents

Attaching Party shall secure any necessary franchises, permits or consents from federal, state, county or municipal authorities and from the owners of private property, to construct and operate its Attachments at the location of the SBC Structure it uses.

5. PROCESS FOR GAINING ACCESS TO SBC STRUCTURE

Following are the major process steps that an Attaching Party should follow in order to gain access to SBC Structure. However, following this process does not guarantee that SBC will be able to accommodate the Attaching Party's request.

- Information Access
- Structure Access Request
- Make Ready Survey
- Make Ready Work
- Occupancy Permit
- Construction of Attaching Party facilities

5.1 Information Access:

In order to determine where Structure exists and what might be available for use, an Attaching Party will have access to SBC's Structure Records.

5.1.1 Limitations:

- 5.1.1.1 In all instances the information made available will be that which is currently on the records. SBC will not create additional information or gather information not currently on the records. SBC will not provide information in formats other than that in which it currently exists.
- 5.1.1.2 In the event the records do not exist, it shall be the responsibility of the surveying party to obtain and provide field information to SBC. The information required from the Attaching Party will be restricted to that which is necessary to process the request and will not be used for any reason other than processing the request.
- 5.1.1.3 Proprietary information will not be made available for review by attaching parties.
- 5.1.1.4 The apparent availability of structure on records does not guarantee the actual availability or structural integrity of any structure. Upon request by Attaching Party, SBC will meet with the Attaching Party to clarify matters relating to maps, records or other record information.
- 5.1.1.5 A signed non-disclosure agreement must be on file before SBC will make available any and all records.

5.1.2 Access Process

An Attaching Party may request access to SBC Structure Records in one of three ways. Contact SBC Primary Point of Contact to:

5.1.2.1 Request to view SBC structure records

5.1.2.1.1 The attaching party must give at least forty-eight (48) hours advance notice

5.1.2.1.2 All record inspections may require supervision and are restricted to specific work areas

5.1.2.1.3 Inspections are restricted to Monday through Friday, 9am to 4pm

5.1.2.1.4 Due to security reasons, not all areas can accommodate this type of request

5.1.2.2 Request Copies of SBC Structure Records

5.1.2.2.1 The request must be in writing and signed by an authorized agent of the attaching party

5.1.2.2.2 Attaching Party will clearly identify the route including beginning and ending points

5.1.2.2.3 SBC can not accommodate requests where the proposed path is not clearly defined.

5.1.2.3 Request to have SBC perform a records check

SBC may perform the records check and inform the Attaching Party of the results at the Attaching Party's expense.

5.2 Structure Access Request

- 5.2.1 To officially request access to SBC Structure, an Attaching Party will submit a Structure Access Request to the SBC Primary Point of Contact. Appropriate forms (poles, conduit, or rights-of-way) are available from the SBC Primary Point of Contact.
- 5.2.2 To be a valid Structure Access request that qualifies for the priority queue as referred to in Section 4.1 and qualifies to start the clock for response time intervals, the request must have:
 - 5.2.2.1 sufficient, clear information to identify the specific Structure for which access is desired
 - 5.2.2.2 details that will specify what make ready survey activity is needed
 - 5.2.2.3 any required prepayment fees and/or billing authorizations
- 5.2.3 A sketch identifying the entire area involved must be submitted with the Structure Access request. The sketch must clearly identify:
 - 5.2.3.1 State, municipality and street names
 - 5.2.3.2 Primary and subsequent placement paths proposed by Attaching Party
 - 5.2.3.3 Identify the type of structure being requested (poles, conduit or right-of-way)
 - 5.2.3.4 Identify the type, size and quantities of equipment proposed
 - 5.2.3.5 Identify the locations of splices, cable loops, cable coils and ancillary equipment
 - 5.2.3.6 Identify manhole locations, manhole numbers, and/or pole tag identification (if pole tag number is not available the closest physical address will be required. i.e. Rear 1314 Elm Street)
 - 5.2.3.7 Attaching Party point of contact information
- 5.2.4 If Attaching Party contemplates the need to submit more than 10 structure requests within any 45-day period with respect to poles, ducts, conduits, and rights-of-way within the territory of any single SBC construction district, Attaching Party shall give SBC advance notice as promptly as is reasonably practicable, and the Parties will negotiate a mutually agreeable response time.
 - 5.2.4.1 No more than 300 poles shall be the subject of any single pole structure access request.
 - 5.2.4.2 No more than 20 manholes shall be the subject of any single conduit structure access request.

