

AN ORDINANCE **91488**

GRANTING WESTERN INTEGRATED NETWORKS OF TEXAS OPERATING L.P. (WIN) A FIFTEEN (15) YEAR FRANCHISE AGREEMENT TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE/BROADBAND COMMUNICATIONS SYSTEM THAT UTILIZES PUBLIC RIGHTS-OF-WAY, FOR A CONSIDERATION OF 5% OF GROSS REVENUES TO BE RECEIVED BY THE CITY; PROVIDING FOR THREE (3) READINGS AND A PUBLIC HEARING; ESTABLISHING AN EFFECTIVE DATE OF SIXTY (60) DAYS AFTER THE THIRD AND FINAL READING OF THIS ORDINANCE; AUTHORIZING THE CITY MANAGER TO ENTER THE FRANCHISE AGREEMENT WITH WIN; AND TERMINATING THE INTERIM LICENSE AGREEMENT WITH WIN UPON THE EFFECTIVE DATE OF THE FRANCHISE AGREEMENT.

* * * * *

WHEREAS, Western Integrated Networks of Texas Operating L.P. ("WIN"), which is a Delaware Limited Partnership formed in November 1999 and is a subsidiary of Western Integrated Networks, LLC, has applied for a Franchise to utilize City rights-of-way in order to construct, operate and maintain a City-wide cable television/broadband telecommunications system to provide the residents of San Antonio and the surrounding area with cable television, telephone and high-speed internet service; and

WHEREAS, WIN has had similar systems already approved in Sacramento, California and Austin, Texas; and

WHEREAS, this use of the City's streets will be conducted in such a manner that it is not inconsistent with use of the City's public rights-of-way or the Master Plan; and

WHEREAS, WIN proposes to build a one (1) gigahertz band capacity system utilizing state-of-the-art telecommunications equipment and local fiber optic network infrastructure trunking facilities; and

WHEREAS, WIN's network will consist of a primary, fully redundant, self-correcting ring of fiber optic transportation cables which will be placed underground, by directional boring where feasible, in the central business district and other appropriate areas, including Utility Conversion Districts, otherwise, those facilities will be connected to overhead utility poles; and

WHEREAS, barring no material delay which results from an act of God, national emergency, strike or delay caused by the City, within sixty (60) months of the effective date of the Franchise, WIN will complete the build-out of its system in a non-discriminatory, equitable manner, and provide service to all customers City-wide who live in areas with a density of at least twenty-five (25) dwelling units per street mile; and

WHEREAS, WIN will abide by all of the City's right-of-way management rules and police powers contained in other similar license agreements and franchises, including those related to: 1) construction, restoration and maintenance of rights-of-way, which include those rules related to the City's Street Cut Policy, Major Thoroughfare Plan and Tri-Party Downtown Transportation Improvements; 2) submission performance bonds, insurance, indemnity and a \$1 million prepaid Franchise fee and a \$100,000 Security Fund, which will be retained as liquidate damages in the event WIN fails to construct, operate and maintain its system as obligated; 3) relocation of its facilities upon the request of City and at no cost to City; 4) abandonment protections for the City; and 5) recapture rights which may be exercised by the City; and

WHEREAS, WIN will be required to abide by all of the applicable franchise provisions of Article XI of the City's Charter; and

WHEREAS, the Franchise Agreement will allow WIN to operate a cable television system, which will include internet service, however, it does not grant the authority to operate a local exchange telecommunications system; and

WHEREAS, the City will receive 5% of the gross revenues received by WIN for services provided utilizing the system authorized by this Franchise, and WIN has agreed to provide \$150,000 in scholarships to students studying communications at local colleges and universities; and

WHEREAS, this Franchise is competitively neutral with the Franchise of the incumbent provider Time Warner Cable, however, since Time Warner Cable's Franchise expires in approximately three (3) years, WIN has agreed to reopen and renegotiate provisions of the Franchise Agreement in order maintain neutrality; and

WHEREAS, WIN will reimburse Time Warner Cable on a per subscriber basis for equipment and facilities costs associated with the provision of public, educational and government ("PEG") channel services, and will contribute \$200,000 towards the start-up costs associated with creating a third party nonprofit entity to operate said PEG channel services, as well as costs for the maintenance and operation of the equipment and facilities to be used for the PEG services; and

WHEREAS, prior to offering local exchange telecommunications service to its customers, WIN will obtain the City's standard right-of-way use permit which will be developed by the City for all certified telecommunications providers that maintain facilities in the City's rights-of-way; and

WHEREAS, it is the City's intent to treat other similarly situated cable television/broadband telecommunications system providers on a competitively neutral basis; **NOW THEREFORE**;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. There is hereby granted to Western Integrated Networks of Texas Operating L.P. ("WIN") a fifteen (15) year non-exclusive Franchise to use the City's public rights-of-way to construct, operate and maintain a cable/broadband communications system, for a consideration of 5% of gross revenues to be received by the City pursuant to the terms and conditions set out in the Franchise Agreement attached hereto and incorporated herein, in substantially final form, as Attachment I. A final original of the Franchise Agreement will be attached hereto and incorporated herein upon final execution as Attachment II.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute a Franchise Agreement with WIN.

SECTION 3. The Director of Finance is authorized to record and account for the prepayment of franchise fees in the amount of \$1,000,000 in accordance with Generally Accepted Accounting Principals and the terms of the Franchise agreement. The 5% of gross revenues to be received by the City under of the Franchise Agreement shall be deposited in the General Fund, 11-000. The \$500,000 performance bond and \$100,000 cash deposit shall be recorded in the Agency & Trust Fund, 69-002.

SECTION 4. The current Interim License Agreement, which was passed by Ordinance on March 23, 2000, is hereby terminated upon the effective date of this Franchise Agreement.

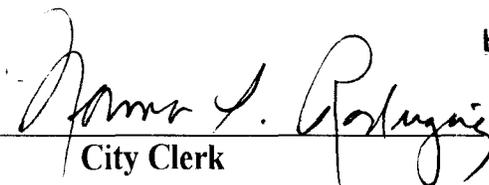
SECTION 5. This Ordinance shall not be passed until it's third (3rd) and final reading and a public hearing, which readings shall be at three separate regular meetings of the Council. The last reading shall take place not less than thirty (30) days from the first reading. After the passage of this Ordinance on its first reading, is shall be published once in a newspaper of general circulation in the City, advising all persons that a public hearing will be held on this Franchise on the date stated. This Ordinance shall take effect sixty (60) days after its passage on its third and final reading, the Ordinance having passed each reading by a majority vote of the Council, and the Franchise Agreement shall continue in force and effect for a term to expire at the end of the day on June 30, 2015.

PASSED AND APPROVED AND ADOPTED ON FIRST READING THIS 23RD DAY OF MARCH, 2000


MAYOR

Howard W. Peak

ATTEST:


City Clerk

00-17

After passage on the first reading, a notice of time, date and place said Ordinance would be given a public hearing and considered for passage was published in a newspaper of general circulation in the City of San Antonio, said publication being on the 26th day of March, 2000, and being more than ten days prior to the time designated for said hearing. The public hearing was held at that time, date and place specified in the newspaper.

PASSED ON SECOND READING THIS 6th DAY OF April, 2000



MAYOR

Howard W. Peak

ATTEST: Thomas S. Rodriguez
City Clerk

PASSED ON THIRD AND FINAL READING THIS 27th DAY OF April
2000,



MAYOR

Howard W. Peak

ATTEST: Thomas S. Rodriguez
City Clerk

APPROVED AS TO FORM: Veronica M. Zetzsche
for City Attorney

00-17

CITY OF SAN ANTONIO
Finance Department
Director's Office

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
2000-11-14 A 10:46

TO: Terry Brechtel, Executive Director of Financial and Administrative Services
FROM: Octavio Peña, CPA, Director, Finance Department; John German, Director, Public Works
COPIES: File
SUBJECT: Western Integrated Networks - Franchise Agreement and First Amendment

DATE: December 14, 2000

Franchise Agreement: Western Integrated Networks of Texas Operating L.P. including First Amendment.

Ordinance Authorizing Franchise Agreement: #91488

Ordinance Authorizing First Amendment: #92694

Date of Ordinance Authorizing Franchise Agreement: April 27, 2000

Date of Ordinance Authorizing First Amendment: October 12, 2000

Policy Analysis:

The franchise agreement authorizes Western Integrated Networks of Texas Operating L.P. (WIN) to construct, operate and maintain a Broadband Telecommunications System to provide cable television programming, telephone service and high-speed internet service. The services proposed by WIN through its system will require a franchise agreement for the cable television programming and high speed internet services. The local telephone service will be addressed through a separate permit process in accordance with State law.

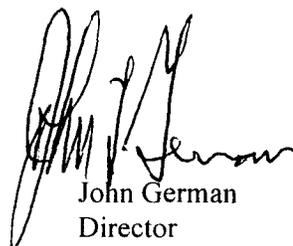
The first amendment allowed for an additional sixty days for the City and WIN to negotiate the details of the City Network Agreement (Article 39(b)) of the Franchise Agreement.

Coordination:

This franchise agreement has been coordinated with the Department of Public Works and City Attorney's Office.



Octavio Peña, CPA
Director
Finance Department



John German
Director
Public Works

**FIRST AMENDMENT TO THE
CABLE TELEVISION FRANCHISE AGREEMENT
WESTERN INTEGRATED NETWORKS**

This First Amendment to the Cable Television Franchise Agreement ("First Amendment") is entered into by the CITY OF SAN ANTONIO, a Texas Municipal corporation ("City"), acting by and through its City Manager pursuant to and duly authorized by Ordinance No. 92694, passed and approved on October 12, 2000, and Western Integrated Networks of Texas, L.P. ("WIN") acting by and through its duly authorized designated officer.

A. City and WIN entered into the Cable Television Franchise Agreement ("Franchise") pursuant to City of San Antonio Ordinance No. 91488, which was passed and approved at three readings on March 23, April 6, and April 27, 2000.

B. City and Win agree to amend a specific provision of the Franchise as set out in this First Amendment:

Article 39(b) ("City Network") is amended to allow for an additional sixty (60) days for the parties to negotiate the details of the City Network Agreement.

Except as otherwise expressly modified hereby, all terms and provisions of the Franchise are ratified and confirmed and shall remain in full force and effect, enforceable in accordance with their terms.

EXECUTED AND SIGNED, in duplicate originals, this 20th day of November, 2000.

CITY OF SAN ANTONIO

**WESTERN INTEGRATED NETWORKS OF
TEXAS, L.P.**

Tam M. Briseño
ALEXANDER E. BRISEÑO
City Manager

William J. Mahon, Jr.
WILLIAM J. MAHON, JR.
Senior Vice President

70
ATTEST:
Ann DeLuca
City Clerk
APPROVED AS TO FORM:
[Signature]
City Attorney

ATTEST:
Sharon A. Mau
Printed Name: Sharon A. Mau
Title: Legal Affairs Manager

**CABLE TELEVISION FRANCHISE AGREEMENT
WITH WESTERN INTEGRATED NETWORKS
OF TEXAS OPERATING L.P.**

This CABLE TELEVISION FRANCHISE AGREEMENT is made and entered into by and between the City of San Antonio, a Texas Municipal Corporation and Home-Rule Municipality, acting herein through its City Manager pursuant to Ordinance No. 91488, which was passed and approved on March 23, April 6, and April 27, 2000, respectively, as Franchisor, (herein referred to as “Grantor”), and Western Integrated Networks of Texas Operating L.P., a Delaware limited partnership, as Franchisee (herein referred to as “Grantee”) with its principal place of business being located at 2000 S. Colorado Blvd., Suite 2-800, Denver, Colorado 80222, and both parties do hereby **WITNESSETH**:

WHEREAS, Grantee, which is a privately held cable television company with its corporate offices in Denver, Colorado did appear before the City Council to petition that the company be awarded a non-exclusive Franchise to construct a cable television system in the City of San Antonio, and

WHEREAS, Grantee desires use of certain Public Rights-Of-Way within the City of San Antonio for the purpose of constructing, maintaining and operating Grantee’s Cable Television System for the purpose of offering Cable Television Services as defined by this Franchise Agreement and pursuant to local, state and federal laws, and such use requires a Franchise Agreement; and

WHEREAS, this use of the Grantor’s streets will be conducted in such a manner that is not inconsistent with the use of the Grantor’s Public Rights-Of-Way; and

WHEREAS, the Company stated that it was prepared to invest over \$500 million in the development of the San Antonio cable TV system, and that annual company employment is expected to exceed 300 persons when the system is completely constructed and operational, and that such employment would yield a payroll over \$ 7 million annually, and

WHEREAS, this Franchise Agreement will allow the Grantee to operate a Cable /Broadband System, which will include Internet service, but it does not grant the authority to use the Public Right-of-Way to operate a telecommunications system; and

WHEREAS, prior to offering local exchange telecommunications service to its customers, the Grantee will follow the City’s standard right-of-way ordinances, rules, policies or requirements which may be developed by the City for all certificated telecommunications providers and any other entities that use or maintain facilities in the City’s rights-of-way; and

WHEREAS, Grantee has proposed to construct a Cable/Broadband System with a one (1) gigahertz band capacity utilizing state-of-the-art broadband equipment and local fiber optic network infrastructure trunking facilities; and

WHEREAS, City Council has determined that such a Cable/Broadband System will further the public convenience and public welfare of the inhabitants of San Antonio; and

WHEREAS, it is in the City's interest to set forth rights, duties and obligations of Grantee in this Franchise Agreement; **NOW THEREFORE**:

THE ABOVE PARTIES AGREE TO THE FOLLOWING:

SECTION 1. SHORT TITLE. This Agreement shall be known and may be cited as the Western Integrated Networks Cable Television Franchise Agreement.

SECTION 2. DEFINITIONS. For purposes of this Agreement the following terms, phrases, words, abbreviations, and their derivations shall have the same meanings given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive. All words that are not defined herein shall have the meaning ascribed to them under the Cable Act, and all other words not defined by this Franchise or the Cable Act shall be construed by ascribing the ordinary meaning to such words.

- a. "Access Channel" means any non-commercial public, educational or government channels.
- b. "Basic Service" shall mean any service tier which includes the retransmission of local television broadcast service, including the delivery of broadcast signals and programming originated over the network, covered by the minimum monthly charge paid by subscribers. Basic cable tier must include: (1) all local television broadcast stations carried on the system by virtue of the Cable Act's must-carry and retransmission consent provisions; (2) all public, educational and governmental ("PEG") access channels; and (3) any other local television broadcast stations carried on the system.
- c. "Broadcast" means the over-the-air transmission of electro-magnetic audio or video signals.
- d. "Cable Act" shall mean the Cable Communications and Policy Act of 1984, found in 47 U.S.C. § 521 *et. seq.*, and as thereafter, or hereinafter, amended.
- e. "CATV" or CATV system shall mean Cable /Broadband System as hereinafter defined.

- f. "Cable/Broadband System" shall have the meaning ascribed to the term "Cable System" under the Cable Act.
- g. "Cable Service" shall have the meaning ascribed to it under the Cable Act, and shall include all Internet services, including Internet access service, but shall not include the provision of telecommunications service.
- h. "City" means the City of San Antonio, Texas.
- i. "City Council" means the governing body of the City of San Antonio.
- j. "City Manager" means the chief administrative officer of the City of San Antonio or his designated agent.
- k. "Cablecast" shall mean to distribute over a cable television system.
- l. "Channel" shall mean a band of frequencies six-megahertz in width in the electromagnetic spectrum.
- m. "Converter" shall mean an electronic device capable of converting electronic signals to other than their original frequencies so as to eliminate interferences within television receivers of subscribers.
- n. "Dwelling unit" shall mean a room or suite of rooms, in a building or portion thereof, used for living purposes by one family.
- o. "Educational Authorities" shall mean those *public* or private school districts within the City of San Antonio, and/or those colleges and universities within the City of San Antonio, whether operating independently or in unison in relation to the transmission or reception of programming through the CATV system.
- p. "FCC" shall mean the Federal Communications Commission.
- q. "Franchise" shall mean the authorization granted by this ordinance to construct, operate, and maintain a CATV system in the City of San Antonio.
- r. "Full Expanded Service" shall mean the level of service received by a CATV system subscriber for an additional charge over the Basic Service charge and which will allow for the capability to receive all services being offered by the grantee with the exception of pay television services or limited access services.
- s. "Grantor" shall mean the City of San Antonio.
- t. "Grantee" shall mean Western Integrated Networks of Texas Operating L.P., a Delaware limited partnership.

- u. "Gross Annual Revenues" shall mean all revenues derived *by* the Grantee, its affiliates or subsidiaries from and in connection with the operation of a Cable/Broadband System as authorized by this Franchise to provide Cable Service. For the purposes of this section, this term shall include, but not be limited to, installation fees, fees for Basic Service, Fees for Premium Service, fees for any cable programming service, and any other subscriber fees, charges for lease of channels, revenue from advertising, fees, charged for carriage of programming on the system, and all Internet services, including Internet access service. The term shall not include any taxes on services furnished by the Grantee, which is imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the Grantee for such governmental unit. Revenue received by the City under this Franchise is not such a tax.
- v. "Person" shall mean any individual, firm, partnership, association, corporation, company, or organization of any kind.
- w. "Pay Television" shall mean the delivery over the CATV system of video and audio signals in intelligible form to subscribers for a fee or charge over and above the charge for basic or full or expanded services, on a per program, per channel, or other subscription basis.
- x. "Premium Service" shall mean the same as pay television.
- y. "Subscriber" shall mean a recipient of services, which are delivered over the CATV system.
- z. "Public Rights-of-Way" or "Right-of-Way" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive or other easement now or hereafter held by the City and shall include other easements or rights of way as shall be now held or hereafter held by the City and its Grantee for the purposes of installing or transmitting cable television system transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.
- aa. "User" shall mean a person utilizing a cable television system channel for purposes of production or transmission of materials to subscribers.

SECTION 3. GRANTING CLAUSE.

a. There is hereby granted by the Grantor to Grantee, the right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the Public Rights-of-Way now laid out or dedicated, and all extensions thereof, and additions thereto in the City, a Cable/Broadband System, including, poles, wires, cables, underground conduits,

manholes, and other cablevision conductors and fixtures necessary for the maintenance, operation, and distribution of Cable Service (including Internet service).

b. In accordance with Article XI, Section 130 of the City Charter, the right to use and occupy said Public Rights-of-Way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said Public Rights-of-Way to any person at any time during the period of the Franchise, provided, however, that any such additional rights may only be granted on a competitively neutral basis with this Franchise. For purposes of this Franchise Agreement, the term "competitively neutral," as used or construed in the Federal Telecommunications Act of 1996 or any amendments thereafter, shall not control the meaning of "competitive neutrality" as used in this Franchise Agreement.

c. This Franchise does not grant the authority to use the Public Right-of-Way to operate a telecommunications system and prior to offering local exchange telecommunications service to its customers, the Grantee will follow the City's standard right-of-way requirements which will be developed consistent with state law for all certificated telecommunications providers that maintain facilities in the City's rights-of-way.

SECTION 4. FRANCHISE TERM.

a. The Franchise term and the rights, privilege, and authority hereby granted shall take effect and be in force sixty days from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of fifteen (15) years, provided that within thirty (30) days after the date of the final passage of the Franchise ordinance the Grantee shall file with the City Clerk its unconditional acceptance of the terms of this Agreement and promise to comply and abide by all its provisions, terms, and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by and on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths. In the event that such instrument as aforesaid shall not be filed within the time required, the ordinance and the rights, privileges, and Franchise as hereby granted shall ipso facto be, and become, terminated, null, and void. In addition to the acceptance by the Grantee provided for herein, Grantee's parent company shall also file an unconditional acceptance of the terms of the Franchise ordinance and agrees to guarantee the obligations and undertakings of Grantee under the Franchise and to perform in the event of default by its subsidiary company.

b. Reopener.

(i) Within four years (4) years of the Effective Date of this Franchise, the City shall have the exclusive right to reopen and renegotiate the following terms or clauses contained in this Franchise: 1) Section 12 - Public, Educational and Government Channels; 2) Section 13 - Installation and Maintenance of Service Connections in Public Buildings; and 3) Section 17 e. related to the City's right to audit. Subject to reasonableness on the part of the City, the City has the exclusive right to unilaterally modify each clause which has been reopened pursuant to this section 4b(i) to the extent necessary in order that each clause listed above be made consistent and competitively neutral with any renewal Franchise the City hereinafter grants to the incumbent provider (Time Warner), and other similarly situated cable service providers. Under no circumstances, however, shall Grantee be required to provide more than six (6) PEG access

channels. It is the City's intent to negotiate provisions reopened under this subsection 4b with the goal of accomplishing competitive neutrality among all Cable/Broadband System providers franchised by the City, and the Grantee and City each agree to actively negotiate in good faith to accomplish this goal. For purposes of this Franchise Agreement, the term "competitively neutral," as used or construed in the Federal Telecommunications Act of 1996 or any amendments thereafter, shall not control the meaning of "competitive neutrality" as used in this Franchise Agreement.

(ii) Within four (4) years of the effective date of this Franchise, the City may reopen negotiations on any other provision of this Franchise, except for Sections 12 and 13, and amend the Franchise to reflect such negotiated changes, provided, however, that Grantee shall only be required to agree to changes in provisions other than Sections 12 and 13 which do not materially, adversely affect Grantee's rights or materially increase Grantee's obligations hereunder. It is the City's intent to negotiate provisions reopened under this subsection 4b(ii) with the goal of modernizing Franchise language and/or procedures as appropriate, and the Grantee and City each agree to actively negotiate in good faith to accomplish this goal.

(iii) Under no circumstances shall Grantee be required to accept any amendments to this Franchise which would require Grantee to change the network architecture, technology or design, including bandwidth capacity as set forth in Section 11 e. below, of the Grantee's Cable/Broadband System. The City may only so reopen negotiations and amend this Franchise pursuant to this subsection 4b on one occasion. Also, under no circumstances shall the City's right to reopen Sections 12 and 13 of this Franchise pursuant to 4(b)(i) be construed to be a change in network architecture, technology or design.

SECTION 5. FRANCHISE RENEWAL PROCEDURES.

a. This Franchise may be renewed by the City Council upon application by the Grantee pursuant to the procedures established in this Section, and subject to the Cable Act, State of Texas and applicable laws. In the event that renewal procedure laws change during the term of this Agreement, Subsections (b) and (c) below shall be modified in accordance with those changes.

b. Pursuant to the applicable laws which are in effect at the inception of this Agreement, during the six (6) month window between the thirty-sixth (36th) and thirtieth (30th) months prior to the expiration of the Franchise, the Grantee shall inform the City Council in writing of its intent to seek renewal of the Franchise.

c. If Grantee timely notifies the City of its intention to renew under Section 5b., the City Council shall, after public notice, proceed to determine whether: (1) Grantee has substantially complied with the material terms of its existing Franchise; (2) the quality of the Grantee's service has been adequate, with "quality" meaning signal quality, customer service, billing practices and channel capacity, (3) Grantee's renewal proposal is reasonable in light of the community's cable-related needs and interests, taking into account the cost of meeting those needs and interest; and (4) whether the operator is legally, technically, and financially qualified to fulfill its renewal proposal. To determine satisfactory performance, the City Council shall

consider technical developments and performance of the system, and any other particular requirements set out in this Agreement.

d. Provided Grantee has timely given the City notice of its intent to renew under Section 5b., only upon a finding that the Grantee's performance is not satisfactory based upon the procedures and factors set forth in this Section 5., may the City Council deny Grantee's Franchise renewal request.