5.3 Make Ready Survey

5.3.1 General

A Make Ready Survey detailing the work that will be necessary to accommodate an Attaching Party's facilities must be conducted before SBC 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 Attaching Party's request. A make ready survey may be performed by SBC at the Attaching Party's expense or the Attaching Party may perform the make ready survey if permissible in the application area. Attaching Party will not be

allowed to perform a make ready survey that is required to be performed by SBC pursuant to SBC's collective bargaining agreements, work rules, and/or policies, where applicable.

5.3.2 Make Ready Survey Performed by SBC

5.3.2.1 Attaching Party is encouraged to accompany SBC during the make ready survey in order to help clarify the results.

5.3.2.2 If Attaching Party requests to accompany SBC during the make ready survey, SBC will notify Attaching Party within 48 hours of the survey.

5.3.2.3 SBC will notify current Attaching Parties (if required) of surveys that result in make ready work required accommodating Attaching Party's request.

5.3.2.4 If the results of the survey indicate that SBC needs to perform make ready work; Attaching Party must remit the advance payment, within 45 days after receipt in order to maintain their position in the priority queue. Refer to Section 9 for additional information on advance payment.

5.3.2.5 If SBC and Attaching Party cannot mutually agree upon reasonable intervals, the Attaching Party may request to perform the make ready survey.

5.3.3 Make Ready Survey Performed by Attaching Party

5.3.3.1 Attaching party must notify SBC of its desire to perform the make ready survey.

5.3.3.2 Except as otherwise noted, Attaching Party or a mutually agreed upon contractor may perform the make ready survey.

5.3.3.3 The Attaching Party may request SBC to accompany Attaching Party during the make ready survey.

5.3.3.4 Attaching Party shall notify SBC within 48 hours prior to the start of the survey (regardless of SBC participation or not).

5.3.3.5 All standards and conditions specified in section 7 must be followed.

5.3.3.6 All municipal requirements e.g. traffic control, must be followed.

5.3.3.7 SBC may verify the results of the make ready survey and, if necessary, make changes and/or additions to the survey.

5.3.3.8 SBC will require Attaching Party to provide Pole Loading information as part of the Make-Ready Survey in order to ensure the time lines are met. Failure to do so may result in rendering the request incomplete thereby losing position in the queue. Attaching Party will not be required to furnish any data that will provide future benefit to other Attaching Parties, including SBC, without compensation.

5.3.3.9 If results of the survey indicate that SBC must perform make ready work; Attaching Party must return the advance payment for Make Ready work within 45 days after receipt in order to maintain their position in the priority queue.

5.4 Make Ready Work

5.4.1 Make Ready work includes, but is not limited to the following:

5.4.1.1 Duct and Conduit:

- 5.4.1.1.1 verifying the integrity of the SBC conduit/innerduct (rodding).
- 5.4.1.1.2 making innerduct assignments
- 5.4.1.1.3 tagging innerduct
- 5.4.1.1.4 core boring manhole walls
- 5.4.1.1.5 placing innerduct couplers
- 5.4.1.1.6 repairing or clearing broken or blocked conduit
- 5.4.1.1.7 placing innerduct
- 5.4.1.1.8 constructing additional conduit
- 5.4.1.1.9 rebuilding or replacing manholes

5.4.1.2 Poles:

- 5.4.1.2.1 raise or lower attachments
- 5.4.1.2.2 place brackets
- 5.4.1.2.3 place anchors and guys
- 5.4.1.2.4 replace poles
- 5.4.1.2.5 tagging cables

5.4.2 Completion of Make Ready work

5.4.2.1 If performed by SBC, make-ready work to accommodate Attaching Party's facilities shall be included in the normal work load schedule of SBC with construction responsibilities in the geographic areas where the relevant poles or conduit systems are located and shall not be entitled to priority, advancement, or preference over other work to be performed by SBC in the ordinary course of SBC's business.

5.4.2.2 No Make Ready work will be performed until receipt of advanced payment.

5.4.2.3 Make ready work required for the initial placing of an Attaching Party's facilities shall be performed by SBC, Attaching Party, or SBC approved contractor.

5.4.2.4 All standards and conditions specified in Section 7 will be followed.

5.4.2.5 The Attaching Party will not be allowed to perform any Make Ready work that is required to be performed by SBC employees pursuant to SBC collective bargaining agreements, work rules and policies.

5.4.2.6 SBC will not be responsible for make ready work delays caused by the Attaching Party, other owners, and/or occupants, or any other circumstance beyond the control of SBC.

5.4.3 Inspections of Attaching Party's Facilities

5.4.3.1 SBC has the right, but not the obligation, to make post-construction and periodic inspections (of any part or all) of Attaching Party's facilities attached to or in SBC structure. Periodic inspections of the entire plant of the Attaching Party will not be made more often than once every two- (2) years unless in SBC's judgement such inspections are required for reasons involving safety or because of an alleged violation of the terms of these guidelines. Where

reasonably practicable to do so, SBC will provide prior written notice to Attaching Parties of periodic inspections.

5.4.3.2 The costs of inspections made during construction and/or the initial Post-Construction Survey shall be paid by the Attaching Party.

5.4.3.3 The costs of periodic inspections will be paid by those Attaching Parties with 2% or greater of their attachments in violation. The amount paid by the Attaching Party shall be the percentage that their violations bear to the total violations of all Attaching Parties found in the inspection.

5.5 Right-of-Way

5.5.1 Availability

SBC shall make available, to the extent it may lawfully do so, access to poles, ducts, conduits and rights-of-way along SBC's distribution network that are owned or controlled by SBC (individually and collectively, Structure) for the placement of Attaching Party's attachments.

5.5.2 Accessibility

The availability of SBC Structure for Attaching Party's attachments is subject to and dependent upon all rights, privileges, franchises or authorities granted by governmental entities with jurisdiction, existing and future agreements with other persons, all interests in property granted by persons or entities public or private, and applicable law, and all terms, conditions and limitations of any or all of the foregoing, by which SBC owns and controls structure or interests therein.

5.6 Occupancy Permit

5.6.1 After successful completion of all Make Ready work associated with a Structure Request (including Make Ready work by other Attaching Parties), the SBC Primary Point of Contact will issue an Occupancy Permit to the requesting Attaching Party.

5.6.2 The Occupancy Permit shall expire if:

5.6.2.1 the Attaching Party has not occupied the structure within twelve (12) months from the date the Occupancy Permit is granted. In SBC CALIFORNIA, the timeframe is nine (9) months.

5.6.2.2 the Attaching Party's franchise, consent or other authorization from federal, state, county or municipal entities or private property owners is terminated.

5.6.2.3 the Attaching Party fails to comply with any material term or condition of these guidelines and does not correct such noncompliance within sixty (60) days after receipt of notice thereof from SBC.

5.6.2.4 SBC ceases to have the right or authority to maintain its structure, or any part thereof, to which the Attaching Party has attachments.

5.6.3 If the Attaching Party surrenders its permit for any reason (including forfeiture under the terms of these guidelines), but fails to remove its Attachments from the Structure within sixty (60) days after the event requiring the surrender of such permit, SBC shall remove the Attaching Party's attachments at the Attaching Party's expense.

5.6.4 Structure rental rates will apply from the date the Occupancy Permit is issued and until written notice of termination of use.

6. STRUCTURE MODIFICATIONS WHICH ADD CAPACITY

Part of the Make Ready Work pursuant to a Structure Access Request may include modifications to SBC structure which add capacity.

6.1 Notification of Modifications

If a Structure Access Request results in SBC making modifications that add capacity to SBC Structure, SBC shall notify all parties currently attached to the structure within five (5) business days of completing the field survey. These parties will have sixty (60) days to indicate if they wish to participate in the modification.

6.2 Costs of Modifications to SBC Structure

All parties who participate in modifications adding capacity to SBC structure shall share in the cost of such modifications and will gain a proportional vested interest in the modification. All modifications to SBC's structure will be owned by SBC.

6.3 Future Use of Added Structure Capacity

6.3.1 If any Party submits a new Structure Access Request and is assigned to use the modified Structure capacity, SBC will notify all parties with a vested interest in the added capacity within sixty (60) days of the request. Each participating party will be responsible to collect their proportionate share of the modification value from the party seeking attachment to the modified structure. SBC is not and will not be responsible for collecting any modification costs except for SBC.

6.3.2 If there were no maintenance spare ducts prior to the modification work and the construction creates new duct that can become maintenance spares, such duct will be so designated for all future use.

7. CONSTRUCTION AND INSTALLATION

7.1 General

The following guidelines must be adhered to whenever an Attaching Party or its contractors are working in, on or near SBC Structure.

7.1.1 SBC may have a designated representative on the job whenever Attaching Party or its contractors are working in ducts, conduit or SBC manholes.

7.1.2 When Attaching Party is going to perform installation, make ready work, or routine maintenance work, SBC must be notified 5 business days in advance of Attaching Party's start date to provide a representative.

7.1.3 Attaching Party is responsible for all actions of Attaching Party workers or contractors

7.1.4 Attaching Party workers or contractors must be fully trained and it is the Attaching Party's responsibility to insure they follow all applicable safety rules and construction standards.