SECTION 6. TRANSFER OF FRANCHISE.

a. The Franchise granted shall be a privilege to be held in personal trust by the Grantee. Neither the Franchise, Grantee's Cable System, nor control of Grantee shall be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise, or by force or involuntary sale, without prior consent of the City Council expressed by ordinance, and then only on such conditions as may therein be prescribed. The City is hereby empowered to take legal or equitable action to set aside, annul, revoke or cancel the Franchise, or the transfer of the Franchise, if said transfer is not made according to the procedures established in this Agreement.

b. Grantee shall file an application for City consent to any sale, transfer, or assignment at least one hundred and twenty (120) days prior to the proposed date of the sale, transfer, or assignment. The City Clerk shall notify the City Council of the receipt of such application for a proposed sale, transfer, or assignment, and the City Council shall call a public hearing prior to approving or disapproving such sale, transfer, or assignment. Within 30 days of the date of the public hearing, the Grantee shall notify its subscribers of the hearing by announcement on at least two channels of its system, between the hours of 7:00 PM and 10:00 PM, for 15 consecutive days preceding the date of the public hearing, and in addition shall provide written notice to all subscribers. The City Council shall not withhold, delay or condition its consent unreasonably, consistent with federal laws and rules; provided, however, that the proposed assignee shall agree to comply with all the provisions of this Franchise, and the assignee must cure or agree to assume liability for any failure by its predecessor to comply with this Franchise, and Council may consider whether the proposed transfer would reduce or eliminate the competitive delivery of Cable Services in the City to the extent provided in the Cable Act, and the assignee must be able to provide proof of financial responsibility as determined by the Council. If the City fails to act upon such a request within one hundred and twenty (120) days written notice from the Grantee, then such request shall be deemed granted, provided, however, federal law shall preempt this requirement to the extent that federal laws and rules are inconsistent with this one hundred and twenty (120) day requirement.

c. Nothing in this Section shall be deemed to prohibit the assignment, mortgage, or pledge of the system or any part thereof for financing purposes; provided, however, that such financing purposes shall be for the construction, maintenance, operation or improvement of the CATV system authorized by this Franchise.

SECTION 7. FRANCHISE TERRITORY AND LINE EXTENSION POLICY.

a. This Franchise shall be for the present territorial limits of the City of San Antonio and for any area henceforth added thereto during the term of the Franchise. The Grantee hereby agrees to provide Cable Service availability to all property within the City limits as of the effective date of this ordinance in all areas where the housing density reaches 25 dwelling units or more per street mile in accordance with the construction timetable established hereinafter.

b. Upon completion of installation of the cable television system in the initial service area as described above, the Grantee shall extend its services to areas annexed to the City of San Antonio subsequent to the effective date of this ordinance when housing density reaches 25 dwelling units per street mile.

c. Within twelve (12) months after any annexation, the Grantee must submit proof to the City Manager, or his designee, that the same service is provided to newly annexed areas of the City as is provided in other parts of the City.

SECTION 8. CONSTRUCTION TIMETABLE.

a. Upon accepting the Franchise, Grantee shall file the documents required to obtain all necessary Federal, State, and local licenses, and authorizations required for the conduct of its business, and shall submit monthly reports to the City Manager or his designated agent on progress in this respect until all such documents are in hand. In the event that the documents necessary to receive the proper licenses and certificates are not filed, the Council may declare the enabling ordinance null and void.

b. The Grantee herein expressly agrees and affirms that a principal criterion to be utilized in designing and constructing the Cable System shall be to insure that all areas of the City shall be provided service in an equitable manner.

c. In constructing the Cable/Broadband System, the Grantee shall provide service to at least 10% of the total area of the City to be served under this Franchise within the first 24 months following the effective date of this Franchise. At least another 25% of the total area of the City to be served shall be provided service within the second 24 months, and the remaining portion of the total area of the City to be served shall be provided service no later than the last 12 months. Failure to provide service availability to all areas of the City as defined in Section 7, above, within the deadlines set forth in this paragraph 8 c. shall be considered a material breach of the Franchise and subject Grantee to the penalties enumerated hereinafter, except for delays caused by acts of God, national emergencies, strikes or delays caused by the City, its agencies, or other utilities. It is the intent of the Grantee to build-out its system, and offer its services to customers, in an equitable, non-discriminatory manner, and in furtherance of such intent, Grantee agrees to build-out its system in substantial compliance with the activation Phasing Map set forth in Exhibit "A," attached hereto and incorporated herein for all purposes. Grantee shall ensure that access to any Cable Service is not denied to any group because of the income of the residents of the area in which the group resides.

d. By the 1st Reading of the Franchise, the Grantee shall furnish the City Council with an activation Phasing Map illustrating the scheduled order in which Cable Services will become available to certain areas within the City. Within three (3) months after the effective date of this Franchise, Grantee shall furnish a Service Availability Schedule in sufficient detail displaying the estimated dates upon which Cable Service availability shall be furnished to subscribers within sub-areas of each area identified in the Phasing Map, said schedule having been prepared utilizing the criterion established above and in compliance with such criterion. If City Council finds that Grantee's proposed Phasing Map does not comply with the criterion in the last two (2) sentences of Section 8c. above anytime during the three (3) readings of the Franchise Ordinance, then Council may direct the Grantee to modify such Phasing Map in order to satisfy such criterion. After the passage of the Franchise Ordinance on the third (3rd) reading, the Phasing Map, including any modifications made by Council and agreed to by Grantee, shall be deemed accepted by the City, and the Phasing Map shall be attached to this Franchise and be incorporated by reference for all purposes as Exhibit "A." Upon timely submission by Grantee of a Service Availability Schedule in compliance with the criterion above, said Schedule shall be attached to this Franchise and incorporated by reference for all purposes as Exhibit "B." Adherence to the Phasing Map and the Service Availability Schedule by the Grantee shall be mandatory; provided, however, that the Grantee may submit a re-estimated Service Availability Schedule to the City's Supervisor of Public Utilities each quarter. Such re-estimated schedules will take the place of previously submitted schedules. Grantee may be required to appear before Council to make a presentation regarding the change of schedule and Council may direct Grantee to modify its estimates if such estimates do not meet the criterion of this Franchise.

SECTION 9. USE OF STREETS.

a. Construction Work-Regulation By City.

1. The work done by the Grantee in connection with the construction, maintenance, repair, extension, betterment, permanent improvement or enlargement, of the Cable/Broadband System within the Public Rights-of-Way shall be subject to and governed by all pertinent laws, rules, regulations, including City, State, and Federal, both present and future, including the City's Street Cut Manual or requirements related to the use of right-of-way, that are applicable to insuring the work done does not unduly inconvenience the public in the use of the surface of the Public Rights-of-Way and that are uniformly applied to other similarly situated entities occupying the Public Rights-of-Way.

2. All excavations and other construction in the streets shall be so carried on as to interfere as little as practicable with the use of City's Public Rights-of-Way and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the City under the policy and regulatory powers of the City necessary to provide for public convenience.

3. Before initiating construction on Public Rights-of-Way, the Grantee will make all reasonable efforts to attach its Cable/Broadband System to existing poles and to share existing conduit space. Additionally, the Grantee will negotiate in good faith to make its excess conduit space available on a nondiscriminatory basis to other authorized cable and telecommunications providers, consistent with federal state, or City regulations.

4. Grantee shall employ the use of directional boring, where feasible, in the central business district and other appropriate areas, including Utility Conversion Districts. In all sections of the City where the cables, wires and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground.

5. The Grantee shall, prior to the construction of any portion of the transmission and/or distribution plant of the, Cable System, submit detailed plans and specifications of the distribution system to the City Manager or his designated agent for review and approval. No construction shall start until such plans have been approved, provided such consent shall not be withheld unreasonably.

b. Construction, Restoration and Maintenance of Streets.

1. In its construction or maintenance of its installations, Grantee shall comply with all permit procedures and excavation and restoration standards applicable to other utilities operating within the City whenever it is necessary to cut or otherwise disturb the surfaces of the Public Rights-of-Way. In case of disturbance of any street or paved area the Grantee shall, at its own cost and expense and in a manner approved by the City manager or his designated agent, replace, and restore such street and/or paved area in as good a condition as before the work involving such disturbance was done. Grantee shall further warrant all pavement repairs according to the City's Street Cut Policy as more fully defined in Section 29-145 of the City of San Antonio City Code, which is the same standard required of other utilities, and which may be amended from time to time, including repeal and substitution through recodification, provided the same continues to apply uniformly to other providers similarly situated with Grantee. Furthermore, Grantee shall be responsible for compensation for costs associated with restoration, reconstruction and repair to damage to Tri-Party Downtown Transportation Improvements as more fully defined in Section 29-21 of the San Antonio City Code. No public rights-of-way shall be encumbered for a longer period than shall be reasonably necessary to execute the work.

2. The City shall have the power at any time to order and require Grantee to remove and abate any pole, wire, cable or other structure that is dangerous to life and property, and in case Grantee, after notice, fails or refuses to comply, the City shall have the power to remove the same at the expense of Grantee, all without compensation or liability for damages to Grantee. Prior to construction, Grantee shall submit engineering plans to the City for review and approval when such plans are for projects which involve significant amounts of either new cable and underground conduit systems, or both, in Public Rights-of-Way. Approval of such plans shall not be unreasonably delayed, withheld or conditioned by the City.

3. Except in an emergency, Grantee shall not excavate in any Public Right-of-Way without first securing permission of the City, but such permission shall not be unreasonably delayed, withheld or conditioned if the proposed excavation is in accordance with the terms identified in the City's Street Cut Policy as more fully defined in Sections 29-21 and 29-145 of the City of San Antonio Code and this agreement. The City shall be notified as identified in the City's Street Cut Policy as more fully defined in Section 29-145 of the City of San Antonio Code regarding work performed under emergency conditions.

4. The existence and location of underground utilities are commonly indicated on the plans and are taken from the best records available and are not to be construed nor guaranteed to be accurate. The Grantee shall contact the one-call center at TESS (1-800-545-6005), so long as that center is in existence and utilized by the City, otherwise, City shall notify Grantee of any

change and Grantee shall comply with such change, at least forty-eight (48) hours prior to excavation. Grantee has the responsibility to protect and support the various utility facilities during construction.

5. All transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of the Public Rights-of-Way, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets.

c. Work by Others, Construction by Abutting Owners, Alteration to conform to Public Improvements.

1. The City reserves the right to lay, and permit to be laid, electricity, sewer, gas, water and other pipe lines or cables and conduits, as well as drainage pipes and channels and streets and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City of San Antonio, in, across, along, over or under any street, alley, highway, or public place occupied by Grantee, and to change any curb or sidewalk or the grade of any street and to maintain all the City's facilities. In permitting such work to be done by others, the City shall not be liable to Grantee for any damage caused by those persons or entities. Notwithstanding Section 21 of this Franchise, City shall not be liable for any other direct or consequential damage to Grantee or its customers that may arise if the City, its agents, employees or contractors negligently cause the flow of data, video or light impulses through Grantee's lines to be interrupted or stopped. Nothing herein shall relieve any third party from responsibility for damages caused to Grantee by such third party.

2. If the City requires Grantee to adapt or conform its Facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the City, to use, or to use with greater convenience, any right-of-way, street, alley, highway or public place, Grantee shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse Grantee for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of Grantee's facilities; provided, however, that the City shall never be liable for such reimbursement.

d. Abandonment of Facilities. Whenever Grantee intends to abandon any of its Facilities within the Public Rights-of-Way, it shall submit to the Director of Public Works an application requesting permission to abandon the facility, describing the facility to be abandoned and the date of the proposed abandonment. City may require Grantee, at Grantee's expense, to remove the facility from the Public Rights-of-Way or modify the facility in order to protect the public health and safety or otherwise serve the public interest. If this Franchise terminates for any reason, then the facilities that remain in the Public Right-of-way for more than ninety (90) days after the date of termination shall be deemed abandoned. City may remove abandoned facilities and the Grantee shall be liable for all costs associated with the necessary removal of its facilities.

e. Conformance with Major Thoroughfare Plan.

1. Whenever Grantee acquires any interest in real property for the installation or relocation of service lines, or any other Grantee equipment or facilities along or adjacent to any existing street or thoroughfare or any proposed street, highway or thoroughfare as reflected on the City's current Major Thoroughfare Plan, Grantee shall give the City's Director of Public Works and the City's Director of Planning, written notice of such acquisition within thirty (30) days of the date of that acquisition. The City's Director of Public Works and the City's Director of Planning will review the acquisition to see that it does not conflict or interfere with any proposed street or thoroughfare expansion.

2. If either the Director of Public Works or the Director of Planning determines that the acquisition will conflict or interfere with the Major Thoroughfare Plan, then the City will notify the Grantee of the conflict or interference. Thereafter, the City and the Grantee will endeavor in good faith to resolve the conflict or interference. If the conflict or interference cannot be resolved in good faith, then Grantee shall bear all financial losses that result from the conflict or interference and will absolve the Grantee of any responsibility for such losses.

f. Rights in the Event of Abandonment. In the event that the governing body of the City closes or abandons any Rights-of-Way that contain the facilities of the Grantee installed hereunder, any conveyance of land contained in such closed or abandoned right-of-way shall be subject to, and conditioned upon, the rights of the Grantee, if necessary.

g. Supervision by City of Location of Poles and Conduits. All poles placed shall be of sound material and reasonably straight, and shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location and route of all poles, stubs, guys, anchors, conduits, fiber, and cables placed and constructed by the Grantee in the construction and maintenance of its Cable/Broadband System in the City shall be subject to the lawful, reasonable and proper control, direction and/or approval of the City.

h. Attachments to Poles and Space in Ducts.

1. Nothing contained in this Franchise shall be construed to require or permit any pole attachments for electric light or power wires or communications facilities or systems not provided by the Grantee to be attached to the Grantee's poles or other physical plant or placed in the Grantee's conduit. If the City desires pole attachments for electric light or power wires or communications facilities or systems not provided by the Grantee, or if the City desires to place communications facilities or systems not provided by the Grantee in any Grantee duct, then a further separate, noncontingent agreement shall be prerequisite to such attachment(s) or such use of any duct by the City.

2. Nothing contained in this Franchise shall be construed to require or permit any pole attachments of Facilities owned, leased, or controlled by the Grantee to be attached to the City's poles or other physical plant or placed in the City's conduit. If the Grantee desires to place attachments for any Facilities provided by the Grantee, or if the Grantee desires to place any Facilities in any City duct, then a further separate agreement shall be prerequisite to such attachment(s) or such use of any duct by the Grantee.

3. Nothing contained in this Franchise related to the Grantee's Cable/Broadband System shall obligate or restrict the Grantee in exercising its rights voluntarily to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies which are authorized to operate within the City.

4. Grantee shall utilize existing poles, conduits, and other facilities whenever possible. Prior to the utilization of any street for the placement of the distribution plant of the Cable System, the Grantee shall make available upon written request by the City any "utility pole usage agreement" with each utility within the City currently owning such poles, conduits, and other facilities, whose poles, conduits and facilities are to be used. To the extent that existing poles, posts, conduits, and other such structures are not available, or will not be available to the Grantee within a reasonable time, the Grantee shall have the right to purchase, lease, or in any manner acquire land or rights-of-way upon or under which to erect and maintain its own poles, conduits, and other such structures as may be necessary for the construction and maintenance of its Cable System.

i. Temporary Rearrangement of Aerial Wires. Upon request, the Grantee will remove or raise or lower its aerial wires, fiber, or cables temporarily to permit the moving of houses or other bulky structures. The reasonable and necessary expense of such temporary rearrangements shall be paid by the party or parties requesting them, and the Grantee may require payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary rearrangement. The City may require the removal of Grantee's aerial wires in connection with the demolition of unsafe structures, including emergency or ordered demolitions, at no cost to City.

j. Tree Trimming and Graffiti Abatement. The right, license, privilege, and permission is hereby granted to the Grantee, its contractors and agents, to trim trees, subject to requirements of the City's Tree Ordinance, as may be amended from time to time, upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the Grantee's Cable System, and when so directed by the City, the trimming shall be done under the supervision and direction of the City or of any City official to whom those duties have been or may be delegated. At the option of the City, such trimming may be done by City or under its supervision and direction at the expense of the Grantee if Grantee has failed after two (2) weeks' notice to perform such work. City may at any time with Grantee's concurrence perform such work at Grantee's expense. The City shall report damage or vandalism to Grantee's facilities as soon as practicable after City discovers or learns of such event. Grantee shall make the necessary repairs or restoration (including cleaning of graffiti) as soon as practicable after Grantee discovers or learns of any misuse, destruction, damage or vandalism to its facilities.

k. Relocation of Facilities. The Grantee shall, upon the written request of the City, relocate its Facilities situated within any street, at no expense to the City, where reasonable and necessary to accommodate street construction, or widening, or other public improvement projects, including Utility Conversion Districts, of the City. The Grantee shall have the right to present to the City alternative proposals to the proposed relocation. The City shall give due and reasonable consideration to such alternative proposals. However, when relocation is necessitated by federal government requirements, and when such requirements include reimbursements, the

City will reimburse Grantee for its proportionate share from funds provided the City in such reimbursements. Also, if a third party makes a request to relocate, and such relocation benefits that third party, then the Grantee shall be reimbursed by the third party.

1. Use of Premises.

1. Grantee is prohibited from using the Public Rights-of-Way in any manner which violates federal, state, or local laws; City codes and regulations; City Public Works policies, rules and orders; and City permitting procedures; regardless of when such may become effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality; and shall provide satisfactory evidence of compliance upon request of the City.

2. The City shall be responsible for providing a Phase One Environmental Assessment to Grantee prior to the commencement of any City Capital Improvement Project, as designated and administered by the City's Public Works Department. Such Capital Improvement Projects shall include but not be limited to installing underground drainage and constructing streets, sidewalks and curbs. Responsibility for addressing regulated, contaminated or hazardous materials encountered on Public Rights-of-Ways by either Grantee or the City, or both, as the case may be, shall be apportioned as follows:

(a) **Projects which are Joint Bid.** During construction projects which are City Capital Improvement Projects (as defined by the City's Public Works Department, or its successor) in which the Grantee has agreed to "joint bid" with the City, the City shall be responsible for the management of the project in accordance with all applicable laws and regulations. The Grantee shall be responsible for its normal installation or relocation costs, plus any incremental increase in costs involved in the excavation and backfill of trenches in areas containing contaminated material, including the costs for safety and health plans and all other actions necessary to the safety of its personnel, agents or contractors, associated with such excavation. Any incremental increase in costs shall be limited solely to Grantee's portion of the City Capital Improvement Project. The City will be responsible for the cost of the necessary environmental assessments, soil testing, appropriate and legal transport and disposal of contaminants and contaminated soil as regulations may require. The City shall assume the regulatory status of "generator", as that term is defined in 40 C.F.R. Section 260.10 or under any applicable state or federal statutes or regulations, after careful evaluation of all applicable data regarding the cause, source, level and extent of the contamination on a case by case basis. Grantee shall have no obligation to participate through a joint bid arrangement on any Capital Improvement Project until the City commits to a status as "generator". Grantee shall have no liability for any actions of those grantees or agents under City management or City hire.

(b) **Capital Improvement Projects which are not Joint Bid Projects.** If, during City Capital Improvement Projects that are not "joint bid" projects, Grantee discovers any contaminated, regulated or hazardous materials on or in the Public Rights-of-Way project site, Grantee shall have the following options:

(i) The Grantee may assume the regulatory status of "generator", as that term is defined in 40 C.F.R. Section 260.10 or any applicable state or federal statutes or regulations, after careful evaluation of all applicable data regarding the cause, source, level and extent of the contamination on a case by case basis. If Grantee assumes the regulatory status of

generator, it shall be responsible for environmental assessment, excavation, testing, transportation, and disposal of any contaminated or regulated material, excavated by itself, in accordance with applicable law; or

(ii) The Grantee may elect to abandon its Facilities within the contaminated area of the Rights-of-Way and reroute around the contaminated area. Grantee shall notify the City of the condition. In the absence of aggravation or effected release by Grantee, Grantee shall not be liable for any remediation of the regulated or hazardous materials or contaminated property. In the event of such aggravation or release, or unless the contamination is the result of Grantee's Facilities, Grantee's liability shall be limited to addressing the aggravation or release; or

(iii) The Grantee may elect to negotiate with the City to participate in Capital Improvement Projects in a "joint bid" arrangement. If a participation agreement is negotiated, Grantee and City agree to adjust the performance schedule to accommodate any delays associated with necessary remediation.

(c) Grantee's Projects. It is understood that Grantee may undertake projects on the Public Rights-of-Way that are not City Capital Improvement Projects. The City agrees to share with Grantee environmental assessment information it may possess, if any, pertaining to the work site, upon request of Grantee. City assumes no liability or responsibility for the accuracy of such information, data, or any recommendation that may be included therein. If, during projects which are not City Capital Improvement Projects, but which occur on the Public Rights-of-Way, Grantee discovers regulated, contaminated or hazardous materials on the Public Rights-of-Way, Grantee shall have the following options:

(i) The Grantee may assume the regulatory status of "generator", as that term is defined in 40 C.F.R. Section 260.10 or under any applicable state or federal statutes or regulations, after careful evaluation of all applicable data regarding the cause, source, level and extent of the contamination on a case by case basis. If Grantee assumes the regulatory status of generator, it shall be responsible for environmental assessment, excavation, testing, transportation, and disposal of any contaminated or regulated material, excavated by itself, in accordance with applicable law; or

(ii) The Grantee may elect to abandon its Facilities within the contaminated area of the Rights-of-Way and reroute around the contaminated area. Grantee shall notify the City of the condition. In the absence of aggravation or effected release, Grantee shall not be liable for any remediation of the regulated or hazardous materials or contaminated property. In the event of such aggravation or release, or unless the contamination is the result of Grantee's Facilities, Grantee's liability shall be limited to addressing the aggravation or release.

(d) Grantee's Obligations with Respect to its Options. When exercising the foregoing options with respect to City Capital Improvement Projects, Grantee shall use reasonable efforts to exercise its options in a timely manner so as not to unduly or unreasonably delay the continuing work on the Capital Improvement Project.

SECTION 10. CONFORMANCE TO CERTAIN STANDARDS.

a. Methods of construction, installation, and maintenance of the Cable/Broadband System shall comply with all applicable laws, ordinances, safety requirements, and technical standards including but not limited to FCC, FAA, National Electric Safety Code, National Electric Code,

National Cable Television Association Standards of Good Engineering Practices, and American Telephone & Telegraph Construction Procedures to the extent that such codes are consistent with local law affecting the construction, installation, and maintenance of electric supply and communications lines. To the extent that such codes are inconsistent with other provisions of this Franchise or with local laws, the latter shall govern when the Franchise or local laws require a higher standard than the codes.

b. Any tower constructed for use in the Cable/Broadband System shall comply with the standards contained in Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, EIA Standards RS-222-A as published by the Engineering Department of the Electronic Industries Association, 2001 Eye Street, N. W., Washington, D. C. 20006 or its successor.

c. Installation and physical dimensions of any tower constructed for use in the Cable/Broadband System shall comply with all applicable FAA and FCC regulations concerning navigable airspace and tower marking and lighting.

d. Any antenna structure in the Cable/Broadband System shall comply with the City's requirements regarding Construction, Marking, and Lighting of Antenna Structures.

SECTION 11. SYSTEM DESIGN CRITERIA.

a. The Cable/Broadband System installed in the City of San Antonio shall upon activation be initially capable of cablecasting no less than (80) channels of video services or its equivalent of video, audio, or other combination of electronic signals.

b. Within six (6) months of the date of acceptance of this Franchise by the Grantee, the Grantee shall file with the City Clerk of the City of San Antonio a full, detailed statement which shall be incorporated by reference to this Franchise as Exhibit "C" and which shall contain the following information which is available at that time and shall update this information every three (3) months until all information is determined:

1. The location of the cable television system's "headend" facilities, local origination studio facilities, receiving and transmitting station for the sending or receiving of programming by way of satellite, and central business office.