7.1.5 Attaching Party will be solely responsible at its own expense for the proper handling, storage, transport, treatment, disposal and use of all Hazardous Substances by Attaching Party and its contractors and agents. "Hazardous Substances" include those substances (i) included within the definition of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste or pollutant or contaminant under any Applicable Law and (ii) listed by any governmental agency as a hazardous substance.

7.1.6 When Attaching Party is allowed to perform Make Ready Survey or Make Ready work, Attaching Party may subcontract the work with contractors approved by SBC. Approval of such subcontractors by SBC shall be based on the same criteria it uses in approving contractors for its own purposes. If desired, attaching party may request approval of their contractor, or request SBC approved contractor.

7.1.7 The SBC representative shall have full authority, but not responsibility, to stop any work operations that do not conform to the applicable rules and standards.

7.1.8 Attaching Party shall be responsible to obtain any and all work or construction permits necessary to perform Attaching Party's work.

7.2 Rebuild, Rehabilitation and Upgrades
All rebuilds, rehabilitation and upgrades of Attaching Parties existing facilities require an SBC issued Occupancy Permit (see section 5.6), in order to ensure that safety, reliability and engineering standards are met.

7.3 Overlashing
Attaching Parties are required to provide the SBC Primary Point of Contact written notice of their plans to overlash to their existing facilities on SBC structure. Notice shall include:

7.3.1 Location of structure being overlashed.

7.3.2 Identification of all necessary make ready work to accommodate overlash.

7.3.3 Warranty that the poles are within loading specifications and meet all specifications in section 7.3 after work is completed.

7.3.4 Third Party Overlashing
All third party overlashing must follow the above overlashing guidelines. In addition, the Attaching Party whose attachment is overlashed is responsible for any make ready survey and make ready work charges applicable to the third party overlashing. In SWBT, SNET and SBC CALIFORNIA, an SBC Occupancy Permit must be obtained for the overlash.

7.4 Safety
Any party working on or in SBC Structure must comply with the provisions of the Federal Occupational Safety and Health Act of 1970 (OSHA), as amended, and with any rules and regulations under such Acts, as well as any other applicable federal, state, county and local laws, regulations and codes. The SBC representative assigned to the job shall have authority, but not the responsibility, to enforce all safety rules.

7.5 Methods And Procedures
Attaching Party's attachments shall be placed and maintained in accordance with the requirements and specifications of the latest editions of the:

7.5.1 National Electrical Code (NEC)

7.5.2 National Electrical Safety Code (NESC),

7.5.3 Telcordia - Blue Book , Manual of Construction Procedures, (SR-14212) call Telcordia Customer Service - (800)521-2673 to order Blue Book

7.5.4 SBC-Pacific follows California Public Utility Commission General Orders 95 and 128.

7.5.5 State specific construction standards and procedures.

- 7.5.5.1 Attaching Party shall, if requested by SBC to do so, place a pull mandrel (slug) through all or any specified part of the duct that was occupied by Attaching Party.
- 7.5.5.2 Attaching Party shall be solely responsible for the removal of its own facilities from SBC's poles, ducts, conduits, and rights-of-way and for (1) paying all persons and entities which provide materials, labor, access to real or personal property, or other goods or services in connection with the removal of Attaching Party's facilities from SBC's poles, ducts, conduits, or rights-of-way and (2) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SBC's poles, ducts, conduits, or rights-of-way.
- 7.5.5.3 When Attaching Party no longer intends to occupy space on a SBC pole or in a SBC duct or conduit, Attaching Party will provide written notification to SBC that it wishes to terminate the license with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Attaching Party's facilities, the license shall terminate and the space shall be available for reassignment.

8. EMERGENCY ACCESS TO STRUCTURES

8.1 Discovery and Notification

- 8.1.1 SBC will grant emergency access to its structure based on non-discriminatory priority restoration of 911, police, fire, hospitals, disaster recovery and other communication services involved with public safety and emergency services. Secondary priority will be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified.
- 8.1.2 The first communication provider on site will assess the damage and, as best as possible without detailed investigation, determine if the damage is limited to their facilities or if other Carriers and services are involved.
- 8.1.3 Each Attaching Party involved in restoration will notify the SBC primary point of contact within 12 hours of accessing SBC structure for emergency restoration purposes. The notice will include quantity of emergency and non-emergency services involved and an estimated completion time.

8.2 Notice to Other Attaching Party

- 8.2.1 SBC will attempt to identify other Attaching Party from cable records or identifications tags on cables in manholes or on poles.
- 8.2.2 Restoration will begin, by priority, immediately after assessment of the damage has been made. Any Attaching Party not responding to individual trouble alerts or SBC contact attempts will be considered in the restoration plan after identifying themselves as participants. SBC assumes no responsibility for lack of or incorrect identification information of any Attaching Party.

8.3 Use Of Maintenance Spare Structure

- 8.3.1 Maintenance spare structure will be used to restore the highest priority first. Vacant of the maintenance spare structure will be executed as soon as possible to allow access by succeeding Attaching Party.

- 8.3.2 All Attaching Parties will conduct prioritization and vacation of maintenance spare facilities in an expeditious, safe and professional manner.
- 8.3.3 Attaching Party not vacating the maintenance spare structure must provide an immediate like-for-like replacement at their cost, which will immediately be owned and managed by SBC as a replacement maintenance spare structure.
- 8.3.4 Existing spare structure may be used for restoration purposes providing the structure is returned to an operational spare status after restoration work is complete. Any spare structure not returned will be included in the active leased inventory of the Attaching Party using the spare structure. Like-for-like replacement of a spare structure will be considered as a returned operational spare structure.

8.4 Costs for Restoral

Each Attaching Party will be responsible for their own costs incurred during restoral. Any dispute or concern of responsibility of cost will not interfere with service restoral.

9. FEES

9.1 Cost Recovery

- 9.1.1 Attaching Party shall reimburse SBC for all costs incurred by SBC associated with an Attaching Party's information request, Make Ready Survey, Make Ready work, and inspection work whether or not access is granted. Charges may be on an actual cost basis or unit costs.
- 9.1.2 Upon completion of the Make Ready Survey, SBC will send the Attaching Party an advance payment cost estimate consisting of the calculated fixed charge or the estimated amount to be adjusted upon completion of work.
- 9.1.3 An advance payment cost estimate will be sent to the Attaching Party and payment is required before SBC will issue an occupancy permit. The advance payment cost estimate will be based on the Attaching Party's application for access. Attaching Party will be required to pay the advance payment cost estimate within 45 days after receipt to maintain their position in the priority queue. If SBC determines that the initial advance payment cost estimate will not cover the costs, an adjusted cost estimate will be sent to the Attaching Party. Attaching Party shall pay the adjusted advance payment cost estimate within 45 days after receipt to maintain its position in the priority queue. If, after the work is completed, it is determined that the advance payment cost estimate or the adjusted advance payment cost estimate were too high, the balance will be trued-up to the Attaching Party, where applicable and a refund issued.
- 9.1.4 Attaching Party may also be required to pay other owners and/or Attaching Parties for work to be completed by them to accommodate a structure access request.

9.2 Attachment Rental Fees

In addition to the above associated costs, the Attaching Party will be required to pay all applicable attachment rental fees. Attaching Parties will be billed in advance on a semi-annual basis, typically in January and July of each year. The attachment rates are for a period of one year from January 1 through December 31. Attaching Parties will be given written notice prior to any rate changes.

10. RELOCATION OF ATTACHING PARTIES' FACILITIES

- 10.1 If SBC is required by a governmental entity, court or Commission to move, replace or change the location, alignment or grade of its conduits or poles, each Party shall bear its own expenses of relocating its own equipment and facilities.

- 10.2 SBC may also request Attaching Parties to move their facilities at other times in order to make room for additional facilities on the structure. In these cases the expenses for transfer of facilities will be borne by the party for whom the request is made.
- 10.3 Attaching Parties will transfer all facilities within 30 days of notification from SBC that the structure is ready for the transfer. In all cases, if the Attaching Party fails to make the transfer within 30 days, SBC may make the transfer at the owner's expense.

11. UNAUTHORIZED ATTACHMENTS

- 11.1 If unauthorized attachments on or in SBC Structure, which includes poles conduits and ducts, are discovered, SBC will provide written notice to the owner of the unauthorized attachment. The owner must, within 30 days of receiving such notice:

11.1.1 Immediately prepare and submit a Structure Access Request for the attachments

11.1.2 pay a penalty in the amount of five (5) times the annual attachment and occupancy fees after the expiration of the initial thirty (30) day notice.

11.1.3 correct any violations of placement standards or pay the cost for such corrections

11.1.4 pay for SBC expenses to administer and record the attachments

- 11.2 If the owner of the unauthorized attachments fails to pay the attachment fee, fails to submit the necessary Structure Access Request, or fails to make the necessary standards corrections within the designated time intervals,

- 11.3 SBC shall have the right to remove such unauthorized attachments from SBC's Structure at the owner's expense.

11.4 SBC CALIFORNIA

SBC CALIFORNIA will charge, automatically, a penalty of \$500.00 per violation. For purposes of applying the \$500.00 penalty, each unauthorized pole attachment shall constitute a separate violation.