2. The location of all regional headend and antenna sites.

3. The location of all designated points within the system wherein electronic signals (video and/or audio) may be transmitted into the system other than the central headend area, and other than schools.

4. A list of lessors of any of the above-delineated locations which are leased to the Grantee.

5. A description of the cablecasting equipment to be utilized in the local origination studio facility.

6. A description of any mobile unit or facilities to be utilized by the Grantee in the production or transmission of programming.

c. The Grantee agrees and affirms that the statement of programming services on each channel of the (80) channels or its equivalent of video, audio or other combinations of electronic signals, which is incorporated as Exhibit "D", and adopted by reference shall constitute the initial level of programming to be available to all subscribers for basic, full, and/or premium services of the Grantee. Such programming may be changed by Grantee subject to Grantee providing an equivalent amount of programming for each level of service.

d. Grantee shall construct one earth station, as needed, to receive satellite programming services to be carried on the Cable System and agree to construct additional earth stations when such construction will advance the amount of CATV programming for subscribers in the City.

e. Grantee's Cable System must have a minimum band width capacity of 750 megahertz, and must utilize state-of-the-art equipment and local fiber optic network infrastructure trunking facilities.

SECTION 12: PUBLIC, EDUCATIONAL & GOVERNMENT CHANNELS

a. Access Channels: Notwithstanding the provisions of Section 4 b., the number of Public, Educational, & Government Channels shall in no case exceed six (6) total channels. The Grantee, at a minimum and subject to the terms of this Franchise Agreement, shall provide the following access channel capacity in the following manner:

1. Government Channel: One channel shall be made available for use by the City of San Antonio at no cost to the City or its assigns.

2. Educational Channel: Two channels shall be made available to the local educational authorities on an as-needed basis.

3. Public Access Channel: One specially designated, non-commercial public access channel shall be made available on a first-come, first served nondiscriminatory basis.

b. The access channels delineated herein shall be made available to the authorized government, non-profit civic and non-commercial users at no cost; provided, however, that the Grantee shall be authorized to charge other users for the use of its local origination studio facilities and/or technical personnel a fee which shall be no greater than its actual cost of providing such facilities and/or personnel.

c. The Grantee hereby agrees that it shall utilize reasonable efforts to encourage the development and utilization of those channels herein described as access channels.

d. The Grantee shall be allowed to utilize the channels designated as access channels for such other purposes as it may deem appropriate at all times the users are not utilizing these channels.

e. Control over the content of the programming transmitted over the access channels by the Grantee shall be limited to that level which is authorized by the Cable Act and/or the FCC now or hereinafter during the length of the Franchise terms.

f. The Fine Arts Committee has the authority to formulate rules governing scheduling of programming of those access channels dedicated for use by the educational community. The Fine Arts Committee has adopted rules, which were approved by Council pursuant to Resolution No. 81-51-58 on October 1, 1981, and those rules shall be utilized by the Grantee and all parties involved. The City or any non-profit entity designated by the City shall have the authority to repeal or change such rules. Any such rules shall be subject to City approval and Grantee shall be required to abide to such changes after approval by the City.

g. The Grantee shall provide each public, governmental, and educational entity upon request an electronic device to allow for "limited access" programming on the access channels at no cost. Additional devices shall be provided by Grantee to such entities if requested at Grantee's cost. (i.e. Grantee shall be entitled to actual costs)

h. The City Council shall reserve the right to establish and appoint a Citizens Committee or committees to advise on the utilization of the government and/or public access channels.

i. Grantee shall provide and maintain a minimum of 3 production studios within Bexar County, and a minimum of 2 fully equipped for color mobile units for the purpose of local program origination.

j. In lieu of providing the PEG facilities and equipment set forth in paragraph 12 i., including the mobile unit and production studio requirements, the City may choose to require Grantee to reimburse Time Warner Cable, or its successor in interest, for Grantee's proportionate share of all reasonable costs associated with the provision of PEG facilities and equipment incurred by Time Warner Cable. Such reimbursement shall be based upon the percentage of the total number of cable subscribers served by Grantee within the corporate limits of the City. As a condition to reimbursement, Time Warner Cable shall provide the City with financial statements evidencing the total direct and actual costs associated with the PEG facilities and equipment it provides, and the City, at its sole discretion, shall make a determination regarding the reasonableness of such costs. The City shall then notify Grantee of the amount owed to Time Warner Cable and Grantee shall pay the City directly and copy Time Warner Cable with proof of payment. The City shall forward the payment to Time Warner Cable. Grantee's payment to the City shall be made within thirty (30) days after the City notifies Grantee of such amount.

k. Interconnection for access channels distribution. For the purposes of distributing access channels, the Grantee shall interconnect its system, at its own cost, with the Time Warner Cable System and any other cable system in the City at a technically feasible interconnection point under an agreement between the Grantee and such other cable system operator, subject to

the reasonable cooperation of Time Warner Cable, or its successor in interest, in providing interconnection. From the time Grantee commences offering cable service to subscribers, the Grantee shall exercise its best efforts to comply with the provisions of this Section through interconnection with the Time Warner System within 120 days, but in no event shall Grantee have more than 180 days to comply with this subsection. Nothing herein shall be deemed to constitute a requirement that Grantee compensate or reimburse Time Warner Cable for Time Warner Cable's costs in implementing such connection, provided, however, Grantee shall be responsible for constructing facilities at Grantee's costs to reach the appropriate interconnection point on Time Warner Cable's system.

1. Start-up Fund. Upon request by the City, Grantee agrees to make a one-time cash payment of \$200,000 towards the establishment of a PEG facility and equipment fund to be utilized by the City or a third party, not-for-profit organization in the event that the City elects to establish a centralized PEG program to which all Cable Service providers contribute on an equitable and competitively neutral basis to fund such program, including state-of-the-art facilities and equipment. If that third party does not utilize all of the initial \$200,000 in the start-up of the program, then any remainder shall remain in the operating budget of that third party for the operation and management of PEG program and each Cable Service provider which contributes to the start-up fund shall receive a credit in a proportionate share as part of each provider's annual contributions in support of the operations by the third party.

SECTION 13. INSTALLATION AND MAINTENANCE OF SERVICE CONNECTIONS IN PUBLIC BUILDINGS.

a. The Grantee shall provide one service connection, including Cable Television and/or Internet Service, in each of the following locations:

1. All governmental buildings or facilities as may be now or hereinafter designated by the City Manager or his agent.
2. All public and parochial school buildings as may be designated now or hereinafter by the chief administrative officer of each school district or parochial school system.
3. Each classroom building and dormitory building of each college or university.
4. Such service connections shall be provided to buildings as designated by the proper administrative official within two months of the date service is available to such building.

b. No charge will be made by the Grantee for the installation, disconnections (when reasonably requested), reconnections (when reasonably requested), monthly services, and/or maintenance of equipment on any service connection authorized by subsection (a) above. A converter to provide the capability of receiving all services except "Pay Television" shall be provided to each location at no cost. The costs of all equipment and services provided by Grantee under this Section 13 shall be comparable to the value of all services and connections

provided by the incumbent local cable provider, Time Warner Cable, or its successor, under Section 12 of its Franchise Agreement with the City.

c. The Grantee shall install and maintain return (upstream) full-channel transmission capability in each public and/or parochial school building when requested by the chief executive officer of the school district or school system.

d. The Grantee shall install and maintain return (upstream) audio and/or video transmission capability in any governmental building or facility as may be now or hereinafter designated by the City Manager or his agent, at no cost to the City.

SECTION 14. PERFORMANCE EVALUATION SESSIONS.

a. It is understood that City Council has the right to assure that this Agreement is being complied with. In order to assure compliance, on or about the 2nd, 5th, 7th, 10th and 12th anniversaries of the date of franchise acceptance by the Grantee, the City Council may hold a public hearing or hearings for the purpose of reviewing the performance of the Grantee under the Franchise. Attendance of the Grantee's duly authorized representative at these public hearings is mandatory unless waived by the City Council. Topics which may be discussed at any of these sessions include, but are not limited to, customer service, signal quality, system maintenance, system channel capacity, PEG requirements, the level of performance or services compared to systems of similar description in other cities within the FCC's top 100 TV Market listings, amendments to the Franchise ordinance, and any FCC, State, or judicial rulings pertinent to the Franchise. The Grantee shall make available to the City, if requested, any records, documents, or other information as may be relevant to the City's review.

b. The Grantee shall notify all subscribers of the time, place, and purposes of each of the evaluation sessions by announcement on at least two channels of its system between the hours of 7:00 P.M. and 10:00 P.M. every day for fifteen (15) consecutive days preceding each session.

c. At the conclusion of each performance evaluation session, the City Council may pass a resolution stating its findings and directing Grantee to take steps as necessary to come into compliance with the Franchise.

d. All records and minutes of each of the performance evaluation sessions shall be retained by the City Clerk and be available for inspection throughout the term of the franchise.

SECTION 15. SYSTEM TECHNICAL STANDARDS.

a. The Grantee hereby agrees to construct and maintain the cable television system utilizing the technical standards delineated in the FCC Rules and regulations, 47 CFR 76.601 through 76.630 as now exist or may hereinafter be amended.

b. The Grantee further agrees that the cable television system shall be so constructed and maintained as to provide that the visual signal level to system noise shall be no less than 43

decibels when measured at any subscriber terminal in the system, the FCC Rules and Regulations previously cited notwithstanding.

c. The Grantee further agrees to provide the following in the construction, operation, and maintenance of the cable television system.

1. The cable television system shall be continuously operational on a 24 hour a day basis.
2. The cable television system shall be designed and operated so as to avoid causing interference with reception of off-the-air signals by non-subscribers to the system.

SECTION 16. RATES AND CHARGES FOR SERVICE.

a. The City shall review and analyze rates for the provision of basic service to subscribers, residential or non-residential, including installation of services and equipment (converters and remotes) used for basic service, which is consistent with the 1992 Cable Act, 47 U.S.C. §543, and rate regulations, 47, C.F.R. §§76.900 et seq.

b. At least ninety (90) days before the effective date of any rate increase, and for a period of five (5) consecutive days, the Grantee shall notify its subscribers of the rate increase by announcement on at least two (2) channels of its system, between the hours of 7:00 p.m. and 10:00 p.m.

SECTION 17. FRANCHISE FEE.

a. Annual Franchise Payment. In consideration of the terms of this Franchise, the Grantee shall pay annually to the City a sum equal to five percent (5%) of the Gross Annual Revenues of the Cable/Broadband System, including all Internet services, including Internet access services. Such payment shall be in addition to and shall not be construed as payment in lieu of personal or real property taxes levied by the City. To the extent that Grantee receives revenue from a Subscriber for multiple services that are provided for a fixed price, and revenue for some but not all of such services is includable in the computation of Gross Annual Revenues for purposes of calculation of the Franchise Fee due hereunder, Grantee shall allocate the appropriate portion of such revenue for inclusion in Gross Annual Revenues. In the event such fixed price for such multiple services is lower than the aggregate of the prices of those services if each service is purchased individually, then the amount of the revenue to be allocated to each service shall be proportional to the individual price of such service compared to the aggregate of the individual prices of such services when purchased individually.

a-1 Prepayment of Franchise Fees. As a condition precedent to the execution of this Franchise by the City, the Grantee will pay the City an advance payment of its Franchise fees in the amount of \$1,000,000.00. This advance payment shall be credited against the Grantee's Franchise fee payments due the City. Such credit shall be taken in the amount equal to 100% of Franchise fees due each year until this prepayment fund is exhausted. The credit will include a calculation of the rate of return on the initial prepayment, provided, however, such rate of return shall be calculated based on the standard rate utilized, and realized, by the City. Should the

Grantee default and fail to install and operate a cable television system, in accordance herewith, the Grantee specifically agrees that this prepayment shall be retained by the City as liquidated damages.

b. It is recognized that the 5% Franchise fee is established in conformance with the current FCC Rules. In the event that the FCC shall modify such Rule so as to eliminate or alter in any fashion the Franchise fee limitation, or in the event that such 5% Franchise fee limitation shall be eliminated or altered by judicial determination, the City reserves the right to renegotiate the amount of the fee.

c. The payment due to the City as is required in Subsection (a) above, shall be computed and due quarterly, based on Grantee's fiscal year. The Grantee shall file with the City, within 30 days after the expiration of each of the Grantee's fiscal quarters, a financial statement clearly showing the Gross Annual Revenues received by the Grantee during the preceding quarter, and such other information as may be required by the City Manager, or his/her designee, to provide reasonable verification of gross revenues and of Franchise fees. Payment of the quarterly portion of the Franchise fee shall be payable to the City at the time such statement is filed.

d. In accordance with Article XI, Section 133 of the City Charter, the Grantee shall file, within sixty (60) days of the close of the Grantee's fiscal year, an annual report prepared and audited by a Certified Public Accountant, clearly showing the Gross Annual Revenues attributable to the Grantee's San Antonio Cable Television system, as well as those other items of information required by Section 133 of the City Charter. Extension of such period up to 30 additional days may be granted by City upon request by Grantee.

e. The City shall have the right to inspect the Grantee's income records, the right of audit and the recomputation of any amounts determined to be payable under this Franchise, provided, however, that such audit shall take place within forty-six (48) months following the close of each of the Grantee's fiscal years. Any additional amount due the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City, which notice shall include a copy of the audit report. The cost of said audit shall be borne by the Grantee if it is properly determined that the Grantee's annual payment to the City for the preceding year is increased thereby by more than one (1) percent.

f. In the event that any Franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such due date at the annual rate of ten percent (10%).

g. No acceptance of any payment by the City shall be construed as a release, or as an accord and satisfaction, of any claim the City may have for further or additional sums payable as a Franchise fee under this Agreement or for the performance of any other obligation of the Grantee.

SECTION 18. METHOD OF ACCOUNTING.

In accordance with Article XI, Section 134(6) of the City Charter the Grantee shall maintain its books and a system of accounts in accordance with generally accepted methods of accounting applicable to the cable television industry.

SECTION 19. DEPRECIATION RESERVES.

Only if Grantee elects cost-of-service method of rate regulation, then Grantee shall establish and maintain sufficient depreciation reserves to preserve the integrity of the property used and useful in rendering its services to the public. The depreciation reserves so established may be used only for the replacement, improvement, betterment, and extension of the San Antonio cable television system. The amount and character of reserves shall be in accordance with current common practices applicable to the cable television industry.

SECTION 20. RATE OF RETURN.

Only if Grantee elects cost-of-service method of rate regulation, in accordance with Article XI, Section 134 (5) of the City Charter, the rate of return to the Grantee for services rendered by authority of this Franchise shall not exceed a fair return upon the fair value of the property used in rendering the public service.

SECTION 21. INDEMNIFICATION AND INSURANCE

a. GRANTEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to GRANTEE'S activities under this FRANCHISE, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this FRANCHISE, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS FRANCHISE. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. GRANTEE and the CITY shall each promptly advise the other in writing of any claim or demand against the CITY or GRANTEE known

to either party related to or arising out of GRANTEE'S activities under this FRANCHISE and GRANTEE shall see to the investigation and defense of such claim or demand at GRANTEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.

b. It is the EXPRESS INTENT of the parties to this FRANCHISE, that the INDEMNITY provided for in this section (Section 12), is an INDEMNITY extended by GRANTEE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. GRANTEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

c. Prior to the commencement of any work, under this Franchise, Grantee shall furnish an original completed Certificate of Insurance or the City's Standard Certificate of insurance form to the City's Finance Department and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Franchise until such certificate shall have been delivered to the City's Finance Department and the City Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

d. The City reserves the right to review the insurance requirements of this section during the effective period of this Franchise and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Franchise, but in no instance will the City allow modification whereupon the City may incur increased risk. Any such modifications shall be applied uniformly to all similarly situated Cable Service providers which hold a Franchise with the City.

e. A Grantee's financial integrity is of interest to the City. Therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Franchise, and any extension hereof, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

	<u>TYPE</u>	<u>AMOUNT</u>
1.	Workers' Compensation Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
2.	Commercial General (public) Liability Insurance to include coverage for the following:	
	a. Premises operations	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence or its equivalent; with an aggregate of \$5,000,000 or its equivalent
	*b. Independent Contractors	
	c. Products/completed operations	
	d. Contractual liability	
	e. Personal Injury	
	f. Explosion, collapse, underground	
	g. Broad form property damage, to include fire legal liability	
3.	*Business Automobile Liability	
	a. Owned/leased vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent.
	b. Non-owned vehicles	
	c. Hired vehicles	
4.	*Professional Liability (Claims made form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services
	*if applicable	

f. The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the City, the Grantee shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

g. Grantee agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

- Name the City and its officers, employees, volunteers, agents and elected representatives as additional insureds with respect to the operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the professional liability, workers' compensation and liability policy;
- The Grantee's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City for liability arising out of operations under the contract with the City; and
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.

h. Grantee shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

**City of San Antonio
Finance Department
P. O. Box 839966
San Antonio, Texas 78283-3966**

**City of San Antonio
City Clerk's Office
P. O. Box 839966
San Antonio, Texas 78283**

i. If Grantee fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Grantee to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Grantee to stop work hereunder, and/or withhold any payment(s) which become due, to Grantee hereunder until Grantee demonstrates compliance with the requirements hereof.

j. Nothing herein contained shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Franchise.

k. The Grantee shall obtain and maintain during construction of its Cable System, at its sole cost and expense, and file with the City Clerk, a corporate surety bond with a surety company authorized to do business in the State of Texas and found acceptable by the City's Risk Manager, in the amount of Five Hundred Thousand Dollars (\$500,000) to secure Grantee's performance of its obligations and faithful adherence to all requirements of this Franchise. The

Grantee shall not commence construction operation or activation of its system until providing the City with the required bond.

SECTION 22. RECAPTURE PROVISION.

a. The City shall have the right to cancel this Franchise and to purchase the Cable/Broadband System according to the formula set forth herein, however, such right will only be exercised after 10 years from the effective date of this Franchise, including a specific renewal period, if any. In the event that the City determines to purchase the system, it shall notify the grantee by Certified Mail that the City Council has, by ordinance, determined to so purchase. Within sixty (60) days after the receipt of such notice, the Grantee and the City shall each appoint a qualified and experienced cable television appraiser to represent it in the purchase procedures. The two representatives so appointed shall then mutually agree upon and appoint a third qualified and experienced cable television appraiser to participate in the purchase procedures. In the event that the two appraisers appointed by the City and the Grantee cannot agree upon a third appraiser within thirty (30) days, either the City or the Grantee may request the American Arbitration Association to name a third appraiser. The three appraisers thus appointed shall evaluate the Grantee's Cable/Broadband System by determining the fair market value of the system. The fair market value shall be determined by considering the elements of market value in accordance with the customary approaches to value utilized in the sale of a going Cable /Broadband System, including the age, bandwidth capacity and architecture of the system. The City shall have the right to purchase the system at an "adjusted" fair market value, that is, the fair market value of the system less the value, if any, determined by the appraisers to be attributable to the value of the franchise privilege itself; it being understood however that the value of the franchise privilege itself shall in no case be determined to exceed five percent (5%) of the market value of the system as found by the appraisers. The City shall have the right to purchase the system at the "adjusted" market value indicated by at least two of the appraisers so designated and the purchase price shall be paid in cash within 90 days of the City's final decision to purchase the system; such final decision shall be made by the City within 30 days of the completion of the appraisals.

b. The Grantee shall be allowed a reasonable time in which to terminate its operations after purchase and such time period shall in no event be less than six (6) months after the fair market value has been agreed upon by the City and the Grantee.

c. If the City exercises its right to recapture under this Section, the City shall do so only on a competitively neutral and equitable basis with other Cable/Broadband System providers. For purposes of this Franchise Agreement, the term "competitively neutral," as used or construed in the Federal Telecommunications Act of 1996 or any amendments thereafter, shall not control the meaning of "competitively neutrality" as used in this Franchise Agreement.

SECTION 23. REPORTS AND RECORDS.

a. Copies of all petitions, applications, and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters

affecting cable television operations authorized pursuant to the Franchise, shall be simultaneously submitted to the City Manager or his designated agent upon request.

b. The Grantee shall maintain an office in the City for so long as it continues to operate the Cable/Broadband System or any portion thereof and shall designate such offices as the place where all notices, directions, orders and requests may be served or delivered under this ordinance. The City Manager shall be notified of the location of such office or any change thereof.

c. The Grantee shall keep complete and accurate books of account and records of its business and operations under and in connection with the ordinance and Franchise. All such books and records shall be made available at the Grantee's office in the City.

d. The City Manager or his authorized agent shall have access to all books of account and records of the Grantee for the purpose of ascertaining the correctness of any and all reports and shall be given access to all other relevant records upon request. To the extent allowed by law, the City shall protect all confidential information from public disclosure.

e. Any false entry in the books of account or records of the Grantee or false statement in the reports to the City Manager as to a material fact, knowingly made by the Grantee shall constitute the breach of a material provision of the ordinance and Franchise.

SECTION 24. CUSTOMER SERVICE STANDARDS.

a. Office and Phone for Service. The Grantee shall maintain an office in the City which shall be open during all usual business hours, have a locally listed telephone and be so operated that complaints and requests for repairs or adjustments may be received at any time. In addition, the Grantee shall maintain a convenient office in the City open during normal business hours, for the receipt of sums due by its subscribers and shall provide for regular billing of accounts. The Grantee agrees to work with the City to develop adequate phone lines to serve customers, customer service office hours and service centers.

b. Notification of Service Procedures. The Grantee shall furnish each subscriber at the time service is installed written instructions that clearly set forth procedures for placing a service call, or requesting an adjustment. Said instructions shall also include the name, address and telephone number of the City Manager or other designated employee and a reminder that the subscriber can call or write the City Manager or other designated employee for information regarding terms and conditions of the Grantee's Franchise if the Grantee fails to respond to the subscriber's request for installation, service or adjustment within a reasonable period of time.

c. Service Response Time. The Grantee shall provide "same day" service response, seven (7) days a week for all complaints and requests for repairs or adjustments received prior to 2:00 p.m. each day. In no event shall the response time for calls received subsequent to 2:00 p.m. exceed twenty-four (24) hours.

d. Service Interruptions and Notifications. The Grantee shall interrupt system service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and except in emergency situations, only after publishing notice of service interruption. Services may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair, without notification, any night except Friday, Saturday, or Sunday, or the night preceding a holiday.

e. Whenever service is interrupted to any subscriber for any period of time in excess of 24 hours, the subscriber shall be entitled to receive a rebate of one-thirtieth (1/30th) of his monthly service fee for each day or part thereof between the end of the 24 hours and the time service is restored to proper standards.

f. Complaint Records. The Grantee shall maintain a centralized complaint file containing all written complaints received, and will make same available to the City for review during normal business hours. Non-written complaints shall be maintained on computer records, and hard copies shall be provided to the City upon request for spot checks or for review of specific customer complaints. Records will identify date and time of complaints and the subscriber's name with a description of the complaint and what actions were taken by the Grantee in response thereto. Records shall be kept for a period of at least three years.

g. Grantee shall comply with all FCC customer service standards set forth in 47 C.F.R. Section 76.309, as in effect on January 1, 2000. All of the standards contained in this Section 24 are in addition to any FCC cable customer service standards currently in effect, or hereafter adopted by the FCC.