12. CHANGES TO GUIDELINES

- 12.1 SBC reserves the right to change and update these Guidelines for Access to SBC Structure.
- 12.2 The SBC Primary Point of Contact shall provide notice of any change in the Guidelines to all Attaching Parties and the Public Utilities Commission of Ohio. No change shall be effective until the date specified in the notice of change, which shall be at least sixty (60) days from the date of the notice.

13. NOTICES

- 13.1 Any notice to be given to either Party under this Agreement shall be sent by
 - 13.1.1 certified mail, return receipt requested
 - 13.1.2 overnight mail
 - 13.1.3 facsimile with a confirmation, followed by an original sent by regular US mail or overnight mail

- 13.1.4 or other methods mutually agreed upon
- 13.2 Notices to SBC shall be sent to the appropriate SBC Primary Point of Contact. The Primary Points of Contact are listed in Appendix 1 to these guidelines.
- 13.3 Any change of address, either by SBC or the Attaching Party, shall be handled in the above-prescribed manner.

APPENDIX 1 - PRIMARY POINTS OF CONTACT

- **Arkansas (Includes Missouri Area Code 417)**

Structure Access Manager
1111 W Capitol Ave.
Room 525
Little Rock, Ark 72201
(501) 373-6301

- **California**

Los Angeles & Ventura Counties
Structure Access Manager
1409 Van Owen Street, Room 105A
Van Nuys, CA 91405
(818) 373-5947
(818) 373-8537

Orange, San Diego, Imperial, Riverside and Bernardino Counties
Structure Access Manager
4220 Arizona Street, Room 100
San Diego, CA 92104
(619) 574-4252
(619) 574-4253

Northern & Central California (except North and South Bay)
Structure Access Manager
3675 T Street, Room 170
Sacramento, CA
(916) 453-7043

South Bay (South San Francisco to San Jose to Freemont)
Structure Access Manager
3475 B North 1st Street, Room 250
San Jose, CA 95134
(408) 493-7066
(408) 493-7119

North Bay (San Francisco, Hayward North to Livermore)
Structure Access Manager
3401 Crow Canyon Road, Suite 2000
San Ramon, CA 94583
(925) 823-1212

- **Connecticut**

Structure Access Manager
1441 North Colony Road
Meriden, CT 06450
(203) 238-5620

- **Illinois, Indiana, Michigan, Ohio, Wisconsin**

Structure Access Manager
23500 Northwestern Highway, Room E230
Southfield, Michigan 48075

(888)395-ASAC (2722)

- **Kansas (Includes Missouri Area Code 816)**

Structure Access Manager
500 E 8th St.
Room 690
Kansas City, Mo. 64106
(816) 275-1640

- **Missouri (Includes Area Code 314, 557, 573, 636, 660)**

Structure Access Manager
12930 Olive Blvd
2nd Floor
Creve Coeur, Mo. 63141
(314) 275-0083

- **Nevada**

Structure Access Manager
645 E. Plumb Ln
Reno, Nevada 89502
(775) 333-3850

- **Oklahoma**

Structure Access Manager
5305 E 71st St
Floor 1
Tulsa, OK 74136
(918) 596-6873

- **Texas**

Structure Access Manager
11930 Airline, Room 105
Houston, TX 77037
(281) 878-5500

AT&T Wholesale Amendment

Contract Number: 9196

**Amendment to
Interconnection Agreement
between
Nextel West Corp.
and
Southwestern Bell Telephone Company d/b/a AT&T Kansas**

Pursuant to this Amendment (the "Amendment") Nextel West Corp. ("Nextel") a Delaware corporation and Southwestern Bell Telephone Company d/b/a AT&T Kansas ("AT&T Kansas"), hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Interconnection Agreement between the Parties approved by The State Corporation Commission of the State of Kansas ("Commission") on October 12, 1998, as amended ("the Agreement").

WHEREAS, Sprint and AT&T Kansas agree to amend the Agreement as set forth herein;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sprint and AT&T Kansas hereby covenant and agree as follows:

1. The Parties agree to delete Section 18.2.1 in its entirety and replace it with the following:
 - 18.2.1 AT&T Kansas and Carrier agree to interconnect pursuant to the terms defined in this Agreement for an initial period terminating March 9, 2013, and thereafter the Agreement shall continue in force and effect unless and until terminated as provided herein. Either Party may terminate this Agreement by providing written notice of termination to the other Party, such written notice to be provided at least sixty (60) days in advance of the date of termination; provided, however, that no such termination shall be effective prior to the date one year from the Effective Date of this Agreement. By mutual agreement, AT&T Kansas and Carrier may amend this Agreement in writing to modify its terms.
2. All other provisions of this Agreement, as amended, shall remain in full force and effect.
3. Either or both of the Parties are authorized to submit this Amendment to the appropriate Commission for approval subject to section 252(e) of the Federal Telecommunications Act of 1996.
4. This Amendment shall be filed with and is subject to approval by the Commission and shall be effective upon the date of the last signature of both Parties.