SECTION 25. PROTECTION OF SUBSCRIBER PRIVACY.

a. Use of Data from Subscriber. The Grantee shall not initiate or use any form, procedure or device for procuring information or data from subscribers' terminal by use of the system, without prior valid authorization from each subscriber, so affected.

b. Subscriber Lists. The Grantee shall not, without prior valid authorization from each subscriber so affected, provide any list designating subscriber's names or addresses to any other party except where required under contract for provision of premium service.

c. Subscriber Transmissions. Grantee shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of two-way services utilizing aural, visual or digital signals without first obtaining written permission of the subscriber.

d. Grantee must also abide by all subscriber privacy requirements adopted by the FCC in 47 U.S.C. §551, including any future amendments to these requirements.

SECTION 26. SECURITY FUND.

a. Within thirty (30) days after the acceptance of this Franchise, the Grantee shall deposit with the City's Director of Finance and maintain on deposit throughout the term of the Franchise the sum of \$100,000 in cash.

b. Within thirty (30) days after notice to it that any amount has been withdrawn from the security fund deposited pursuant to Paragraph (A) of this section the Grantee shall pay to, or deposit with, the City's Director of Finance a sum of money sufficient to restore such security fund to the original amount of \$100,000.

c. If the Grantee fails to pay to the City any compensation within the time fixed herein, or, fails after ten (10) days notice to pay to the City, any taxes due and unpaid; or fails to repay to the City within such ten (10) days, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this ordinance or its Franchise, or fails after three (3) days notice by the City Manager of such failure to comply with any provision of this Franchise which the City Manager reasonably determines can be remedied by an expenditure of the security, the City's Director of Finance may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the City's Director of Finance shall notify the Grantee of the amount and date thereof.

d. The cash deposit shall become the property of the City in the event that the Franchise is terminated prior to its termination date as set out herein. The cash deposit shall be retained by the City and returned to the Grantee at the expiration of the Franchise provided there is then no outstanding default on the part of the Grantee.

e. The rights reserved to the City with respect to the security fund are in addition to all other rights of the City, whether reserved by this ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the City may have.

SECTION 27. PENALTY PROVISIONS.

a. For violation of material provisions of this ordinance the penalties shall be chargeable to the Security Fund as follows:

- i) For failure to comply with any provision of Section 8(b) or 8(c) \$200.00 per day.
- ii) For failure to provide data and reports as requested by the City Manager or the Council.....\$300 per day
- iii) For failure to comply with reasonable recommendations of the City Manager relating to services as provided for in Section 24 and such reasonable requests as may be made pursuant to authority granted by this Franchise \$300.00 per day.

iv) For failure to restore the cash deposit as required in Section 26 within the specified thirty (30) days, the entire cash deposit remaining shall be forfeited.

b. Before imposing penalties pursuant to this Section 27, City shall afford Grantee the opportunity to be heard before City Council. The City shall give Grantee at least one (1) week's prior notice of such public hearing, however, the City shall prescribe the procedures to be followed at such public hearing.

SECTION 28. OTHER PROVISIONS.

a. Emergency Alert Override: The grantee shall incorporate into its facilities, the capabilities for an emergency override audio alert whereby a designee of the City, in times of emergency may introduce an audio and video message on all channels simultaneously.

b. Interconnection with other cable system operators: Whenever directed by the City Manager or his agent, the Grantee shall so construct, operate, and/or modify the cable television system so as to have the capability to interconnect the same, and shall so interconnect the same when so directed, into other systems in the City; provided, however, that such interconnection shall not be required until such systems shall also be capable of such interconnection and shall have permitted such interconnection, and until agreement is reached between the two operators on the terms of such interconnection, which terms must be competitively neutral.

c. Other Business Activities: The grantee shall not engage in the business of selling, repairing or installing television receivers or radio receivers within the City of San Antonio during the term of the Franchise.

SECTION 29. TERMINATION.

a. City, at its option, may terminate this Franchise by giving written notice of such termination to Grantee upon occurrence of any of the following:

1. Filing of a voluntary bankruptcy petition by Grantee.
2. Taking of jurisdiction of Grantee or his assets in bankruptcy proceedings by any court, such proceedings not being vacated within 30 days.
3. Taking by execution of Grantee's interest in this contract or of property placed on the premises.
4. Appointment by any court of a receiver for Grantee such proceedings not being vacated within 30 days.

b. Notwithstanding any other provision in this ordinance, the City, acting through the City Council, shall have the option to cancel and terminate this Franchise at any time for failure of the Grantee to comply with any provision or requirement contained herein after 60 days written notice to do so.

c. Before imposing termination pursuant to this Section 29, City shall afford Grantee the opportunity to be heard before City Council. The City shall give Grantee at least one (1) week's prior notice of such public hearing, however, the City shall prescribe the procedures to be followed at such public hearing.

SECTION 30. SEVERABILITY PROVISION

If any section, sentence, clause or phrase of this Franchise is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of this Franchise, and any portions in conflict are hereby repealed; provided, however, that in the event that any section is declared invalid, and such provision is material to this Franchise, then such a section or sections will be renegotiated by the City and the Grantee.

SECTION 31. RIGHTS OF INDIVIDUALS, AFFIRMATIVE ACTION PROGRAM AND EQUAL EMPLOYMENT.

a. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, or sex. Grantee shall comply at all times with all other applicable federal, state, and city laws, and all executive and administrative orders relating to nondiscrimination.

b. All local subsidiary companies of Grantee's parent company shall establish Affirmative Action programs prescribed by FCC rules, regulations, and guidelines.

c. In addition, Grantee agrees to adopt and implement the City of San Antonio's affirmative action program in the exercise of its rights under this Franchise.

d. Equal Opportunity Policy. Equal opportunity employment shall be afforded by all operators of cable television systems to all qualified and qualifiable persons and no person shall be discriminated against in employment because of race, color, religion, national origin or sex.

e. The Grantee agrees to specifically define the responsibility of each level of management to insure positive applications and vigorous enforcement of the policy of equal opportunity, and assure employment specifically at the higher and mid-management levels for Blacks and Mexican Americans. Grantee shall conduct continuing review of employment structures and employment practices and adopt positive recruitment policies, on-the-job training, job design and other measures needed to assure genuine equality of opportunity.

f. In addition Grantee agrees to adopt and implement Title VII of the Civil Rights Act of 1964, and to adapt the City of San Antonio's Affirmative Action Plan for its use in the exercise of its Rights under this Franchise. The employment criteria to be used in the Grantee's Affirmative Action Plan will be based on the percentages by ethnic group of the total number of unemployed in Bexar County as reported annually by the Texas Employment Commission.

g. Within fifteen days of the effective date of the Franchise, the Grantee agrees to file an affirmative Action Plan, hereafter referred to as the Plan, with the City of San Antonio's Department of Finance. The City will annually evaluate and review the Plan and provide technical assistance if necessary to assure conformance with the obligations of this Franchise.

h. Employment Policies. The Grantee adopts the following general employment practices:

1. Recruiting through schools and colleges with high minority enrollments.
2. Maintaining systematic contacts with media advocacy groups, minority and human relations organizations, leaders, and spokesmen to encourage referral of local qualified minority applicants at all levels of employment.
3. Making known to the citizens media groups and to appropriate recruitment sources in the employer's immediate area that qualified minority persons sensitive to the needs of the minority community are being sought for consideration whenever the cable operator hires its employees to assure non-discrimination in selection or hiring.
4. Instructing personally those on the staff of the system who make hiring decisions that all applicants for all jobs are to be considered without discrimination.
5. Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

SECTION 32. GRANTEE'S POLICY ON SMALL BUSINESS CONTRACTING, MINORITY PROGRAMING, AND EDUCATIONAL OPPORTUNITIES

a. In addition to, and in furtherance of the commitments made by Grantee in Section 31 above, Grantee's authorized representative has filed with the City a policy statement attached to this Franchise as Exhibit "E" hereof and is incorporated herein for all purposes.

b. Small Business & Economic Development Advocacy (SBEDA) Policy. Grantee will cooperate with the City's SBEDA policy, according to Ordinance No. 77758, as may be amended, in the award of contracts in the area of construction, procurement and professional services.

c. Policy on Minority Programming and Educational Opportunities. Grantee shall cooperate with City's coordinator of Equal Employment Opportunity with the goal of placing qualified and qualifiable candidates into job openings created by the growth of the cable industry. In addition the Grantee agrees to establish at local institutions, technical scholarships to qualify local applicants for positions requiring specialized electronic training and internship to further on-the-job training for these employees.

d. In addition, the Grantee agrees to establish an endowment fund that will provide scholarships and grants to City residents who are economically disadvantaged applicants wishing

to complete an education in the communications field. Full scholarships for undergraduate and masters level pursuits will be provided to students lacking the necessary funds to complete such schooling. The Grantee agrees to make available the total sum of \$150,000, beginning with an initial contribution of \$50,000, followed by contributing annual increments of \$7,200 per year during the remaining term of the Franchise for the purpose of funding the scholarship fund. Grantee will, by public notice, seek resumes and applications of interested students with the aid of the Advisory Committee and the use of the cable system.

SECTION 33. EXHIBITS

Exhibit "A", "B", "C", "D", "E" and "F" are attached hereto and hereby adopted and incorporated into the Franchise. This Franchise, together with its attached exhibits and the authorizing ordinance, embodies the complete agreement of the parties relating to the Cable/Broadband System, which is the subject of this Franchise, superseding all oral or written previous and contemporary agreements between the parties and relating to this Franchise, and, except as otherwise provided in this Franchise, it cannot be amended without written agreement of the City and Grantee to be attached to, and made a part of, this Franchise and subject to approval of the City Council of San Antonio.

SECTION 34. VENUE AND GOVERNING LAW

a. Venue of any court action brought directly or indirectly by reason of this Franchise shall be in Bexar County, Texas. This Franchise shall be construed under, and in accordance with, the laws of the state of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

b. This Franchise shall be construed in accordance with the City Charter and City Code(s) in effect on the date of passage of this Franchise Agreement, and as may be subsequently amended, to the extent that such Charter and Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

c. This Franchise Agreement shall be construed and deemed to have been drafted by the combined efforts of the City and the Grantee.

SECTION 35. WAIVER

None of the material provisions of this Franchise may be waived or modified except expressly in writing signed by the Grantee and City, as authorized by City Council by passage of an Ordinance. Failure of either party to require the performance of any term in this Franchise or the waiver by either party of any breach thereof shall not prevent subsequent enforcement of such term and shall not be deemed a waiver of any subsequent breach.

SECTION 36. CAPTIONS

The captions contained in this Franchise are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Franchise.

SECTION 37. CONFORMITY TO CONSTITUTION, STATUTES, CHARTER AND CITY CODE

a. This Franchise and referenced ordinance is passed subject to the provisions of the Constitution and the laws of the State of Texas and the Charter provisions of the City of San Antonio and applicable sections of the San Antonio City Code.

b. In addition to these provisions, City expressly reserves the right to adopt, from time to time, ordinances, rules and regulations it may deem necessary in the exercise of City's governmental powers. Grantee agrees to abide by any laws of the City within a reasonable time after passage thereof.

c. City expressly reserves the right to enforce reasonable regulations concerning Franchisee's access to or use of Public Rights-of-Way and other public ways or property, including requirements for permit applications. It is understood and agreed that Franchisee is responsible for obtaining all necessary permits and Licenses.

SECTION 38. NON-BINDING MEDIATION

a. Prior to filing suit, the parties to this Franchise shall use non-binding mediation to resolve any controversy, claim or dispute arising under this contract. If any of the provisions of this Section are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

b. To initiate non-binding mediation, a party shall give written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party. Any mediator so designated must be acceptable to all parties.

c. The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt with the assistance of the mediator, to reach an amicable resolution of the dispute. Any finding by the mediator shall be a non-binding determination.

d. The mediation will be treated as a settlement discussion and therefore will be confidential in accordance with Tex. Civ. Prac. & Rem. Code §154.073. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

e. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

SECTION 39. CITY NETWORK

a. The City has accepted Grantee's offer to install a dedicated dark fiber network consisting of a single dark fiber ("Network") connecting an agreed-upon number of municipal facilities, schools, universities, and non-profit hospital locations in the City in conjunction with Grantee's construction of its Cable/Broadband System in the City.

b. Grantee and the City agree that, within 90 days of the effective date of this Franchise each party will enter into a formal agreement setting forth the terms and conditions

under which Grantee will build the Network. The formal agreement shall include the following key terms and conditions, to which Grantee and the City now agree:

1. The Network will be composed of a single dedicated dark fiber connecting locations to be agreed upon by Grantee and the City. The locations connected to the Network will be City-owned facilities, schools, universities, and non-profit medical centers or hospitals. The Network will not connect to any commercial or for-profit locations.
2. The City and Grantee will agree on the identity and number of locations to be connected to the Network.
3. Grantee will not be responsible for providing or maintaining any terminal or other equipment necessary to activate the Network. Grantee will also not be responsible for managing the Network.
4. The Network will be built by Grantee at its own cost, and Grantee will not charge the City or the locations connected to the Network for construction or maintenance of the Network.
5. The City and Grantee will agree on mutually acceptable terms and conditions governing the attachment of the Network to the demarcation points at each of the locations on the Network.
6. Neither the City nor other institutions connected to the Network shall use the Network for any commercial or for-profit purpose.
7. The City agrees to seek in good faith to obtain comparable public interest facilities or equipment benefits from other providers granted Cable/Broadband System franchises by the City in the future. So long as the City seeks such facilities or equipment benefits in good faith, then the City's failure to receive such similar facilities or equipment benefits from other Cable/Broadband System providers shall not be considered in determining whether there is a violation of the competitive neutrality requirements as that term is used and interpreted throughout this Franchise above.

c. The formal agreement for the Network shall be subject to City Council approval and shall be attached to this Franchise and made a part hereof for all purposes as Exhibit "F."

SECTION 40. ADMINISTRATION AND NOTICE

a. The City Manager, or his designee, is the principal City officer responsible for the administration of this Franchise and shall review the operations of Grantee in the Rights-of-Way under this Grantee.

b. Upon reasonable written request by City, Grantee shall inform the City Council of the City of San Antonio as to all matters in connection with or affecting the construction, reconstruction, maintenance and repair of Grantee's Facilities in the Rights-of-Way and the recording and reporting by Grantee of all material changes to such Facilities.

d. Notices required by this Franchise Agreement may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to City shall be delivered as follows:

Supervisor of Public Utilities
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(210) 207 - 8634

City Clerk's Office
City of San Antonio
P.O. Box 839933
San Antonio, Texas 78283-3933
(210) 207 - 7253

Until any such change is made, notices to Grantee shall be delivered as follows:

President and Chief Operating Officer
Western Integrated Networks of Texas, L.P.
2000 S. Colorado Blvd. Suite 2-670
Denver, Colorado 80222

With copy to:
Glen Hodges, Esq.
Winstead, Sechrest & Minick, P.C.
100 Congress Ave., Suite 800
Austin, Texas 78701

d. Copies of petitions, applications, communications and reports submitted by the Grantee to the Federal Communications Commission or the Public Utilities Commission of Texas shall be provided to the City upon request.

SECTION 41. AUTHORITY

The signer of this Franchise for the Grantee hereby represents and warrants that he or she has full authority to execute this Franchise on behalf of Grantee.

In witness of which this Franchise Agreement has been executed this 28th day of February, 2004.

CITY OF SAN ANTONIO

WESTERN INTEGRATED NETWORKS
OF TEXAS OPERATING, L.P.

Alexander E. Briseño
ALEXANDER E. BRISEÑO
City Manager

William J. ...
Printed name: William J. ...
Title: SENIOR VICE PRES

ATTEST: [Signature]
City Clerk

ATTEST: [Signature]

APPROVED AS TO FORM: [Signature]
City Attorney



EXHIBIT I

**CABLE TELEVISION FRANCHISE AGREEMENT
WITH WESTERN INTEGRATED NETWORKS
OF TEXAS OPERATING L.P.**

This CABLE TELEVISION FRANCHISE AGREEMENT is made and entered into by and between the City of San Antonio, a Texas Municipal Corporation and Home-Rule Municipality, acting herein through its City Manager pursuant to Ordinance Nos. 91488, _____, and _____ passed and approved on March 23, _____, passed and approved on April 6, 2000, and _____, passed and approved on April 27, 2000, respectively, as Franchisor, (herein referred to as "Grantor"), and Western Integrated Networks of Texas Operating L.P., a Delaware limited partnership, as Franchisee (herein referred to as "Grantee") with its principal place of business being located at _____, and both parties do hereby **WITNESSETH**:

WHEREAS, Grantee, which is a privately held cable television company with its corporate offices in Denver, Colorado did appear before the City Council to petition that the company be awarded a non-exclusive Franchise to construct a cable television system in the City of San Antonio, and

WHEREAS, Grantee desires use of certain Public Rights-Of-Way within the City of San Antonio for the purpose of constructing, maintaining and operating Grantee's Cable Television System for the purpose of offering Cable Television Services as defined by this Franchise Agreement and pursuant to local, state and federal laws, and such use requires a Franchise Agreement; and

WHEREAS, this use of the Grantor's streets will be conducted in such a manner that is not inconsistent with the use of the Grantor's Public Rights-Of-Way; and

WHEREAS, the Company stated that it was prepared to invest over \$500 million in the development of the San Antonio cable TV system, and that annual company employment is expected to exceed 300 persons when the system is completely constructed and operational, and that such employment would yield a payroll over \$ 7 million annually, and

WHEREAS, this Franchise Agreement will allow the Grantee to operate a Cable /Broadband System, which will include Internet service, but it does not grant the authority to use the Public Right-of-Way to operate a telecommunications system; and

WHEREAS, prior to offering local exchange telecommunications service to its customers, the Grantee will obtain the City's standard right-of-way use permit which will be developed by the City for all certificated telecommunications providers that maintain facilities in the City's rights-of-way; and

WHEREAS, Grantee has proposed to construct a Cable/Broadband System with a one (1) gigahertz band capacity utilizing state-of-the-art broadband equipment and local fiber optic network infrastructure trunking facilities; and

WHEREAS, City Council has determined that such a Cable/Broadband System will further the public convenience and public welfare of the inhabitants of San Antonio; and

WHEREAS, it is in the City’s interest to set forth rights, duties and obligations of Grantee in this Franchise Agreement; **NOW THEREFORE**:

THE ABOVE PARTIES AGREE TO THE FOLLOWING:

SECTION 1. SHORT TITLE. This Agreement shall be known and may be cited as the Western Integrated Networks Cable Television Franchise Agreement.

SECTION 2. DEFINITIONS. For purposes of this Agreement the following terms, phrases, words, abbreviations, and their derivations shall have the same meanings given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive. All words that are not defined herein shall have the meaning ascribed to them under the Cable Act, and all other words not defined by this Franchise or the Cable Act shall be construed by ascribing the ordinary meaning to such words.

- a. "Access Channel" means any non-commercial public, educational or government channels.
- b. "Basic Service" shall mean any service tier which includes the retransmission of local television broadcast service, including the delivery of broadcast signals and programming originated over the network, covered by the minimum monthly charge paid by subscribers. Basic cable tier must include: (1) all local television broadcast stations carried on the system by virtue of the Cable Act’s must-carry and retransmission consent provisions; (2) all public, educational and governmental (“PEG”) access channels; and (3) any other local television broadcast stations carried on the system.
- c. "Broadcast" means the over-the-air transmission of electro-magnetic audio or video signals.
- d. “Cable Act” shall mean the Cable Communications and Policy Act of 1984, found in 47 U.S.C. § 521 *et. seq.*, and as thereafter, or hereinafter, amended.
- e. "CATV" or CATV system shall mean Cable /Broadband System as hereinafter defined.
- f. "Cable/Broadband System” shall have the meaning ascribed to the term “Cable System.” under the Cable Act.
- g. "Cable Service" shall have the meaning ascribed to it under the Cable Act, and shall include all Internet services, including Internet access service, but shall not include the provision of telecommunications service.
- h. "City" means the City of San Antonio, Texas.
- i. "City Council” means the governing body of the City of San Antonio.
- j. "City Manager" means the chief administrative officer of the City of San Antonio or his designated agent.

- k. "Cablecast" shall mean to distribute over a cable television system.
- l. "Channel" shall mean a band of frequencies six megahertz in width in the electromagnetic spectrum.
- m. "Converter" shall mean an electronic device capable of converting electronic signals to other than their original frequencies so as to eliminate interferences within television receivers of subscribers.
- n. "Dwelling unit" shall mean a room or suite of rooms, in a building or portion thereof, used for living purposes by one family.
- o. "Educational Authorities" shall mean those *public* or private school districts within the City of San Antonio, and/or those colleges and universities within the City of San Antonio, whether operating independently or in unison in relation to the transmission or reception of programming through the CATV system.
- p. "FCC" shall mean the Federal Communications Commission.
- q. "Franchise" shall mean the authorization granted by this ordinance to construct, operate, and maintain a CATV system in the City of San Antonio.
- r. "Full Expanded Service" shall mean the level of service received by a CATV system subscriber for an additional charge over the Basic Service charge and which will allow for the capability to receive all services being offered by the grantee with the exception of pay television services or limited access services.
- s. "Grantor" shall mean the City of San Antonio.
- t. "Grantee" shall mean Western Integrated Networks of Texas Operating L.P., a Delaware limited partnership.
- u. "Gross Annual Revenues" shall mean all revenues derived *by* the Grantee, its affiliates or subsidiaries from and in connection with the operation of a Cable/Broadband System as authorized by this Franchise to provide Cable Service. For the purposes of this section, this term shall include, but not be limited to, installation fees, fees for Basic Service, Fees for Premium Service, fees for any cable programming service, and any other subscriber fees, charges for lease of channels, revenue from advertising, fees, charged for carriage of programming on the system, and all Internet services, including Internet access service. The term shall not include any taxes on services furnished by the Grantee which is imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the Grantee for such governmental unit. Revenue received by the City under this Franchise is not such a tax.
- v. "Person" shall mean any individual, firm, partnership, association, corporation, company, or organization of any kind.
- w. "Pay Television" shall mean the delivery over the CATV system of video and audio signals in intelligible form to subscribers for a fee or charge over and above the charge for basic or full or expanded services, on a per program, per channel, or other subscription basis.

- x. "Premium Service" shall mean the same as pay television.
- y. "Subscriber" shall mean a recipient of services, which are delivered over the CATV system.
- z. "Public Rights-of-Way" or "Right-of-Way" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive or other easement now or hereafter held by the City and shall include other easements or rights of way as shall be now held or hereafter held by the City and its Grantee for the purposes of installing or transmitting cable television system transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.
- aa. "User" shall mean a person utilizing a cable television system channel for purposes of production or transmission of materials to subscribers.

SECTION 3. GRANTING CLAUSE.

a. There is hereby granted by the Grantor to Grantee, the right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the streets now laid out or dedicated, and all extensions thereof, and additions thereto in the City, a Cable/Broadband System, including, poles, wires, cables, underground conduits, manholes, and other cablevision conductors and fixtures necessary for the maintenance, operation, and distribution of Cable Service (including Internet service).

b. In accordance with Article XI, Section 130 of the City Charter, the right to use and occupy said Public Rights-of-Way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said Public Rights-of-Way to any person at any time during the period of the Franchise, provided, however, that any such additional rights may only be granted on a competitively neutral basis with this Franchise. For purposes of this Franchise Agreement, the term "competitively neutral," as used or construed in the Federal Telecommunications Act of 1996 or any amendments thereafter, shall not control the meaning of "competitive neutrality" as used in this Franchise Agreement.

c. This Franchise does not grant the authority to use the Public Right-of-Way to operate a telecommunications system and prior to offering local exchange telecommunications service to its customers, the Grantee will obtain the City's standard right-of-way use permit which will be developed consistent with state law for all certificated telecommunications providers that maintain facilities in the City's rights-of-way.

SECTION 4. FRANCHISE TERM.

a. The Franchise term and the rights, privilege, and authority hereby granted shall take effect and be in force sixty days from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of fifteen (15) years, provided that within thirty (30) days after the date of the final passage of the Franchise ordinance the Grantee shall file with the City Clerk its unconditional acceptance of the terms of this Agreement and promise to comply and abide by all its provisions, terms, and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by and on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths. In the event that such instrument as aforesaid

shall not be filed within the time required, the ordinance and the rights, privileges, and Franchise as hereby granted shall ipso facto be, and become, terminated, null, and void. In addition to the acceptance by the Grantee provided for herein, Grantee's parent company shall also file an unconditional acceptance of the terms of the Franchise ordinance and agrees to guarantee the obligations and undertakings of Grantee under the Franchise and to perform in the event of default by its subsidiary company.

b. Reopener.

(i) Within four years (4) years of the Effective Date of this Franchise, the City shall have the exclusive right to reopen and renegotiate the following terms or clauses contained in this Franchise: 1) Section 12 - Public, Educational and Government Channels; 2) Section 13 - Installation and Maintenance of Service Connections in Public Buildings; and 3) Section 17 e. related to the City's right to audit. Subject to reasonableness on the part of the City, the City has the exclusive right to unilaterally modify each clause which has been reopened pursuant to this section 4b(i) to the extent necessary in order that each clause listed above be made consistent and competitively neutral with any renewal Franchise the City hereinafter grants to the incumbent provider (Time Warner), and other similarly situated cable service providers. Under no circumstances, however, shall Grantee be required to provide more than six (6) PEG access channels. It is the City's intent to negotiate provisions reopened under this subsection 4b with the goal of accomplishing competitive neutrality among all Cable/Broadband System providers franchised by the City, and the Grantee and City each agree to actively negotiate in good faith to accomplish this goal. For purposes of this Franchise Agreement, the term "competitively neutral," as used or construed in the Federal Telecommunications Act of 1996 or any amendments thereafter, shall not control the meaning of "competitive neutrality" as used in this Franchise Agreement.

(ii) Within four (4) years of the effective date of this Franchise, the City may reopen negotiations on any other provision of this Franchise, except for Sections 12 and 13, and amend the Franchise to reflect such negotiated changes, provided, however, that Grantee shall only be required to agree to changes in provisions other than Sections 12 and 13 which do not materially, adversely affect Grantee's rights or materially increase Grantee's obligations hereunder. It is the City's intent to negotiate provisions reopened under this subsection 4b(ii) with the goal of modernizing Franchise language and/or procedures as appropriate, and the Grantee and City each agree to actively negotiate in good faith to accomplish this goal.

(iii) Under no circumstances shall Grantee be required to accept any amendments to this Franchise which would require Grantee to change the network architecture, technology or design, including bandwidth capacity as set forth in Section 11 e. below, of the Grantee's Cable/Broadband System. The City may only so reopen negotiations and amend this Franchise pursuant to this subsection 4b on one occasion. Also, under no circumstances shall the City's right to reopen Sections 12 and 13 of this Franchise pursuant to 4(b)(i) be construed to be a change in network architecture, technology or design.

SECTION 5. FRANCHISE RENEWAL PROCEDURES.

a. This Franchise may be renewed by the City Council upon application by the Grantee pursuant to the procedures established in this Section, and subject to the Cable Act, State of Texas and applicable laws. In the event that renewal procedure laws change during the term of this Agreement, Subsections (b) and (c) below shall be modified in accordance with those changes.

b. Pursuant to the applicable laws which are in effect at the inception of this Agreement, during the six (6) month window between the thirty-sixth (36th) and thirtieth (30th) months prior to the expiration of the Franchise, the Grantee shall inform the City Council in writing of its intent to seek renewal of the Franchise.

c. If Grantee timely notifies the City of its intention to renew under Section 5b., the City Council shall, after public notice, proceed to determine whether: (1) Grantee has substantially complied with the material terms of its existing Franchise; (2) the quality of the Grantee's service has been adequate, with "quality" meaning signal quality, customer service, billing practices and channel capacity, (3) Grantee's renewal proposal is reasonable in light of the community's cable-related needs and interests, taking into account the cost of meeting those needs and interest; and (4) whether the operator is legally, technically, and financially qualified to fulfill its renewal proposal. To determine satisfactory performance, the City Council shall consider technical developments and performance of the system, and any other particular requirements set out in this Agreement.

d. Provided Grantee has timely given the City notice of its intent to renew under Section 5b., only upon a finding that the Grantee's performance is not satisfactory based upon the procedures and factors set forth in this Section 5., may the City Council deny Grantee's Franchise renewal request.

SECTION 6. TRANSFER OF FRANCHISE.

a. The Franchise granted shall be a privilege to be held in personal trust by the Grantee. Neither the Franchise, Grantee's Cable System, nor control of Grantee shall be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise, or by force or involuntary sale, without prior consent of the City Council expressed by ordinance, and then only on such conditions as may therein be prescribed. The City is hereby empowered to take legal or equitable action to set aside, annul, revoke or cancel the Franchise, or the transfer of the Franchise, if said transfer is not made according to the procedures established in this Agreement.

b. Grantee shall file an application for City consent to any sale, transfer, or assignment at least one hundred and twenty (120) days prior to the proposed date of the sale, transfer, or assignment. The City Clerk shall notify the City Council of the receipt of such application for a proposed sale, transfer, or assignment, and the City Council shall call a public hearing prior to approving or disapproving such sale, transfer, or assignment. Within 30 days of the date of the public hearing, the Grantee shall notify its subscribers of the hearing by announcement on at least two channels of its system, between the hours of 7:00 PM and 10:00 PM, for 15 consecutive days preceding the date of the public hearing, and in addition shall provide written notice to all subscribers. The City Council shall not withhold, delay or condition its consent unreasonably, consistent with federal laws and rules; provided, however, that the proposed assignee shall agree to comply with all the provisions of this Franchise, and the assignee must cure or agree to assume liability for any failure by its predecessor to comply with this Franchise, and Council may consider whether the proposed transfer would reduce or eliminate the competitive delivery of Cable Services in the City to the extent provided in the Cable Act, and the assignee must be able to provide proof of financial responsibility as determined by the Council. If the City fails to act upon such a request within one hundred and twenty (120) days written notice from the Grantee, then such request

shall be deemed granted, provided, however, federal law shall preempt this requirement to the extent that federal laws and rules are inconsistent with this one hundred and twenty (120) day requirement.

c. Nothing in this Section shall be deemed to prohibit the assignment, mortgage, or pledge of the system or any part thereof for financing purposes; provided, however, that such financing purposes shall be for the construction, maintenance, operation or improvement of the CATV system authorized by this Franchise.

SECTION 7. FRANCHISE TERRITORY AND LINE EXTENSION POLICY.

a. This Franchise shall be for the present territorial limits of the City of San Antonio and for any area henceforth added thereto during the term of the Franchise. The Grantee hereby agrees to provide Cable Service availability to all property within the City limits as of the effective date of this ordinance in all areas where the housing density reaches 25 dwelling units or more per street mile in accordance with the construction timetable established hereinafter.

b. Upon completion of installation of the cable television system in the initial service area as described above, the Grantee shall extend its services to areas annexed to the City of San Antonio subsequent to the effective date of this ordinance when housing density reaches 25 dwelling units per street mile.

c. Within twelve (12) months after any annexation, the Grantee must submit proof to the City Manager, or his designee, that the same service is provided to newly annexed areas of the City as is provided in other parts of the City.

SECTION 8. CONSTRUCTION TIMETABLE.

a. Upon accepting the Franchise, Grantee shall file the documents required to obtain all necessary Federal, State, and local licenses, and authorizations required for the conduct of its business, and shall submit monthly reports to the City Manager or his designated agent on progress in this respect until all such documents are in hand. In the event that the documents necessary to receive the proper licenses and certificates are not filed, the Council may declare the enabling ordinance null and void.

b. The Grantee herein expressly agrees and affirms that a principal criterion to be utilized in designing and constructing the Cable System shall be to insure that all areas of the City shall be provided service in an equitable manner.

c. In constructing the Cable/Broadband System, the Grantee shall provide service to at least 10% of the total area of the City to be served under this Franchise within the first 24 months following the effective date of this Franchise. At least another 25% of the total area of the City to be served shall be provided service within the second 24 months, and the remaining portion of the total area of the City to be served shall be provided service no later than the last 12 months. Failure to provide service availability to all areas of the City as defined in Section 7, above, within the deadlines set forth in this paragraph 8 c. shall be considered a material breach of the Franchise and subject Grantee to the penalties enumerated hereinafter, except for delays caused by acts of God, national emergencies, strikes or delays caused by the City, its agencies, or other utilities. It is the intent of the Grantee to build-out its system, and offer its services to customers, in an equitable, non-discriminatory manner, and in furtherance of such intent, Grantee agrees to build-out its system in substantial compliance with the activation Phasing Map set forth in Exhibit A, attached hereto and incorporated herein for all purposes. Grantee shall

ensure that access to any Cable Service is not denied to any group because of the income of the residents of the area in which the group resides.

d. By the 1st Reading of the Franchise, the Grantee shall furnish the City Council with an activation Phasing Map illustrating the scheduled order in which Cable Services will become available to certain areas within the City. Within three (3) months after the effective date of this Franchise, Grantee shall furnish a Service Availability Schedule in sufficient detail displaying the estimated dates upon which Cable Service availability shall be furnished to subscribers within sub-areas of each area identified in the Phasing Map, said schedule having been prepared utilizing the criterion established above and in compliance with such criterion. If City Council finds that Grantee’s proposed Phasing Map does not comply with the criterion in the last two (2) sentences of Section 8c. above anytime during the three (3) readings of the Franchise Ordinance, then Council may direct the Grantee to modify such Phasing Map in order to satisfy such criterion. After the passage of the Franchise Ordinance on the third (3rd) reading, the Phasing Map, including any modifications made by Council and agreed to by Grantee, shall be deemed accepted by the City, and the Phasing Map shall be attached to this Franchise and be incorporated by reference for all purposes as Exhibit A. Upon timely submission by Grantee of a Service Availability Schedule in compliance with the criterion above, said Schedule shall be attached to this Franchise and incorporated by reference for all purposes as Exhibit B. Adherence to the Phasing Map and the Service Availability Schedule by the Grantee shall be mandatory; provided, however, that the Grantee may submit a re-estimated Service Availability Schedule to the City’s Supervisor of Public Utilities each quarter. Such re-estimated schedules will take the place of previously submitted schedules Grantee may be required to appear before Council to make a presentation regarding the change of schedule and Council may direct Grantee to modify its estimates if such estimates do not meet the criterion of this Franchise.

SECTION 9. USE OF STREETS.

a. Construction Work-Regulation By City.

1. The work done by the Grantee in connection with the construction, maintenance, repair, extension, betterment, permanent improvement or enlargement, of the Cable/Broadband System within the Public Rights-of-Way shall be subject to and governed by all pertinent laws, rules, regulations, including City, State, and Federal, both present and future, including the City’s Street Cut Manual, that are applicable to insuring the work done does not unduly inconvenience the public in the use of the surface of the Public Rights-of-Way.

2. All excavations and other construction in the streets shall be so carried on as to interfere as little as practicable with the use of City’s Public Rights-of-Way and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the City under the policy and regulatory powers of the City necessary to provide for public convenience.

3. Before initiating construction on Public Rights-of-Way, the Grantee will make all reasonable efforts to attach its Cable/Broadband System to existing poles and to share existing conduit space. Additionally, the Grantee will negotiate in good faith to make its excess conduit space available on a nondiscriminatory basis to other authorized cable and telecommunications providers, consistent with federal state, or City regulations.

4. Grantee shall employ the use of directional boring, where feasible, in the central business district and other appropriate areas, including Utility Conversion Districts. In all sections of the City where the cables, wires and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground.

5. The Grantee shall, prior to the construction of any portion of the transmission and/or distribution plant of the, Cable System, submit detailed plans and specifications of the distribution system to the City Manager or his designated agent for review and approval. No construction shall start until such plans have been approved, provided such consent shall not be withheld unreasonably

b. Construction, Restoration and Maintenance of Streets.

1. In its construction or maintenance of its installations, Grantee shall comply with all permit procedures and excavation and restoration standards applicable to other utilities operating within the City whenever it is necessary to cut or otherwise disturb the surfaces of the Public Rights-of-Way. In case of disturbance of any street or paved area the Grantee shall, at its own cost and expense and in a manner approved by the City manager or his designated agent, replace, and restore such street and/or paved area in as good a condition as before the work involving such disturbance was done. Grantee shall further warrant all pavement repairs according to the City's Street Cut Policy as more fully defined in Section 29-145 of the City of San Antonio City Code, a copy of which is attached hereto as Exhibit __, which is the same standard required of other utilities, and which may be amended from time to time, including repeal and substitution through recodification, provided the same continues to apply uniformly to other providers similarly situated with Grantee . Furthermore, Grantee shall be responsible for compensation for costs associated with restoration, reconstruction and repair to damage to Tri-Party Downtown Transportation Improvements as more fully defined in Section 29-21 of the San Antonio City Code, a copy of which is attached hereto as Exhibit __. No public rights-of-way shall be encumbered for a longer period than shall be reasonably necessary to execute the work.

2. The City shall have the power at any time to order and require Grantee to remove and abate any pole, wire, cable or other structure that is dangerous to life and property, and in case Grantee, after notice, fails or refuses to comply, the City shall have the power to remove the same at the expense of Grantee, all without compensation or liability for damages to Grantee. Prior to construction, Grantee shall submit engineering plans to the City for review and approval when such plans are for projects which involve significant amounts of either new cable and underground conduit systems, or both, in Public Rights-of-Way. Approval of such plans shall not be unreasonably delayed, withheld or conditioned by the City.

3. Except in an emergency, Grantee shall not excavate in any Public Right-of-Way without first securing permission of the City, but such permission shall not be unreasonably delayed, withheld or conditioned if the proposed excavation is in accordance with the terms identified in the City's Street Cut Policy as more fully defined in Sections 29-21 and 29-145 of the City of San Antonio Code (Exhibits __ and __) and this agreement. The City shall be notified as identified in the City's Street Cut Policy as more fully defined in Section 29-145 of the City of San Antonio Code (Exhibit __) regarding work performed under emergency conditions.

4. The existence and location of underground utilities are commonly indicated on the plans and are taken from the best records available and are not to be construed nor guaranteed to be accurate. The Grantee shall contact the one-call center at TESS (1-800-545-6005), so long as that center is in existence and utilized by the City, otherwise, City shall notify Grantee of any change and Grantee shall comply with such change, at least forty-eight (48) hours prior to excavation. Grantee has the responsibility to protect and support the various utility facilities during construction.

5. All transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of the Public Rights-of-Way, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets.

c. Work by Others, Construction by Abutting Owners, Alteration to conform with Public Improvements.

1. The City reserves the right to lay, and permit to be laid, electricity, sewer, gas, water and other pipe lines or cables and conduits, as well as drainage pipes and channels and streets and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City of San Antonio, in, across, along, over or under any street, alley, highway, or public place occupied by Grantee, and to change any curb or sidewalk or the grade of any street and to maintain all the City's facilities. In permitting such work to be done by others, the City shall not be liable to Grantee for any damage caused by those persons or entities. Notwithstanding Section 21 of this Franchise, City shall not be liable for any other direct or consequential damage to Grantee or its customers that may arise if the City, its agents, employees or contractors negligently cause the flow of data, video or light impulses through Grantee's lines to be interrupted or stopped. Nothing herein shall relieve any third party from responsibility for damages caused to Grantee by such third party.

2. If the City requires Grantee to adapt or conform its Facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the City, to use, or to use with greater convenience, any right-of-way, street, alley, highway or public place, Grantee shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse Grantee for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of Grantee's facilities; provided, however, that the City shall never be liable for such reimbursement.

d. Abandonment of Facilities. Whenever Grantee intends to abandon any of its Facilities within the Public Rights-of-Way, it shall submit to the Director of Public Works an application requesting permission to abandon the facility, describing the facility to be abandoned and the date of the proposed abandonment. City may require Grantee, at Grantee's expense, to remove the facility from the Public Rights-of-Way or modify the facility in order to protect the public health and safety or otherwise serve the public interest. If this Franchise terminates for any reason, then the facilities that remain in the Public Right-of-way for more than ninety (90) days after the date of termination shall be deemed abandoned. City may remove abandoned facilities and the Grantee shall be liable for all costs associated with the necessary removal of its facilities.

e. Conformance with Major Thoroughfare Plan.

1. Whenever Grantee acquires any interest in real property for the installation or relocation of service lines, or any other Grantee equipment or facilities along or adjacent to any existing street or thoroughfare or any proposed street, highway or thoroughfare as reflected on the City's current Major Thoroughfare Plan, Grantee shall give the City's Director of Public Works and the City's Director of Planning, written notice of such acquisition within thirty (30)

days of the date of that acquisition. The City's Director of Public Works and the City's Director of Planning will review the acquisition to see that it does not conflict or interfere with any proposed street or thoroughfare expansion.

2. If either the Director of Public Works or the Director of Planning determines that the acquisition will conflict or interfere with the Major Thoroughfare Plan, then the City will notify the Grantee of the conflict or interference. Thereafter, the City and the Grantee will endeavor in good faith to resolve the conflict or interference. If the conflict or interference cannot be resolved in good faith, then Grantee shall bear all financial losses that result from the conflict or interference and will absolve the Grantee of any responsibility for such losses.

f. Rights in the Event of Abandonment. In the event that the governing body of the City closes or abandons any Rights-of-Way which contain the facilities of the Grantee installed hereunder, any conveyance of land contained in such closed or abandoned right-of-way shall be subject to, and conditioned upon, the rights of the Grantee, if necessary.

g. Supervision by City of Location of Poles and Conduits. All poles placed shall be of sound material and reasonably straight, and shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location and route of all poles, stubs, guys, anchors, conduits, fiber, and cables placed and constructed by the Grantee in the construction and maintenance of its Cable/Broadband System in the City shall be subject to the lawful, reasonable and proper control, direction and/or approval of the City.

h. Attachments to Poles and Space in Ducts.

1. Nothing contained in this Franchise shall be construed to require or permit any pole attachments for electric light or power wires or communications facilities or systems not provided by the Grantee to be attached to the Grantee's poles or other physical plant or placed in the Grantee's conduit. If the City desires pole attachments for electric light or power wires or communications facilities or systems not provided by the Grantee, or if the City desires to place communications facilities or systems not provided by the Grantee in any Grantee duct, then a further separate, noncontingent agreement shall be prerequisite to such attachment(s) or such use of any duct by the City.

2. Nothing contained in this Franchise shall be construed to require or permit any pole attachments of Facilities owned, leased, or controlled by the Grantee to be attached to the City's poles or other physical plant or placed in the City's conduit. If the Grantee desires to place attachments for any Facilities provided by the Grantee, or if the Grantee desires to place any Facilities in any City duct, then a further separate agreement shall be prerequisite to such attachment(s) or such use of any duct by the Grantee.

3. Nothing contained in this Franchise related to the Grantee's Cable/Broadband System shall obligate or restrict the Grantee in exercising its rights voluntarily to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies which are authorized to operate within the City.

4. Grantee shall utilize existing poles, conduits, and other facilities whenever possible. Prior to the utilization of any street for the placement of the distribution plant of the Cable System, the Grantee shall secure and place on file with the City Clerk a "utility pole usage agreement" with each utility within the City currently owning such poles, conduits, and other facilities, whose poles, conduits and facilities are to be used. To the extent that existing poles, posts, conduits, and other such structures are not available, or will not be available to the Grantee within a reasonable time, the Grantee shall have the right to purchase, lease, or in any manner acquire land or rights-of-way upon or under which to erect and maintain its own poles, conduits, and other such structures as may be necessary for the construction and maintenance of its Cable System.

i. Temporary Rearrangement of Aerial Wires. Upon request, the Grantee will remove or raise or lower its aerial wires, fiber, or cables temporarily to permit the moving of houses or other bulky structures. The reasonable and necessary expense of such temporary rearrangements shall be paid by the party or parties requesting them, and the Grantee may require payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary rearrangement. The City may require the removal of Grantee's aerial wires in connection with the demolition of unsafe structures, including emergency or ordered demolitions, at no cost to City.

j. Tree Trimming and Graffiti Abatement. The right, license, privilege, and permission is hereby granted to the Grantee, its contractors and agents, to trim trees, subject to requirements of the City's Tree Ordinance, as may be amended from time to time, upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the Grantee's Cable System, and when so directed by the City, the trimming shall be done under the supervision and direction of the City or of any City official to whom those duties have been or may be delegated. At the option of the City, such trimming may be done by City or under its supervision and direction at the expense of the Grantee if Grantee has failed after two (2) weeks notice to perform such work. City may at any time with Grantee's concurrence perform such work at Grantee's expense. The City shall report damage or vandalism to Grantee's facilities as soon as practicable after City discovers or learns of such event. Grantee shall make the necessary repairs or restoration (including cleaning of graffiti) as soon as practicable after Grantee discovers or learns of any misuse, destruction, damage or vandalism to its facilities.

k. Relocation of Facilities. The Grantee shall, upon the written request of the City, relocate its Facilities situated within any street, at no expense to the City, where reasonable and necessary to accommodate street construction, or widening, or other public improvement projects, including Utility Conversion Districts, of the City. The Grantee shall have the right to present to the City alternative proposals to the proposed relocation. The City shall give due and reasonable consideration to such alternative proposals. However, when relocation is necessitated by federal government requirements, and when such requirements include reimbursements, the City will reimburse Grantee for its proportionate share from funds provided the City in such reimbursements,. Also, if a third party makes a request to relocate, and such relocation benefits that third party, then the Grantee shall be reimbursed by the third party.

I. Use of Premises.

1. Grantee is prohibited from using the Public Rights-of-Way in any manner which violates federal, state, or local laws; City codes and regulations; City Public Works policies, rules and orders; and City permitting procedures; regardless of when such may become effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality; and shall provide satisfactory evidence of compliance upon request of the City.

2. The City shall be responsible for providing a Phase One Environmental Assessment to Grantee prior to the commencement of any City Capital Improvement Project, as designated and administered by the City's Public Works Department. Such Capital Improvement Projects shall include but not be limited to installing underground drainage and constructing streets, sidewalks and curbs. Responsibility for addressing regulated, contaminated or hazardous materials encountered on Public Rights-of-Ways by either Grantee or the City, or both, as the case may be, shall be apportioned as follows:

(a) Projects which are Joint Bid. During construction projects which are City Capital Improvement Projects (as defined by the City's Public Works Department, or its successor) in which the Grantee has agreed to "joint bid" with the City, the City shall be responsible for the management of the project in accordance with all applicable laws and regulations. The Grantee shall be responsible for its normal installation or relocation costs, plus any incremental increase in costs involved in the excavation and backfill of trenches in areas containing contaminated material, including the costs for safety and health plans and all other actions necessary to the safety of its personnel, agents or contractors, associated with such excavation. Any incremental increase in costs shall be limited solely to Grantee's portion of the City Capital Improvement Project. The City will be responsible for the cost of the necessary environmental assessments, soil testing, appropriate and legal transport and disposal of contaminants and contaminated soil as regulations may require. The City shall assume the regulatory status of "generator", as that term is defined in 40 C.F.R. Section 260.10 or under any applicable state or federal statutes or regulations, after careful evaluation of all applicable data regarding the cause, source, level and extent of the contamination on a case by case basis. Grantee shall have no obligation to participate through a joint bid arrangement on any Capital Improvement Project until the City commits to a status as "generator". Grantee shall have no liability for any actions of those grantees or agents under City management or City hire.