Signature Page

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

Nextel West Corp.

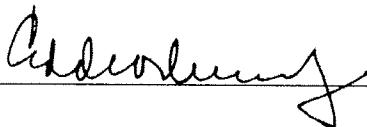
By: 

Name: PAUL W. SCHIEBER
(Print or Type)

Title: VP ACCESS & ROAMING PLN
(Print or Type)

Date: 5/5/10

**Southwestern Bell Telephone Company
d/b/a AT&T Kansas by AT&T Operations,
Inc., its authorized agent**

By: 

Name: Eddie A. Reed, Jr.

Title: Director-Interconnection Agreements

Date: 5-12-10

AT&T Wholesale Amendment

Contract Number: 10177

AMENDMENT TO INTERCONNECTION AGREEMENT

BETWEEN

NEXTEL WEST CORP.

AND

SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A AT&T KANSAS

Pursuant to this Amendment (the "Amendment") Nextel West Corp. ("Nextel"), a Delaware corporation and Southwestern Bell Telephone Company d/b/a AT&T Kansas ("AT&T Kansas")¹, hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Interconnection Agreement between the Parties approved by the Kansas Corporation Commission ("Commission") on October 12, 1998, as amended ("the Agreement").

WHEREAS, Nextel and AT&T Kansas agree to amend the Agreement as set forth herein;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Nextel and AT&T Kansas hereby covenant and agree as follows:

1. The Parties agree to modify Section 5.1 in the Appendix Pricing to now read as follows:

5.1 Inter MTA Traffic Factor

Land to Mobile (originating) (2)	1%
----------------------------------	----

Mobile to Land (terminating): Incidental Terminating InterMTA Traffic Percentage: Notwithstanding the frequency contained in Section 4.2.2, the Parties will use the Surrogate Method Based on Cell Studies as Agreed upon by the Parties (Note: If the Parties are unable to agree on a surrogate method regarding the volume of InterMTA traffic that is sent by Carrier to SWBT for termination, SWBT may rely upon the best data reasonably available to bill Carrier for such traffic, and Carrier, may, if it chooses, challenge the data and amount billed, pursuant to the Agreement's dispute resolution procedures, as not accurately reflecting the actual volume of InterMTA Traffic being sent to SWBT for termination.) The InterMTA Factor that is arrived at by the Parties, whether through use of a surrogate method, or through the use of actual cell site data, or through the dispute resolution procedures, is Carrier specific, and any other carrier adopting this Agreement, will have to arrive at its own carrier-specific InterMTA Factor, with SWBT, either through the use of actual cell site data, or through a surrogate method agreed upon by Carrier and SWBT, or through the dispute resolution procedures, provided by this Agreement.

2. Notwithstanding the changes made to the Agreement by this Amendment, neither the Agreement nor this Amendment shall be in any way construed to be an admission by either Party regarding the routing or

¹ Southwestern Bell Telephone Company is doing business in Kansas as "AT&T Kansas."

compensation treatment applicable to any form of InterMTA Traffic exchanged between the Parties outside the context of implementing and enforcing the Agreement. Further, except for a proceeding to enforce the Agreement, neither Party shall raise the terms regarding the treatment of InterMTA Traffic contained in this Agreement for any purpose in any regulatory, legislative, court or arbitration proceeding between the parties ("Subsequent Proceedings"), and each party expressly reserves all other rights regarding the advocacy positions it may take regarding the treatment of InterMTA Traffic in such Subsequent Proceedings.

3. Either or both of the Parties shall submit the conforming ICA Amendment to the appropriate Commission for approval subject to section 252(e) of the Federal Telecommunications Act of 1996. Said amendments shall be filed with and are subject to approval by the appropriate Commission.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

Nextel West Corp.

By: Dulmira

Name: PAUL W SCHERER

Title: VP ACCESS & ROAMING PLAN

Date: 4/17/11

Southwestern Bell Telephone Company d/b/a
AT&T Kansas by AT&T Services, Inc., its
authorized agent

By: William A. Bockelman

Name: William A. Bockelman

Title: Director

Date: 04/29/2011

AT&T Wholesale Amendment

Contract Number: 17860

**AMENDMENT TO THE AGREEMENT
BETWEEN
365 WIRELESS, LLC
AND**

SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A AT&T KANSAS

This Amendment (the "Amendment") amends the Agreement for Interconnection and Reciprocal Compensation by and between Southwestern Bell Telephone Company d/b/a AT&T Kansas, hereinafter referred to as "AT&T" and 365 Wireless, LLC ("Carrier"). AT&T and Carrier are hereinafter referred to collectively as the "Parties" and individually as a "Party".