(b) Capital Improvement Projects which are not Joint Bid Projects. If, during City Capital Improvement Projects which are not "joint bid" projects, Grantee discovers any contaminated, regulated or hazardous materials on or in the Public Rights-of-Way project site, Grantee shall have the following options:

(i) The Grantee may assume the regulatory status of "generator", as that term is defined in 40 C.F.R. Section 260.10 or any applicable state or federal statutes or regulations, after careful evaluation of all applicable data regarding the cause, source, level and extent of the contamination on a case by case basis. If Grantee assumes the regulatory status of generator, it shall be responsible for environmental assessment, excavation, testing, transportation, and disposal of any contaminated or regulated material, excavated by itself, in accordance with applicable law; or

(ii) The Grantee may elect to abandon its Facilities within the contaminated area of the Rights-of-Way and reroute around the contaminated area. Grantee shall notify the City of the condition. In the absence of aggravation or effected release by Grantee, Grantee shall not be liable for any remediation of the regulated or hazardous materials or

contaminated property. In the event of such aggravation or release, or unless the contamination is the result of Grantee's Facilities, Grantee's liability shall be limited to addressing the aggravation or release; or

(iii) The Grantee may elect to negotiate with the City to participate in Capital Improvement Projects in a "joint bid" arrangement. If a participation agreement is negotiated, Grantee and City agree to adjust the performance schedule to accommodate any delays associated with necessary remediation.

(c) Grantee's Projects. It is understood that Grantee may undertake projects on the Public Rights-of-Way which are not City Capital Improvement Projects. The City agrees to share with Grantee environmental assessment information it may possess, if any, pertaining to the work site, upon request of Grantee. City assumes no liability or responsibility for the accuracy of such information, data, or any recommendation which may be included therein. If, during projects which are not City Capital Improvement Projects, but which occur on the Public Rights-of-Way, Grantee discovers regulated, contaminated or hazardous materials on the Public Rights-of-Way, Grantee shall have the following options:

(i) The Grantee may assume the regulatory status of "generator", as that term is defined in 40 C.F.R. Section 260.10 or under any applicable state or federal statutes or regulations, after careful evaluation of all applicable data regarding the cause, source, level and extent of the contamination on a case by case basis. If Grantee assumes the regulatory status of generator, it shall be responsible for environmental assessment, excavation, testing, transportation, and disposal of any contaminated or regulated material, excavated by itself, in accordance with applicable law; or

(ii) The Grantee may elect to abandon its Facilities within the contaminated area of the Rights-of-Way and reroute around the contaminated area. Grantee shall notify the City of the condition. In the absence of aggravation or effected release, Grantee shall not be liable for any remediation of the regulated or hazardous materials or contaminated property. In the event of such aggravation or release, or unless the contamination is the result of Grantee's Facilities, Grantee's liability shall be limited to addressing the aggravation or release.

(d) Grantee's Obligations with Respect to its Options. When exercising the foregoing options with respect to City Capital Improvement Projects, Grantee shall use reasonable efforts to exercise its options in a timely manner so as not to unduly or unreasonably delay the continuing work on the Capital Improvement Project.

SECTION 10. CONFORMANCE TO CERTAIN STANDARDS.

a. Methods of construction, installation, and maintenance of the Cable/Broadband System shall comply with all applicable laws, ordinances, safety requirements, and technical standards including but not limited to FCC, FAA, National Electric Safety Code, National Electric Code, National Cable Television Association Standards of Good Engineering Practices, and American Telephone & Telegraph Construction Procedures to the extent that such codes are consistent with local law affecting the construction, installation, and maintenance of electric supply and communications lines. To the extent that such codes are inconsistent with other provisions of this Franchise or with local laws, the latter shall govern when the Franchise or local laws require a higher standard than the codes.

b. Any tower constructed for use in the Cable/Broadband System shall comply with the standards contained in Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, EIA Standards RS-222-A as published by the Engineering Department of the Electronic Industries Association, 2001 Eye Street, N. W., Washington, D. C. 20006 or its successor.

c. Installation and physical dimensions of any tower constructed for use in the Cable/Broadband System shall comply with all applicable FAA and FCC regulations concerning navigable airspace and tower marking and lighting.

d. Any antenna structure in the Cable/Broadband System shall comply with the City's requirements regarding Construction, Marking, and Lighting of Antenna Structures.

SECTION 11. SYSTEM DESIGN CRITERIA.

a. The Cable/Broadband System installed in the City of San Antonio shall upon activation be initially capable of cablecasting no less than (80) channels of video services or its equivalent of video, audio, or other combination of electronic signals.

b. Within six (6) months of the date of acceptance of this Franchise by the Grantee, the Grantee shall file with the City Clerk of the City of San Antonio a full, detailed statement which shall be incorporated by reference to this Franchise as Exhibit "___" and which shall contain the following information which is available at that time and shall update this information every three (3) months until all information is determined:

1. The location of the cable television system's "headend" facilities, local origination studio facilities, receiving and transmitting station for the sending or receiving of programming by way of satellite, and central business office.

2. The location of all regional headend and antenna sites.

3. The location of all designated points within the system wherein electronic signals (video and/or audio) may be transmitted into the system other than the central headend area, and other than schools.

4. A list of lessors of any of the above-delineated locations which are leased to the Grantee.

5. A description of the cablecasting equipment to be utilized in the local origination studio facility.

6. A description of any mobile unit or facilities to be utilized by the Grantee in the production or transmission of programming.

c. The Grantee agrees and affirms that the statement of programming services on each channel of the (80) channels or its equivalent of video, audio or other combinations of electronic signals, which is incorporated as Exhibit "___", and adopted by reference shall constitute the initial level of programming to be available to all subscribers for basic, full, and/or premium services of the Grantee. Such programming may be changed by Grantee subject to Grantee providing an equivalent amount of programming for each level of service.

d. Grantee shall construct one earth station, as needed, to receive satellite programming services to be carried on the Cable System and agree to construct additional earth stations when such construction will advance the amount of CATV programming for subscribers in the City.

e. Grantee's Cable System must have a minimum band width capacity of 750 megahertz, and must utilize state-of-the-art equipment and local fiber optic network infrastructure trunking facilities.

SECTION 12: PUBLIC, EDUCATIONAL & GOVERNMENT CHANNELS

a. Access Channels: Notwithstanding the provisions of Section 4 b., the number of Public, Educational, & Government Channels shall in no case exceed six (6) total channels. The Grantee shall provide the following access channel capacity in the following manner:

- 1. Government Channel: One channel shall be made available for use by the City of San Antonio at no cost to the City or its assigns.
- 2. Educational Channel: Two channels shall be made available to the local educational authorities on an as-needed basis.
- 3. Public Access Channel: One specially designated, non-commercial public access channel shall be made available on a first-come, first served nondiscriminatory basis.

b. The access channels delineated herein shall be made available to the authorized government, non-profit civic and non-commercial users at no cost; provided, however, that the Grantee shall be authorized to charge other users for the use of its local origination studio facilities and/or technical personnel a fee which shall be no greater than its actual cost of providing such facilities and/or personnel.

c. The Grantee hereby agrees that it shall utilize reasonable efforts to encourage the development and utilization of those channels herein described as access channels.

d. The Grantee shall be allowed to utilize the channels designated as access channels for such other purposes as it may deem appropriate at all times the users are not utilizing these channels.

e. Control over the content of the programming transmitted over the access channels by the Grantee shall be limited to that level which is authorized by the Cable Act and/or the FCC now or hereinafter during the length of the Franchise terms.

f. The Fine Arts Committee has the authority to formulate rules governing scheduling of programming of those access channels dedicated for use by the educational community. The Fine Arts Committee has adopted rules, which were approved by Council pursuant to Resolution No. 81-51-58 on October 1, 1981. and those rules shall be utilized by the Grantee and all parties involved. The City or any non-profit entity designated by the City shall have the authority to repeal Changes in such rules shall be subject to City approval and Grantee shall be required to abide such changes.

g. The Grantee shall provide each public, governmental, and educational entity upon request an electronic device to allow for "limited access" programming on the access channels at no cost. Additional devices shall be provided by Grantee to such entities if requested at Grantee's cost. (i.e. Grantee shall be entitled to actual costs)

h. The City Council shall reserve the right to establish and appoint a Citizens Committee or committees to advise on the utilization of the government and/or public access channels.

i. Grantee shall provide and maintain a minimum of 3 production studios within Bexar County, and a minimum of 2 fully equipped for color mobile units for the purpose of local program origination.

j. In lieu of providing the PEG facilities and equipment set forth in paragraph 12 i., including the mobile unit and production studio requirements, the City may choose to require Grantee to reimburse Time Warner Cable, or its successor in interest, for Grantee's proportionate share of all reasonable costs associated with the provision of PEG facilities and equipment incurred by Time Warner Cable. Such reimbursement shall be based upon the percentage of the total number of cable subscribers served by Grantee within the corporate limits of the City. As a condition to reimbursement, Time Warner Cable shall provide the City with financial statements evidencing the total direct and actual costs associated with the PEG facilities and equipment it provides, and the City, at its sole discretion, shall make a determination regarding the reasonableness of such costs. The City shall then notify Grantee of the amount owed to Time Warner Cable and Grantee shall pay the City directly and copy Time Warner Cable with proof of payment. The City shall forward the payment to Time Warner Cable. Grantee's payment to the City shall be made within thirty (30) days after the City notifies Grantee of such amount.

k. Interconnection for access channels distribution. For the purposes of distributing access channels, the Grantee shall interconnect its system, at its own cost, with the Time Warner Cable System and any other cable system in the City at a technically feasible interconnection point under an agreement between the Grantee and such other cable system operator, subject to the reasonable cooperation of Time Warner Cable, or its successor in interest, in providing interconnection. From the time Grantee commences offering cable service to subscribers, the Grantee shall exercise its best efforts to comply with the provisions of this Section through interconnection with the Time Warner System within 120 days, but in no event shall Grantee have more than 180 days to comply with this subsection. Nothing herein shall be deemed to constitute a requirement that Grantee compensate or reimburse Time Warner Cable for Time Warner Cable's costs in implementing such connection, provided, however, Grantee shall be responsible for constructing facilities at Grantee's costs to reach the appropriate interconnection point on Time Warner Cable's system.

l. Start-up Fund. Upon request by the City, Grantee agrees to make a one-time cash payment of \$200,000 towards the establishment of a PEG facility and equipment fund to be utilized by the City or a third party, not-for-profit organization in the event that the City elects to establish a centralized PEG program to which all Cable Service providers contribute on an equitable and competitively neutral basis to fund such program, including state-of-the-art facilities and equipment. If that third party does not utilize all of the initial \$200,000 in the start-up of the program, then any remainder shall remain in the operating budget of that third party for the operation and management of PEG program and each Cable Service provider which contributes to the start-up fund shall receive a credit in a proportionate share as part of each provider's annual contributions in support of the operations by the third party.

SECTION 13. INSTALLATION AND MAINTENANCE OF SERVICE CONNECTIONS IN PUBLIC BUILDINGS.

a. The Grantee shall provide one service connection, including Cable Television and/or Internet Service, in each of the following locations:

1. All governmental buildings or facilities as may be now or hereinafter designated by the City Manager or his agent.
2. All public and parochial school buildings as may be designated now or hereinafter by the chief administrative officer of each school district or parochial school system.
3. Each classroom building and dormitory building of each college or university.

4. Such service connections shall be provided to buildings as designated by the proper administrative official within two months of the date service is available to such building.

b. No charge will be made by the Grantee for the installation, disconnections (when reasonably requested), reconnections (when reasonably requested), monthly services, and/or maintenance of equipment on any service connection authorized by subsection (a) above. A converter to provide the capability of receiving all services except "Pay Television" shall be provided to each location at no cost. The costs of all equipment and services provided by Grantee under this Section 13 shall be comparable to the value of all services and connections provided by the incumbent local cable provider, Time Warner Cable, or its successor, under Section 12 of its Franchise Agreement with the City.

c. The Grantee shall install and maintain return (upstream) full-channel transmission capability in each public and/or parochial school building when requested by the chief executive officer of the school district or school system.

d. The Grantee shall install and maintain return (upstream) audio and/or video transmission capability in any governmental building or facility as may be now or hereinafter designated by the City Manager or his agent, at no cost to the City.

SECTION 14. PERFORMANCE EVALUATION SESSIONS.

a. It is understood that City Council has the right to assure that this Agreement is being complied with. In order to assure compliance, on or about the 2nd, 5th, 7th, 10th and 12th anniversaries of the date of franchise acceptance by the Grantee, the City Council may hold a public hearing or hearings for the purpose of reviewing the performance of the Grantee under the Franchise. Attendance of the Grantee's duly authorized representative at these public hearings is mandatory unless waived by the City Council. Topics which may be discussed at any of these sessions include, but are not limited to, customer service, signal quality, system maintenance, system channel capacity, PEG requirements, the level of performance or services compared to systems of similar description in other cities within the FCC's top 100 TV Market listings, amendments to the Franchise ordinance, and any FCC, State, or judicial rulings pertinent to the Franchise. The Grantee shall make available to the City, if requested, any records, documents, or other information as may be relevant to the City's review.

b. The Grantee shall notify all subscribers of the time, place, and purposes of each of the evaluation sessions by announcement on at least two channels of its system between the hours of 7:00 P.M. and 10:00 P.M. every day for fifteen (15) consecutive days preceding each session.

c. At the conclusion of each performance evaluation session, the City Council may pass a resolution stating its findings and directing Grantee to take steps as necessary to come into compliance with the Franchise.

d. All records and minutes of each of the performance evaluation sessions shall be retained by the City Clerk and be available for inspection throughout the term of the franchise.

SECTION 15. SYSTEM TECHNICAL STANDARDS.

a. The Grantee hereby agrees to construct and maintain the cable television system utilizing the technical standards delineated in the FCC Rules and regulations, 47 CFR 76.601 through 76.630 as now exist or may hereinafter be amended.

b. The Grantee further agrees that the cable television system shall be so constructed and maintained as to provide that the visual signal level to system noise shall be no less than 43 decibels when measured at any subscriber terminal in the system, the FCC Rules and Regulations previously cited notwithstanding.

c. The Grantee further agrees to provide the following in the construction, operation, and maintenance of the cable television system.

1. The cable television system shall be continuously operational on a 24 hour a day basis.
2. The cable television system shall be designed and operated so as to avoid causing interference with reception of off-the-air signals by non-subscribers to the system.

SECTION 16. RATES AND CHARGES FOR SERVICE.

a. The City shall review and analyze rates for the provision of basic service to subscribers, residential or non-residential, including installation of services and equipment (converters and remotes) used for basic service, which is consistent with the 1992 Cable Act, 47 U.S.C. §543, and rate regulations, 47, C.F.R. §§76.900 et seq.

b. At least ninety (90) days before the effective date of any rate increase, and for a period of five (5) consecutive days, the Grantee shall notify its subscribers of the rate increase by announcement on at least two (2) channels of its system, between the hours of 7:00 p.m. and 10:00 p.m.

SECTION 17. FRANCHISE FEE.

a. Annual Franchise Payment. In consideration of the terms of this Franchise, the Grantee shall pay annually to the City a sum equal to five percent (5%) of the Gross Annual Revenues of the Cable/Broadband System, including all Internet services, including Internet access services. Such payment shall be in addition to and shall not be construed as payment in lieu of personal or real property taxes levied by the City. To the extent that Grantee receives revenue from a Subscriber for multiple services that are provided for a fixed price, and revenue for some but not all of such services is includable in the computation of Gross Annual Revenues for purposes of calculation of the Franchise Fee due hereunder, Grantee shall allocate the appropriate portion of such revenue for inclusion in Gross Annual Revenues. In the event such fixed price for such multiple services is lower than the aggregate of the prices of those services if each service is purchased individually, then the amount of the revenue to be allocated to each service shall be proportional to the individual price of such service compared to the aggregate of the individual prices of such services when purchased individually.

a-1 Prepayment of Franchise Fees. As a condition precedent to the execution of this Franchise by the City, the Grantee will pay the City an advance payment of its Franchise fees in the amount of \$1,000,000.00. This advance payment shall be credited against the Grantee's Franchise fee payments due the City. Such credit shall be taken in the amount equal to 100% of Franchise fees due each year until this prepayment fund is exhausted. The credit will include a calculation of the rate of return on the initial prepayment, provided, however, such rate of return shall be calculated based on the standard rate utilized, and realized, by the City. Should the Grantee default and fail to install and operate a cable television system, in accordance herewith, the Grantee specifically agrees that this prepayment shall be retained by the City as liquidated damages.

7/9/88

b. It is recognized that the 5% Franchise fee is established in conformance with the current FCC Rules. In the event that the FCC shall modify such Rule so as to eliminate or alter in any fashion the Franchise fee limitation, or in the event that such 5% Franchise fee limitation shall be eliminated or altered by judicial determination, the City reserves the right to renegotiate the amount of the fee.

c. The payment due to the City as is required in Subsection (a) above, shall be computed and due quarterly, based on Grantee's fiscal year. The Grantee shall file with the City, within 30 days after the expiration of each of the Grantee's fiscal quarters, a financial statement clearly showing the Gross Annual Revenues received by the Grantee during the preceding quarter, and such other information as may be required by the City Manager to provide reasonable verification of gross revenues and of Franchise fees. Payment of the quarterly portion of the Franchise fee shall be payable to the City at the time such statement is filed.

d. In accordance with Article XI, Section 133 of the City Charter, the Grantee shall file, within sixty (60) days of the close of the Grantee's fiscal year, an annual report prepared and audited by a Certified Public Accountant, clearly showing the Gross Annual Revenues attributable to the Grantee's San Antonio Cable Television system, as well as those other items of information required by Section 133 of the City Charter. Extension of such period up to 30 additional days may be granted by City upon request by Grantee.

e. The City shall have the right to inspect the Grantee's income records, the right of audit and the recomputation of any amounts determined to be payable under this Franchise, provided, however, that such audit shall take place within forty-six (48) months following the close of each of the Grantee's fiscal years. Any additional amount due the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City, which notice shall include a copy of the audit report. The cost of said audit shall be borne by the Grantee if it is properly determined that the Grantee's annual payment to the City for the preceding year is increased thereby by more than one (1) percent.

f. In the event that any Franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such due date at the annual rate of ten percent (10%).

g. No acceptance of any payment by the City shall be construed as a release, or as an accord and satisfaction, of any claim the City may have for further or additional sums payable as a Franchise fee under this Agreement or for the performance of any other obligation of the Grantee.

SECTION 18. METHOD OF ACCOUNTING.

In accordance with Article XI, Section 134(6) of the City Charter the Grantee shall maintain its books and a system of accounts in accordance with generally accepted methods of accounting applicable to the cable television industry.

SECTION 19. DEPRECIATION RESERVES.

Only if Grantee elects cost-of-service method of rate regulation, then Grantee shall establish and maintain sufficient depreciation reserves to preserve the integrity of the property used and useful in rendering its services to the public. The depreciation reserves so established may be used only for the replacement, improvement, betterment, and extension of the San Antonio cable television system. The amount and character of reserves shall be in accordance with current common practices applicable to the cable television industry.

SECTION 20. RATE OF RETURN.

Only if Grantee elects cost-of-service method of rate regulation, in accordance with Article XI, Section 134 (5) of the City Charter, the rate of return to the Grantee for services rendered by authority of this Franchise shall not exceed a fair return upon the fair value of the property used in rendering the public service.

SECTION 21. INDEMNIFICATION AND INSURANCE

a. **GRANTEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to GRANTEE'S activities under this FRANCHISE, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this FRANCHISE, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS FRANCHISE. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. GRANTEE and the CITY shall each promptly advise the other in writing of any claim or demand against the CITY or GRANTEE known to either party related to or arising out of GRANTEE'S activities under this FRANCHISE and GRANTEE shall see to the investigation and defense of such claim or demand at GRANTEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.**

b. **It is the EXPRESS INTENT of the parties to this FRANCHISE, that the INDEMNITY provided for in this section (Section 12), is an INDEMNITY extended by GRANTEE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. GRANTEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

c. Prior to the commencement of any work, under this Franchise, Grantee shall furnish an original completed Certificate of Insurance or the City's Standard Certificate of insurance form to the City's Finance Department and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Franchise until such certificate shall have been delivered to the City's Finance Department and the City Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

d. The City reserves the right to review the insurance requirements of this section during the effective period of this Franchise and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Franchise, but in no instance will the City allow modification whereupon the City may incur increased risk. Any such modifications shall be applied uniformly to all similarly situated Cable Service providers which hold a Franchise with the City.

e. A Grantee's financial integrity is of interest to the City. Therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Franchise, and any extension hereof, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (public) Liability Insurance to include coverage for the following:	
a. Premises/ Operations	<u>C</u> ombined <u>S</u> ingle <u>L</u> imit
b. Independent contractors	for <u>B</u> odily <u>I</u> njury and
c. Products/completed operations	<u>P</u> roperty <u>D</u> amage of
e. Contractual liability	\$1,000,000 per occurrence
f. Personal Injury	or its equivalent & \$5M
aggregate or its equivalent	
g. Contractual Liability	
h. Explosion, collapse, under-ground	
i. Broad form property damage, to include fire legal liability	
*3. Business Automobile Liability	

- a. Owned/leased vehicles
 - b. Non-owned vehicles
 - c. Hired vehicles
 - d.
 - * If applicable
- Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent.

*4. Professional Liability
behalf (Claims made form)

\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

f. The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the City, the Grantee shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

g. Grantee agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

- Name the City and its officers, employees, volunteers, agents and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the professional liability, workers' compensation and liability policy;
- The Grantee's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City for liability arising out of operations under the contract with the City; and
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.

h. Grantee shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

**City of San Antonio
Finance Department
P. O. Box 839966**

**City of San Antonio
City Clerk's Office
P. O. Box 839966**

i. If Grantee fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Grantee to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Grantee to stop work hereunder, and/or withhold any payment(s) which become due, to Grantee hereunder until Grantee demonstrates compliance with the requirements hereof.

j. Nothing herein contained shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Franchise.

k. The Grantee shall obtain and maintain during construction of its Cable System, at its sole cost and expense, and file with the City Clerk, a corporate surety bond with a surety company authorized to do business in the State of Texas and found acceptable by the City's Risk Manager, in the amount of Five Hundred Thousand Dollars (\$500,000) to secure Grantee's performance of its obligations and faithful adherence to all requirements of this License. The Grantee shall not commence construction operation or activation of its system until providing the City with the required bond.

SECTION 22. RECAPTURE PROVISION.

a. The City shall have the right to cancel this Franchise and to purchase the Cable /Broadband System according to the formula set forth herein, however, such right will only be exercised after 10 years from the effective date of this Franchise, including a specific renewal period, if any. In the event that the City determines to purchase the system, it shall notify the grantee by Certified Mail that the City Council has, by ordinance, determined to so purchase. Within sixty (60) days after the receipt of such notice, the Grantee and the City shall each appoint a qualified and experienced cable television appraiser to represent it in the purchase procedures. The two representatives so appointed shall then mutually agree upon and appoint a third qualified and experienced cable television appraiser to participate in the purchase procedures. In the event that the two appraisers appointed by the City and the Grantee cannot agree upon a third appraiser within thirty (30) days, either the City or the Grantee may request the American Arbitration Association to name a third appraiser. The three appraisers thus appointed shall evaluate the Grantee's Cable/Broadband System by determining the fair market value of the system. The fair market value shall be determined by considering the elements of market value in accordance with the customary approaches to value utilized in the sale of a going Cable /Broadband System, including the age, bandwidth capacity and architecture of the system. The City shall have the right to purchase the system at an "adjusted" fair market value, that is, the fair market value of the system less the value, if any, determined by the appraisers to be attributable to the value of the franchise privilege itself; it being understood however that the value of the franchise privilege itself shall in no case be determined to exceed five percent (5%) of the market value of the system as found by the appraisers. The City shall have the right to purchase the system at the "adjusted" market value indicated by at least two of the appraisers so designated and the purchase price shall be paid in cash within 90 days of the City's final

decision to purchase the system; such final decision shall be made by the-City within 30 days of the completion of the appraisals.

b. The Grantee shall be allowed a reasonable time in which to terminate its operations after purchase and such time period shall in no event be less than six (6) months after the fair market value has been agreed upon by the City and the Grantee.

c. If the City exercises its right to recapture under this Section, the City shall do so only on a competitively neutral and equitable basis with other Cable/Broadband System providers. For purposes of this Franchise Agreement, the term "competitively neutral," as used or construed in the Federal Telecommunications Act of 1996 or any amendments thereafter, shall not control the meaning of "competitively neutrality" as used in this Franchise Agreement.

SECTION 23. REPORTS AND RECORDS.

a. Copies of all petitions, applications, and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the Franchise, shall be simultaneously submitted to the City Manager or his designated agent upon request.

b. The Grantee shall maintain an office in the City for so long as it continues to operate the Cable/Broadband System or any portion thereof and shall designate such offices as the place where all notices, directions, orders and requests may be served or delivered under this ordinance. The City Manager shall be notified of the location of such office or any change thereof.

c. The Grantee shall keep complete and accurate books of account and records of its business and operations under and in connection with the ordinance and Franchise. All such books and records shall be made available at the Grantee's office in the City.

d. The City Manager or his authorized agent shall have access to all books of account and records of the Grantee for the purpose of ascertaining the correctness of any and all reports and shall be given access to all other relevant records upon request. To the extent allowed by law, the City shall protect all confidential information from public disclosure.

e. Any false entry in the books of account or records of the Grantee or false statement in the reports to the City Manager as to a material fact, knowingly made by the Grantee shall constitute the breach of a material provision of the ordinance and Franchise.

SECTION 24. CUSTOMER SERVICE STANDARDS.

a. Office and Phone for Service. The Grantee shall maintain an office in the City which shall be open during all usual business hours, have a locally listed telephone and be so operated that complaints and requests for repairs or adjustments may be received at any time. In addition, the Grantee shall maintain a convenient office in the City open during normal business hours, for the receipt of sums due by its subscribers and shall provide for regular billing of accounts. The Grantee agrees to work with the City to develop adequate phone lines to serve customers, customer service office hours and service centers.

b. Notification of Service Procedures. The Grantee shall furnish each subscriber at the time service is installed written instructions that clearly set forth procedures for placing a service call, or requesting an adjustment. Said instructions shall also include the name, address and telephone number of the City Manager or other designated employee and a reminder that the subscriber can call or write the City Manager or other designated employee for information regarding terms and conditions of the Grantee's Franchise if the Grantee fails to respond to the subscriber's request for installation, service or adjustment within a reasonable period of time.

c. Service Response Time. The Grantee shall provide "same day" service response, seven (7) days a week for all complaints and requests for repairs or adjustments received prior to 2:00 p.m. each day. In no event shall the response time for calls received subsequent to 2:00 p.m. exceed twenty-four (24) hours.

d. Service Interruptions and Notifications. The Grantee shall interrupt system service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and except in emergency situations, only after publishing notice of service interruption. Services may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair, without notification, any night except Friday, Saturday, or Sunday, or the night preceding a holiday.

e. Whenever service is interrupted to any subscriber for any period of time in excess of 24 hours, the subscriber shall be entitled to receive a rebate of one-thirtieth (1/30th) of his monthly service fee for each day or part thereof between the end of the 24 hours and the time service is restored to proper standards.

f. Complaint Records. The Grantee shall maintain a centralized complaint file containing all written complaints received, and will make same available to the City for review during normal business hours. Non-written complaints shall be maintained on computer records, and hard copies shall be provided to the City upon request for spot checks or for review of specific customer complaints. Records will identify date and time of complaints and the subscriber's name with a description of the complaint and what actions were taken by the Grantee in response thereto. Records shall be kept for a period of at least three years.

g. Grantee shall comply with all FCC customer service standards set forth in 47 C.F.R. Section 76.309, as in effect on January 1, 2000. All of the standards contained in this Section 24 are in addition to any FCC cable customer service standards currently in effect, or hereafter adopted by the FCC.

SECTION 25. PROTECTION OF SUBSCRIBER PRIVACY.

a. Use of Data from Subscriber. The Grantee shall not initiate or use any form, procedure or device for procuring information or data from subscribers' terminal by use of the system, without prior valid authorization from each subscriber, so affected.

b. Subscriber Lists. The Grantee shall not, without prior valid authorization from each subscriber so affected, provide any list designating subscriber's names or addresses to any other party except where required under contract for provision of premium service.

c. Subscriber Transmissions. Grantee shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of two way services utilizing aural, visual or digital signals without first obtaining written permission of the subscriber.

d. Grantee must also abide by all subscriber privacy requirements adopted by the FCC in 47 U.S.C. §551, including any future amendments to these requirements.

SECTION 26. SECURITY FUND.

a. Within thirty (30) days after the acceptance of this Franchise, the Grantee shall deposit with the City's Director of Finance and maintain on deposit throughout the term of the Franchise the sum of \$100,000 in cash.

b. Within thirty (30) days after notice to it that any amount has been withdrawn from the security fund deposited pursuant to Paragraph (A) of this section the Grantee shall pay to, or deposit with, the City's Director of Finance a sum of money sufficient to restore such security fund to the original amount of \$100,000.

c. If the Grantee fails to pay to the City any compensation within the time fixed herein, or, fails after ten (10) days notice to pay to the City, any taxes due and unpaid; or fails to repay to the City within such ten (10) days, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this ordinance or its Franchise, or fails after three (3) days notice by the City Manager of such failure to comply with any provision of this Franchise which the City Manager reasonably determines can be remedied by an expenditure of the security, the City's Director of Finance may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the City's Director of Finance shall notify the Grantee of the amount and date thereof.

d. The cash deposit shall become the property of the City in the event that the Franchise is terminated prior to its termination date as set out herein. The cash deposit shall be retained by the City and returned to the Grantee at the expiration of the Franchise provided there is then no outstanding default on the part of the Grantee.

e. The rights reserved to the City with respect to the security fund are in addition to all other rights of the City, whether reserved by this ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the City may have.

SECTION 27. PENALTY PROVISIONS.

a. For violation of material provisions of this ordinance the penalties shall be chargeable to the Security Fund as follows:

- i) For failure to comply with any provision of Section 8(b) or 8(c) \$200.00 per day.
- ii) For failure to provide data and reports as requested by the City Manager or the Council.....\$300 per day
- iii) For failure to comply with reasonable recommendations of the City Manager relating to services as provided for in Section 24 and such reasonable requests as may be made pursuant to authority granted by this Franchise \$300.00 per day.
- iv) For failure to restore the cash deposit as required in Section 26 within the specified thirty (30) days, the entire cash deposit remaining shall be forfeited.

b. Before imposing penalties pursuant to this Section 27, City shall afford Grantee the opportunity to be heard before City Council. The City shall give Grantee at least one (1) week's prior

notice of such public hearing, however, the City shall prescribe the procedures to be followed at such public hearing.

SECTION 28. OTHER PROVISIONS.

a. Emergency Alert Override: The grantee shall incorporate into its facilities, the capabilities for an emergency override audio alert whereby a designee of the City, in times of emergency may introduce an audio and video message on all channels simultaneously.

b. Interconnection with other cable system operators: Whenever directed by the City Manager or his agent, the Grantee shall so construct, operate, and/or modify the cable television system so as to have the capability to interconnect the same, and shall so interconnect the same when so directed, into other systems in the City; provided, however, that such interconnection shall not be required until such systems shall also be capable of such interconnection and shall have permitted such interconnection., and until agreement is reached between the two operators on the terms of such interconnection, which terms must be competitively neutral.

c. Other Business Activities: The grantee shall not engage in the business of selling, repairing or installing television receivers or radio receivers within the City of San Antonio during the term of the Franchise.

SECTION 29. TERMINATION.

a. City, at its option, may terminate this Franchise by giving written notice of such termination to Grantee upon occurrence of any of the following:

1. Filing of a voluntary bankruptcy petition by Grantee.
2. Taking of jurisdiction of Grantee or his assets in bankruptcy proceedings by any court, such proceedings not being vacated within 30 days.
3. Taking by execution of Grantee's interest in this contract or of property placed on the premises.
4. Appointment by any court of a receiver for Grantee such proceedings not being vacated within 30 days.

b. Notwithstanding any other provision in this ordinance, the City, acting through the City Council, shall have the option to cancel and terminate this Franchise at any time for failure of the Grantee to comply with any provision or requirement contained herein after 60 days written notice to do so.

c. Before imposing termination pursuant to this Section 29, City shall afford Grantee the opportunity to be heard before City Council. The City shall give Grantee at least one (1) week's prior notice of such public hearing, however, the City shall prescribe the procedures to be followed at such public hearing.

SECTION 30. SEVERABILITY PROVISION

If any section, sentence, clause or phrase of this Franchise is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of this Franchise, and any portions in conflict are hereby repealed; provided, however, that in the event that any section is declared invalid, and

such provision is material to this Franchise, then such a section or sections will be renegotiated by the City and the Grantee.

SECTION 31. RIGHTS OF INDIVIDUALS, AFFIRMATIVE ACTION PROGRAM AND EQUAL EMPLOYMENT.

a. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, or sex. Grantee shall comply at all times with all other applicable federal, state, and city laws, and all executive and administrative orders relating to nondiscrimination.

b. All local subsidiary companies of Grantee's parent company shall establish Affirmative Action programs prescribed by FCC rules, regulations, and guidelines.

c. In addition, Grantee agrees to adopt and implement the City of San Antonio's affirmative action program in the exercise of its rights under this Franchise.

d. Equal Opportunity Policy. Equal opportunity employment shall be afforded by all operators of cable television systems to all qualified and qualifiable persons and no person shall be discriminated against in employment because of race, color, religion, national origin or sex.

e. The Grantee agrees to specifically define the responsibility of each level of management to insure positive applications and vigorous enforcement of the policy of equal opportunity, and assure employment specifically at the higher and mid- management levels for Blacks and Mexican Americans. Grantee shall conduct continuing review of employment structures and employment practices and adopt positive recruitment policies, on-the-job training, job design and other measures needed to assure genuine equality of opportunity.

f. In addition Grantee agrees to adopt and implement Title VII of the Civil Rights Act of 1964, and to adapt the City of San Antonio's Affirmative Action Plan for its use in the exercise of its Rights under this Franchise. The employment criteria to be used in the Grantee's Affirmative Action Plan will be based on the percentages by ethnic group of the total number of unemployed in Bexar County as reported annually by the Texas Employment Commission.

g. Within fifteen days of the effective date of the Franchise, the Grantee agrees to file an affirmative Action Plan, hereafter referred to as the Plan, with the City of San Antonio's Department of Finance. The City will annually evaluate and review the Plan and provide technical assistance if necessary to assure conformance with the obligations of this Franchise.

h. Employment Policies. The Grantee adopts the following general employment practices:

1. Recruiting through schools and colleges with high minority enrollments.
2. Maintaining systematic contacts with media advocacy groups, minority and human relations organizations, leaders, and spokesmen to encourage referral of local qualified minority applicants at all levels of employment.
3. Making known to the citizens media groups and to appropriate recruitment sources in the employer's immediate area that qualified minority persons sensitive to the needs of the minority community are being sought for consideration whenever the cable operator hires its employees to assure non-discrimination in selection or hiring.

4. Instructing personally those on the staff of the system who make hiring decisions that all applicants for all jobs are to be considered without discrimination.

5. Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

SECTION 32. GRANTEE'S POLICY ON SMALL BUSINESS CONTRACTING, MINORITY PROGRAMING, AND EDUCATIONAL OPPORTUNITIES

a. In addition to, and in furtherance of the commitments made by Grantee in Section 31 above, Grantee's authorized representative has filed with the City Council a policy statement dated _____. Such statement relates directly to citizen and council concerns raised at the public hearing on this Franchise _____ concerning minority programming, employment and education. The policy statement Western Integrated Networks, Inc is attached to this Franchise as Exhibit "___" hereof and is incorporated herein for all purposes.

b. Small Business & Economic Development Advocacy (SBEDA) Policy. Grantee will cooperate with the City's SBEDA policy, according to Ordinance No. 77758, as may be amended, in the award of contracts in the area of construction, procurement and professional services.

c. Policy on Minority Programming and Educational Opportunities. Grantee shall cooperate with City's coordinator of Equal Employment Opportunity with the goal of placing qualified and qualifiable candidates into job openings created by the growth of the cable industry. In addition the Grantee agrees to establish at local institutions, technical scholarships to qualify local applicants for positions requiring specialized electronic training and internship to further on-the-job training for these employees.

d. In addition, the Grantee agrees to establish an endowment fund that will provide scholarships and grants to City residents who are economically disadvantaged applicants wishing to complete an education in the communications field. Full scholarships for undergraduate and masters level pursuits will be provided to students lacking the necessary funds to complete such schooling. The Grantee agrees to make available the total sum of \$150,000, beginning with an initial contribution of \$50,000, followed by contributing annual increments of \$7,200 per year during the remaining term of the Franchise for the purpose of funding the scholarship fund. Grantee will, by public notice, seek resumes and applications of interested students with the aid of the Advisory Committee and the use of the cable system.

SECTION 33. EXHIBITS AND EXTENT OF AGREEMENT

Exhibit "___", Exhibit "___", "___" and _____" attached hereto and dated _____, are hereby adopted and incorporated into the Franchise. This Franchise, together with its attached exhibits and the authorizing ordinance, embodies the complete agreement of the parties relating to the Cable/Broadband System, which is the subject of this Franchise, superseding all oral or written previous and contemporary agreements between the parties and relating to this Franchise, and, except as otherwise provided in this Franchise, it cannot be amended without written agreement of the City and Grantee to be attached to, and made a part of, this Franchise and subject to approval of the City Council of San Antonio.

SECTION 34. VENUE AND GOVERNING LAW

a. Venue of any court action brought directly or indirectly by reason of this Franchise shall be in Bexar County, Texas. This Franchise shall be construed under, and in accordance with, the laws of the state of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

b. This Franchise shall be construed in accordance with the City Charter and City Code(s) in effect on the date of passage of this Franchise Agreement, and as may be subsequently amended, to the extent that such Charter and Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

c. This Franchise Agreement shall be construed and deemed to have been drafted by the combined efforts of the City and the Grantee.

SECTION 35. WAIVER

None of the material provisions of this Franchise may be waived or modified except expressly in writing signed by the Grantee and City, as authorized by City Council by passage of an Ordinance. Failure of either party to require the performance of any term in this Franchise or the waiver by either party of any breach thereof shall not prevent subsequent enforcement of such term and shall not be deemed a waiver of any subsequent breach.

SECTION 36. CAPTIONS

The captions contained in this Franchise are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Franchise.

SECTION 37. CONFORMITY TO CONSTITUTION, STATUTES, CHARTER AND CITY CODE

a. This Franchise and referenced ordinance is passed subject to the provisions of the Constitution and the laws of the State of Texas and the Charter provisions of the City of San Antonio and applicable sections of the San Antonio City Code.

b. In addition to these provisions, City expressly reserves the right to adopt, from time to time, ordinances, rules and regulations it may deem necessary in the exercise of City's governmental powers. Grantee agrees to abide by any laws of the City within a reasonable time after passage thereof.

c. City expressly reserves the right to enforce reasonable regulations concerning Franchisee's access to or use of Public Rights-of-Way and other public ways or property, including requirements for permit applications. It is understood and agreed that Franchisee is responsible for obtaining all necessary permits and Licenses.

SECTION 38. NON-BINDING MEDIATION

a. Prior to filing suit, the parties to this Franchise shall use non-binding mediation to resolve any controversy, claim or dispute arising under this contract. If any of the provisions of this Section are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

b. To initiate non-binding mediation, a party shall give written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The

mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party. Any mediator so designated must be acceptable to all parties.

c. The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt with the assistance of the mediator, to reach an amicable resolution of the dispute. Any finding by the mediator shall be a non-binding determination.

d. The mediation will be treated as a settlement discussion and therefore will be confidential in accordance with Tex. Civ. Prac. & Rem. Code §154.073. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

e. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

SECTION 39. CITY NETWORK

a. The City has accepted Grantee's offer to install a dedicated dark fiber network consisting of a single dark fiber ("Network") connecting an agreed-upon number of municipal facilities, schools, universities, and non-profit hospital locations in the City in conjunction with Grantee's construction of its Cable/Broadband System in the City.

b. Grantee and the City agree that, within 90 days of the effective date of this Franchise each party will enter into a formal agreement setting forth the terms and conditions under which Grantee will build the Network. The formal agreement shall include the following key terms and conditions, to which Grantee and the City now agree:

1. The Network will be composed of a single dedicated dark fiber connecting locations to be agreed upon by Grantee and the City. The locations connected to the Network will be City-owned facilities, schools, universities, and non-profit medical centers or hospitals. The Network will not connect to any commercial or for-profit locations.
2. The City and Grantee will agree on the identity and number of locations to be connected to the Network.
3. Grantee will not be responsible for providing or maintaining any terminal or other equipment necessary to activate the Network. Grantee will also not be responsible for managing the Network.
4. The Network will be built by Grantee at its own cost, and Grantee will not charge the City or the locations connected to the Network for construction or maintenance of the Network.
5. The City and Grantee will agree on mutually acceptable terms and conditions governing the attachment of the Network to the demarcation points at each of the locations on the Network.
6. Neither the City nor other institutions connected to the Network shall use the Network for any commercial or for-profit purpose.
7. The City agrees to seek in good faith to obtain comparable public interest facilities or equipment benefits from other providers granted Cable/Broadband System franchises by the City in the future. So long as the City seeks such facilities or equipment benefits in good faith, then the City's failure to receive such similar facilities or equipment benefits from other Cable/Broadband System providers shall not be considered in determining whether there is a violation of the competitive neutrality requirements as that term is used and interpreted throughout this Franchise above.

c. The formal agreement for the Network shall be subject to City Council approval and shall be attached to this Franchise and made a part hereof for all purposes as Exhibit " . "

SECTION 40. AUTHORITY

The signer of this Franchise for the Grantee hereby represents and warrants that he or she has full authority to execute this Franchise on behalf of Grantee.

In witness of which this Franchise Agreement has been executed this _____ day of _____, 2000.

CITY OF SAN ANTONIO

**WESTERN INTEGRATED NETWORKS
OF TEXAS OPERATING, L.P.**

ALEXANDER E. BRISEÑO
City Manager

ATTEST: _____
City Clerk

ATTEST: _____

APPROVED AS TO FORM: _____
City Attorney

46

CITY OF SAN ANTONIO AGENDA ITEM NO. _____
Finance Department
Interdepartmental Correspondence Sheet

TO: Mayor and City Council

FROM: Octavio Peña, CPA, Director, Finance Department

COPIES: Alexander E. Briseño, City Manager; Terry Brechtel, Executive Director;
Frank J. Garza, City Attorney; John German, Director of Public Works; file

SUBJECT: Third and Final Reading of Western Integrated Networks of Texas Operating L.P. (WIN)
Franchise Agreement

DATE: April 18, 2000

SUMMARY AND RECOMMENDATION

This is the third and final reading of an Ordinance which grants Western Integrated Networks of Texas Operating L.P. (WIN) a franchise agreement to utilize and occupy the City's streets and public rights-of-way for the purpose of constructing, maintaining, and operating a City-wide cable television/broadband telecommunications system. The first reading was passed and approved on March 23, 2000, which began the three reading process required by the City Charter for the granting of a franchise agreement. The second reading which included a public hearing was passed and approved on April 6, 2000. Each of the three readings requires a majority vote approval by City Council and upon the third and final reading, the franchise agreement becomes effective (60) sixty days thereafter. Additionally, as required by the Charter, the Planning Commission approved a resolution on March 22, 2000, recommending approval of the construction of the System by WIN. Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

Western Integrated Networks of Texas Operating L.P. (WIN) is a Delaware limited partnership formed in November 1999 and is a subsidiary of Western Integrated Networks, LLC. Western Integrated Networks, LLC was founded by Mr. James C. Vaughn who has over thirty-five (35) years of experience in the telecommunications industry. It is a privately held company and includes institutional investors such as: J.P. Morgan, First Union Capital, Madison Dearborn, Columbia Capital, Providence Equity, and the Blackstone Group.

Western Integrated Networks, LLC is proposing to construct and operate a cable television/broadband telecommunications system in several areas throughout the country including Sacramento, California; Austin, Texas; and the San Antonio metropolitan area. WIN has requested that the City grant a franchise agreement to allow them to construct, maintain, and operate a City-wide cable television/broadband telecommunications system which will utilize the City's public rights-of-way. This system will provide cable television programming, local telephone service, high-speed Internet service, and other related services to residential and business customers throughout the San Antonio metropolitan area.

The services proposed by WIN will require two (2) separate agreements with the City. This ordinance addresses WIN's ability to operate their system related to cable television programming, high-speed Internet service, and other related services. This ordinance does not grant WIN the authority to operate their system related to local telephone service. In accordance with recently enacted State law, local telephone service will be addressed through a separate agreement that will be brought forward to the City Council for approval at some later date. During the last State legislative session, state law was enacted which mandates a state wide agreement for providing local telephone service for all Texas municipalities.

WIN has proposed to build a 1-gigahertz system utilizing state-of-the-art telecommunications equipment and local fiber optic network infrastructure trunking facilities. The network will consist of a primary, fully redundant, self-healing ring of fiber optic transportation cables. With respect to construction, WIN has indicated that it will place facilities underground in the central business district and other appropriate areas and will place them aerially elsewhere. WIN has also indicated that it will utilize directional boring trenchless technology where feasible. WIN has obtained the necessary federal and state licenses and permits required to provide the aforementioned services.

The following summarizes the significant aspects of the franchise agreement (copy in substantially final form attached as Exhibit I):

- *Term of Agreement.* The franchise agreement is for a period of fifteen (15) years. The agreement will provide that the City has the exclusive right to reopen negotiations on certain provisions of the franchise agreement for the purpose of maintaining "competitive neutrality" in its agreements with all similarly situated cable television/broadband telecommunications providers operating within the City.
- *Construction, Restoration, and Maintenance of Streets.* Consistent with the requirements of other utility companies, WIN will be required to comply with all permit, excavation, and restoration standards including the City's "Street Cut Policy" and "Major Thoroughfare Plan". No public rights-of-way will be encumbered for a longer period than will be reasonably necessary for construction.
- *Performance Bond.* During the construction period, WIN will be required to maintain a corporate surety bond in the amount of \$500,000 to secure their obligations and duties under the agreement.
- *Construction Timetable.* WIN will be provided sixty (60) months to complete construction of its system City-wide provided there are no material or significant delays which result from acts of God, national emergencies, strikes or delays caused by the City, its agents, or other utilities. The system will be constructed and services offered to customers in an equitable, non-discriminatory manner. A preliminary map outlining the cable availability build out to the San Antonio metropolitan area is attached as Exhibit II.
- *Franchise Fee.* Consistent with the maximum amount allowed by federal law, WIN will be required to pay to the City 5% of its gross revenues derived from the operation of the cable television/broadband system including internet service.
- *Security Trust Fund.* Within (30) thirty days after acceptance of the franchise, WIN will be required to submit and maintain a \$100,000 deposit with the City throughout the term of the franchise. This deposit may be drawn upon by the City for WIN's failure to comply or cure any non-compliance with the provisions of the franchise agreement in the specified period of time.
- *Prepayment of Franchise Fees.* WIN will make an advance payment to the City in the amount of \$1 million, which will be credited against WIN's franchise fees due under the agreement. Upon activation of its system and the receipt of revenues from subscribers, WIN will receive a dollar for dollar credit against this prepayment fund, including a credit for interest calculated at the City's rate of return. In the event WIN does not install and operate the system in accordance with the agreement, the City would retain the prepayment as liquidated damages.
- *PEG Channels.* With regard to Public, Educational, and Government access channels, the City will require WIN to share on a pro-rata subscriber basis for reasonable costs incurred in the operation of these access channels, to include the mobile unit and production studios. Over the course of the next twelve (12) months, the City will evaluate alternative structures for the operation of the PEG channels including the establishment of a non-profit which would be responsible for these operations. This evaluation over the course of the next twelve months will include consultation and input from the incumbent cable TV provider Time Warner, WIN and other cable TV providers which may be operating in the San Antonio area. WIN has agreed to contribute \$200,000 to the start-up costs of the non-profit and will contribute on an on-going basis using a subscriber based formula funds necessary for the operations of said non-profit. In the event a non-profit is not created on a timely basis, WIN will offset, again on a subscriber based formula the costs currently being incurred by Time Warner to operate these access channels.
- *Connections to City Facilities.* WIN will be required to provide (1) one cable and/or internet service connection to each City facility designated by the City at no cost. The value of these connections will be equitable and comparable to that provided by Time Warner Cable in its franchise agreement.