WHEREAS, AT&T and Carrier are parties to a Agreement for Interconnection and Reciprocal Compensation under Sections 251 and 252 of the Communications Act of 1996 for Commercial Mobile Radio Service (CMRS), approved April 30, 2012 and as subsequently amended (the "Agreement"); and

WHEREAS, pursuant to the Report and Order and Further Notice of Proposed Rulemaking issued by the Federal Communications Commission ("FCC") on November 18, 2011 (FCC 11-161), and as amended by the FCC on December 23, 2011 (FCC 11-189), the Parties desire to amend the Agreement to establish bill-and-keep as the compensation arrangement for IntraMTA Traffic exchanged between the Parties.

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. The Parties agree to include the following definition of IntraMTA Traffic:

"IntraMTA Traffic" means traffic which, at the beginning of the call, originates and terminates within the same MTA and is exchanged between the End User, end user, Customer or customer of AT&T and the Carrier's, CMRS Provider's, CMRS provider's End User, end user, Customer or customer. All references to Local Traffic, local traffic, and/or Section 251(b)(5) Traffic in the Agreement are hereby replaced by the term "IntraMTA Traffic".

2. As of the Effective Date of this amendment (in compliance with ¶8 of FCC Order 11-189), the Parties shall implement bill-and-keep for IntraMTA Traffic exchanged between the Parties over Type 2A, Type 2B or Type 1 interconnection trunks and facilities. Specifically, neither Party shall compensate the other Party for IntraMTA Traffic exchanged between the Parties.
3. As of the Effective Date, for terminating intrastate or interstate InterMTA Traffic, i.e. non-IntraMTA Traffic, Carrier shall pay a blended rate that consists of the average of AT&T's intrastate and interstate rates for the switched network access service rate elements, on a per minute of use basis, which are set forth in each, AT&T's Intrastate Access Services Tariff, and Interstate Access Services Tariff, as those tariffs may be amended from time to time. This provision does not apply to transit traffic.
4. The Parties agree to remove terminating InterMTA Traffic rate(s) and to replace the rates for Mobile to Land Interconnection Rates per Minute of Use for Type 2A, Type 1 and Type 2B in Appendix Pricing of the Agreement with the rates contained in Exhibit A attached hereto. IntraMTA Traffic will continue to be referenced as Section 251(b)(5) Calls Transport and Termination in Exhibit A. In all other respects the Appendix Pricing shall remain the same.
5. The Parties agree that the terms and conditions of this Agreement shall apply only to IntraMTA Traffic, as defined herein. Further, the terms and conditions shall only apply to traffic originated by, or terminated to, a wireless carrier's network; e.g., this Agreement specifically does not include traffic that only uses a wireless carrier's FCC licensed CMRS services to relay the call from one wireline facility to another.
6. There shall be no retroactive application of any provision of this Amendment prior to the Effective Date of an adopting Carrier's agreement.
7. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.



8. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law, or under the intervening law, or regulatory change provisions, in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.
9. This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with such Agreement.
10. This Amendment shall be filed with and is subject to approval by the State Commission and shall become effective ten (10) days following approval by such Commission ("Amendment Effective Date").

365 Wireless, LLC

Signature: Gwen E. MessnerName: Gwen E. Messner
(Print or Type)Title: VP of Finance
(Print or Type)Date: 1/24/13Southwestern Bell Telephone Company d/b/a AT&T
KANSAS by AT&T Services, Inc., its authorized agentSignature: Patrick DohertyName: Patrick Doherty
(Print or Type)Title: Director - Regulatory
(Print or Type)Date: 1-29-13

Attachment	State	Product	Rate Element Description	COS (Class of Service)	USOC	Zone	Monthly Recurring Charge (MRC)	Non-Recurring Charge (NRC) First	Non-Recurring Charge (NRC) Additional	Per Unit
W2	KS	Local Interconnection (Call Transport and Termination)	Section 251(b)(5) Calls Transport and Termination - Type 2A				\$0.00			MOU
W2	KS	Local Interconnection (Call Transport and Termination)	Section 251(b)(5) Calls Transport and Termination - Type 2E				\$0.00			MOU
W2	KS	Local Interconnection (Call Transport and Termination)	Section 251(b)(5) Calls Transport and Termination - Type 1				\$0.00			MOU