- *Insurance Coverage.* WIN at its sole expense will be required to carry workers' compensation, employer liability, commercial general liability, business automobile liability, and professional liability. Insurance must be obtained from a company authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company.
- *Relocation of Facilities.* Upon written request of the City, WIN will be required to relocate its facilities within the public rights-of-way at no expense to the City where it is reasonable and necessary to accommodate street construction, or widening, or other public improvement projects of the City.
- *Abandonment.* If WIN intends to abandon any of its facilities, it must submit an application to the City's Director of Public Works requesting permission to abandon the facility. The City may require that WIN at its sole expense remove the facility from the public rights-of-way or modify the facility in order to protect the public health and safety or serve the public interest.
- *Recapture.* The City reserves the right to cancel the franchise agreement and purchase the system, at any time, after ten (10) years from the effective date of the franchise agreement. The City would have the right to purchase the system at an "adjusted" fair market value which is the fair market value of the system less the value, if any, determined to be attributable to the franchise privilege. Recapture would also be required to be exercised by the City on a competitively neutral and equitable basis with other cable television/broadband system providers.
- *Indemnification.* Under the agreement, WIN has agreed to provide full or "strict" indemnification to the City.
- *Scholarships.* WIN agrees to contribute \$50,000 initially, and \$7,200 annually thereafter during the term of the franchise for a total of \$150,000 to an endowment fund to provide scholarships for economically disadvantaged applicants desiring to complete an education in the communications field.

In addition, WIN has proposed to the City to install a network consisting of a single dark fiber in conjunction with WIN's construction of its cable television/broadband system in San Antonio. The single dark fiber network ("network") will connect an agreed upon number of City facilities, schools, universities, and non-profit hospital locations. This network will be constructed by WIN at its own cost and WIN will not charge the City for construction or maintenance of the network. The City will be responsible for managing the network and the City and any institutions connected to the network agree not to use it for any commercial or for-profit purpose. The City has agreed to seek comparable public interest obligations from other providers, however, it is not specifically required from other providers. In this instance, the City has merely accepted WIN's proposal.

The City and WIN will continue to negotiate various provisions of the agreement including the locations to be connected to the network. To outline the parties obligation with respect to the acceptance by the City of WIN's proposed network, the proposed franchise agreement has been revised to include a provision which conceptually outlines the City and WIN's intent and obligation. This provision requires that within 90 days of the effective date of the franchise, the City and WIN will enter into a formal agreement with respect to the proposed network and that agreement will be incorporated and become part of the franchise agreement.

POLICY ANALYSIS

The proposed franchise agreement incorporates significant rights-of-way management rights and police powers of the City. In order to maintain "competitive neutrality", the provisions of the proposed franchise agreement with WIN are comparable and equitable with that of the City's franchise agreement with Time Warner Cable.

Historically, one cable TV provider has served the City. Initially, the sole cable TV provider was UA Columbia Vision, which was then subsequently transferred and assigned to Rogers Cable Systems, which was then subsequently transferred and assigned to Time Warner. With the advent of deregulation in the telecommunications industry enacted by the Federal Telecommunications Act of 1996 and other applicable

federal and state laws, San Antonio has recently experienced a proliferation of local telephone service providers which gives our citizens the freedom to shop, compare and choose their local telephone service carrier. With the approval of this cable TV franchise agreement with WIN, citizens of San Antonio will now have the ability to shop, compare and choose their local cable TV provider. The aforementioned provisions are comparable and equitable to those provisions contained in the City's franchise agreement with Time Warner Cable. The proposed franchise agreement is also consistent with the City's intent to maintain "competitive neutrality" in its cable and telecommunications agreements in light of the changed environment as a result of deregulation of the telecommunications industry. Attached as Exhibit III, is a comparative analysis of key elements of the existing Time Warner franchise agreement and the proposed WIN franchise agreement.

FINANCIAL IMPACT

WIN will be required to pay to the City 5% of its gross revenues derived from the operation of the cable television/broadband system including internet service. Based on information provided by WIN, cable television/broadband system franchise fee revenues for the City are expected to increase as indicated in the following table.

Fiscal Year	Projected Increase in Franchise Fees
2001	\$ 0
2002	590,000
2003	1,400,000
2004	2,700,000
2005	3,700,000
2006	4,100,000

SUPPLEMENTARY COMMENTS

Disclosure documents required by the City's Ethics Ordinance are attached as Exhibit IV.

COORDINATION

The negotiation and development of the Franchise Agreement has been coordinated with the City Attorney's Office, Information Services Department and Public Works Department. Additionally, the City utilized the services of Mr. Tim Lay, with Miller, Canfield, Paddock, & Stone as outside legal counsel.

Octavio Peña, CPA
Director
Finance Department

Approved:

Terry Brechtel
Executive Director of
Administration and Financial Services

Alexander E. Briseño
City Manager

Third and Final Reading of an
Ordinance Granting a
Franchise Agreement to
Western Integrated Networks
of Texas Operating L.P.
(WIN)

April 27, 2000

Franchise Process

- City Charter Requires Three Readings and Review by the Planning Commission
- Planning Commission Approved Resolution on March 22, 2000
- First Reading approved on March 23, 2000
- 2nd Reading and Public Hearing approved April 6, 2000
- 3rd and Final Reading is at Least 30 Days After the First Reading

Summary

- Franchise Allows WIN to Utilize the City's Streets and Public Rights-of-Way to Construct, Maintain and Operate a Citywide Cable Television/Broadband Telecommunications System

Background

- WIN is Proposing to Construct and Operate a System Which Will Provide Cable Television Programming, Telephone Service, and High-Speed Internet Service
- These Proposed Services Will Further Offer “Choice” to the Citizens of San Antonio

Policy Analysis

- To Facilitate the Granting of a Franchise to WIN and Still Maintain Neutrality, the Proposed Franchise with WIN is Structured to be Comparable and Equitable to that of TWC's Existing Franchise and the Proposed Franchises for Grande and WOW

Key Elements of Cable Television Franchise Agreements

- Reopener Provision
- Term of Franchise
- Construction (5yrs.)
 - 25 Dwelling Units or More Per St. Mile
- Franchise Fee
- Prepayment of Franchise Fees
- Security Fund
- Connections to City Facilities
- Endowment Fund
- Public, Educational and Government Access Channels
 - Max. 6 Channels
- Construction Policies
 - STREET CUT POLICY

CITY NETWORK

- City has Accepted WIN's Offer to Install a Dedicated Fiber Network Consisting of a Single Dark Fiber
- Network will be Utilized to connect an Agreed Upon Number of Municipal Facilities, Schools, Universities, and Non-Profit Hospital Locations in the City
- Provision has Been Added to the Proposed Franchise which Outlines Key Terms and Conditions Which Have Been Agreed To

CITY NETWORK (Continued)

- Within 90 Days of the Effective Date of the Franchise, the Parties are Required to Enter into a Formal Agreement Setting Forth Terms and Conditions
- City Agrees to Seek in Good Faith Comparable Public Interest Facilities and Benefits from Other Cable Providers
 - Not Considered in Determining Competitive Neutrality

Financial Impact

- WIN Will Pay 5% of Gross Revenues
 - Estimated Financial Impact is Projected Based on the Assumption That There will be Four (4) Cable TV Providers Operating in San Antonio
 - 2001 0
 - 2002 \$ 590,000
 - 2003 1.4 Million
 - 2004 2.7 Million
 - 2005 3.7 Million
 - 2006 4.1 Million

Conclusion

- Proposed Franchise is Comparable and Equitable to that of TWC's Existing Franchise
- Proposed Franchise Agreement was Coordinated With Public Works, Information Services, City Attorney's Office and Outside Legal Counsel
- Staff Recommends Approval of this Ordinance



ACCEPTANCE

To the City Council of the City of San Antonio

The Grantee, Western Integrated Networks of Texas Operating L.P. ("WIN") acting by its undersigned official hereunto duly authorized, hereby unconditionally accepts Ordinance 91488 granting a franchise to Western Integrated Networks of Texas Operating L.P. for constructing, maintaining, operating and using a cable system in the City of San Antonio to provide cable and other services. WIN hereby promises to comply with and abide by all provisions, terms, and conditions of such franchise.

Western Integrated Networks of Texas Operating L.P.

By: WIN Of Texas GP LLC
Its: General Partner

By: *William J. Mahon, Jr.*
Name: William J. Mahon, Jr.
Title: Senior Vice President

Subscribed and sworn to before me, the undersigned authority, on this the 27th day of May, 2000.

Lefete Carter Pearce
Notary Public

My Commission Expires
September 28, 2000

(SEAL)

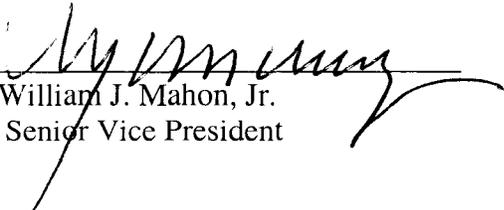


ACCEPTANCE

To the City Council of the City of San Antonio

Western Integrated Networks, LLC, the parent company of Western Integrated Networks of Texas Operating L.P. ("WIN"), acting by its undersigned official hereunto duly authorized, hereby unconditionally accept Ordinance No. 91488 granting a franchise to Western Integrated Networks of Texas Operating L.P. for constructing, maintaining, operating and using a cable system in the City of San Antonio to provide cable and other services. Western Integrated Networks, LLC hereby guarantees the obligations and undertakings of WIN under the franchise, and agrees to perform in the event of default by WIN.

Western Integrated Networks, LLC

By: 
Name: William J. Mahon, Jr.
Title: Senior Vice President

Subscribed and sworn to before me, the undersigned authority, on this the 24th day of March, 2000.



Notary Public

(SEAL)

My Commission Expires
September 28, 2000



WESTERN INTEGRATED NETWORKS, LLC

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
00 AUG -7 AM 9:30

August 1, 2000

City of San Antonio
Attention: City Clerk
P.O. Box 839966
San Antonio, Texas 78283

Dear Sir or Madam:

In accordance with Section 9.4.h of the Cable Television Franchise Agreement, I have enclosed copies of our fully executed pole attachment agreements with City Public Service of San Antonio and Southwestern Bell Telephone Company.

If I may be of any further assistance, please do not hesitate to contact me toll-free at (877) 407-1601.

Sincerely,

Sharon Mau
Legal Affairs Manager

/sm

Enclosure

*
ARC
8/1/00

City Public Service
of San Antonio

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
00 AUG -7 AM 9:30

STANDARD POLE LICENSE AGREEMENT

TABLE OF CONTENTS

	Page
I. Definitions.....	1
A. "Application Fee"	1
B. "Attachment"	1
C. "Attachment Permit"	1
D. "Connection"	1
E. "Connection Fee"	1
F. "CPS Facilities"	1
G. "CPS Poles"	1
H. "Effective Date"	1
I. "Joint User"	2
J. "Licensee's Facilities"	2
K. "Other Licensee"	2
L. "Unauthorized Attachment"	2
M. "Unauthorized Attachment Charge"	2
II. License.....	2
A. Non-Exclusivity	2
B. No Creation of Additional Rights	3
C. Lawful Purpose	3
III. Franchises and Private Rights.....	3
A. Franchise	3
B. Rights to Private Property	3
C. Evidence.....	3
D. Disconnection	3
IV. Attachment Permits and Application Fees	4
A. Permits	4
B. Application Fees	4
C. Termination of Attachment Permit	4
1. Abandonment	4
2. Removal by CPS	5
3. Removal by Licensee	5
4. Substitution by Licensee	5
V. Connection Fees	5
A. Connections for Which Fees are Payable.....	5
B. Payment of the Connection Fees	5
C. Payment in Advance; Exception	5
D. Amount of the Connection Fee	6
VI. Unauthorized Attachments.....	6

A.	Application.....	6
B.	Unauthorized Attachment Charge.....	6
C.	No Ratification of Unauthorized Use.....	6
D.	Excessive Unauthorized Attachments.....	7
VII.	Compliance with Standards	7
VIII.	Attachment of Licensee's Facilities	7
A.	Location	7
B.	Identification.....	8
IX.	Replacement of Poles; Rearrangement of Facilities.....	8
A.	Pole Replacement for Licensee	8
B.	Rearranging Facilities or Strengthening Poles.....	8
C.	CPS or Joint User Changes	9
D.	Aesthetics.....	9
E.	Action by CPS	9
1.	In Cases of Emergency	9
2.	Licensee Default.....	9
F.	Charges for Work	9
1.	CPS' Charges.....	9
2.	Other Licensees.....	10
3.	No Charges in Certain Cases	10
G.	Removal of Abandoned Facilities.....	10
X.	Inspection	10
XI.	No Damage.....	10
XII.	Indemnification--Interruption of Service and Customer Claims	11
XIII.	Indemnification--Other Claims.....	11
A.	Property and Bodily Injury Claims	11
B.	Intellectual Property and Related Claims.....	11
C.	Claims Relating to Right to Occupy	12
D.	Taxes	12
E.	Persons Working on Poles.....	12
F.	Breach of Contract.....	12
XIV.	Bare Licensees.....	12
XV.	Limitations of Liability	12
XVI.	Insurance.....	13
A.	Insurance Coverage	13

B.	Review and Approval of Documents	13
C.	Other Insurance Requirements	14
D.	Indemnification	14
VII.	Surety.....	14
VIII.	Dispute Resolution.....	14
A.	Demand for Arbitration and Arbitration Panel	15
B.	Arbitration Position	15
C.	Arbitration Rules	15
D.	Arbitration Expenses	15
XIX.	Term and Termination	15
A.	Term of Agreement	15
B.	Termination Without Cause	15
C.	Termination for Nonuse or Unlawful Use	15
D.	Termination for Breach	16
E.	Removal Upon Termination.....	16
XX.	Miscellaneous Provisions.....	16
A.	Notices	16
B.	Payments	16
C.	Successors and Assigns	17
D.	Revisions to Exhibits.....	17
E.	Severability	17
F.	Texas Law.....	17
G.	Entire Agreement.....	17
H.	Cumulative Remedies.....	18
I.	No Oral Amendments.....	18
J.	No Waiver.....	18
K.	Prior Agreements.....	18
L.	Contractors and Agents Bound	18
M.	No Third Party Beneficiaries.....	18
	Signature Page	19
	LIST OF EXHIBITS	20
	Exhibit A -- ATTACHMENT PERMIT PROCEDURE	A-1
XXI.	Determining Ownership of Poles.....	A-1
XXII.	Attachment Permit Application	A-1
A.	Numbering	A-1
B.	Contents	A-1

C.	Application Fee.....	A-1
D.	Inspection.....	A-1
E.	Make-Ready Work	A-1
1.	Other Licensees.....	A-2
2.	Licensee's Agreement	A-2
XXIII.	Issuance of the Permit.....	A-2
A.	Delay of Permit Approval Date.....	A-2
B.	Requirement to Attach in Sixty Days.....	A-3
Exhibit B --	ATTACHMENT APPLICATION AND ATTACHMENT PERMIT	B-1
Exhibit C --	AUTHORIZATION FOR MAKE-READY WORK.....	C-1
Exhibit D --	SPECIFICATIONS FOR LICENSEE'S ATTACHMENTS.....	D-1
1.	Attachment and Cable Clearances.....	D-1
2.	Sag and Mid-Span Clearances.....	D-1
3.	Vertical Runs on Poles	D-1
4.	Cable Bonding	D-1
5.	Down Guys and Anchors	D-1
6.	Service Drop Clearance.....	D-1
7.	Customer Premises	D-1
8.	Service Clearances.....	D-2
9.	Climbing Space.....	D-2
10.	Riser Installations	D-2
11.	Identification.....	D-2
12.	Telecommunication Cables.....	D-2
13.	Safety Zone	D-2
Exhibit E --	40' Pole Specifications.....	E-1
Exhibit F --	45' Street Pole Specifications	F-1
Exhibit G --	45' Corner Pole Specifications.....	G-1
Exhibit H --	50' Corner Pole Specifications.....	H-1
Exhibit I --	APPLICATION AND CONNECTION FEES.....	I-1
Exhibit J --	MINIMUM INSURANCE REQUIREMENTS.....	J-1

STANDARD POLE LICENSE AGREEMENT

The City of San Antonio, Texas, acting by and through City Public Service of San Antonio, a municipal board of the City of San Antonio ("CPS") and ~~Name of licensee~~ ("Licensee") agree as follows:

WESTERN INTEGRATED NETWORKS OF TEXAS
OPERATING, L.P.

I. Definitions.

- A. "**Application Fee**" means the fee described in section IV and Exhibit I of this Agreement compensating CPS for the administrative and other work required to process an application for an Attachment Permit.
- B. "**Attachment**" means each and every of Licensee's Facilities attached to or supported in any way by CPS Poles, including but not limited to: every cable, wire, service drop wire or other conductor made of steel, aluminum, copper, coaxial, optical fiber or other material or media. An Attachment occurs whether Licensee's Facilities are connected to a CPS Pole itself or supported by a bracket, support strand or other support device. When cable, wire, conductors or other types of equipment are bundled together and connected to a CPS Pole as a unit, each individual cable, wire, conductor or other equipment in the unit is considered as an independent Attachment.
- C. "**Attachment Permit**" means the permit issued by CPS which allows Licensee to make Attachments of Licensee's Facilities to a specific CPS Pole or Poles.
- D. "**Connection**" means each physical connection to a CPS Pole to support one or more Attachments. Each Connection must occupy less than one foot of vertical space on the CPS Pole.
- E. "**Connection Fee**" means the annual fee described in section V and Exhibit I of this Agreement charged by CPS for permitting Connections of Licensee's Facilities to CPS Poles.
- F. "**CPS Facilities**" means CPS Poles and the wires, cables, apparatus and any other property, equipment or facilities of CPS.
- G. "**CPS Poles**" means the electric distribution system utility poles owned by CPS carrying primary phase to neutral voltages of up to and including 20kV.
- H. "**Effective Date**" means the date on which this Agreement takes effect, as shown on the signature page of this Agreement.

- I. **"Joint User"** means any public utility, governmental body, or other entity, which owns poles that are jointly used by CPS and to which CPS has extended, or in the future shall extend, privileges to jointly use CPS Poles.
 - J. **"Licensee's Facilities"** means Licensee's cables, wires, supporting strands, brackets, service drop wires, tapoffs, line amplifiers, power supplies, and any other equipment or property used in connection with the operation of Licensee's business. However, Licensee is not authorized to attach antennae, wireless radio transceivers or other similar devices to CPS Poles or to any of Licensee's Facilities attached to CPS Poles under this Agreement.
 - K. **"Other Licensee"** means a Joint User or any entity, other than the Licensee, to which CPS has extended, or in the future extends, a license to attach facilities to CPS Poles.
 - L. **"Unauthorized Attachment"** means any Attachment of Licensee's Facilities to CPS Poles for which Licensee has not obtained an Attachment Permit.
 - M. **"Unauthorized Attachment Charge"** means the charge payable by Licensee under this Agreement for Unauthorized Attachments.
- II. **License.** To the extent CPS may lawfully do so and subject to the terms and conditions of this Agreement, CPS grants to Licensee a revocable, non-exclusive license to attach Licensee's Facilities to CPS Poles if, as determined by CPS in its discretion, (1) CPS Poles are reasonably available; and (2) Licensee's use will not interfere with CPS operational requirements or the use of CPS Facilities by any Other Licensee. Attachments of Licensee's Facilities to CPS Poles carrying primary phase to neutral voltages of greater than 20kV are expressly prohibited. The license is a license solely for the provision of Licensee's service within the area served by CPS in which the Licensee has a franchise or other authorization from appropriate authorities. However, CPS and Other Licensees reserve the right at all times to utilize and/or maintain CPS Poles and to operate their facilities on the poles in such manner as will best enable them to fulfill their service requirements. CPS reserves the right to eliminate or limit the number of Attachments that Licensee and/or Other Licensees may make to any CPS Pole. Licensee may not sublicense its rights under this Agreement and may not install facilities of or for any other company, corporation or enterprise (including any affiliated company, corporation or enterprise).
- A. **Non-Exclusivity.** CPS may have previously granted rights or privileges to use CPS Poles to others not parties to this Agreement, including rights or privileges to use poles covered by this Agreement. CPS retains the right to continue and to amend such licenses or privileges and to grant rights and privileges to others after the execution of this Agreement. The rights granted to Licensee under this Agreement are subject at all times to CPS' right to its Poles and to the rights and privileges which CPS has granted or grants in the future to others.

- B. No Creation of Additional Rights. No use, however extended, of CPS Poles, no payments made under this Agreement and no other acts of Licensee or CPS shall create or vest in Licensee any ownership or property rights in CPS' easements, lands or CPS Facilities. Licensee's rights shall be and remain a mere revocable, non-exclusive license under the terms of this Agreement.
- C. Lawful Purpose. Licensee agrees that Licensee will not use Licensee's Facilities in an unlawful manner or for an unlawful purpose under this license.

III. Franchises and Private Rights. The granting of the license under this Agreement is not an assignment of any rights which CPS has to use public or private property on which CPS Poles are located.

- A. Franchise. CPS does not have the power to grant a franchise to Licensee to conduct business within the City of San Antonio or other cities or jurisdictions. Prior to making an application for any Attachment under this Agreement, Licensee must obtain (1) a franchise or other authority authorizing Licensee to erect and maintain Licensee's Facilities within the public streets, highways, alleys, utility easements, and other public thoroughfares directly from the franchising authority; and (2) any other necessary permits, authority, and consents from federal, state, municipal or other public authorities.
- B. Rights to Private Property. If Licensee desires to attach Licensee's Facilities to CPS Poles located on private property, Licensee must obtain any necessary rights to construct and maintain Licensee's Facilities on the property from the owners of such private property, as well as any necessary rights of ingress and egress.
- C. Evidence. Upon CPS' request, Licensee agrees to submit evidence to CPS' satisfaction that Licensee has obtained the franchises and other rights and authorities required by this section III. CPS reserves the right, in its sole discretion, to terminate an existing license or refuse to grant a new license or issue a new Attachment Permit where such evidence is unsatisfactory. If CPS terminates the license or takes other action under the preceding sentence, Licensee agrees to remove Licensee's Facilities within 30 days of the date that Licensee is informed that the evidence is unsatisfactory to CPS.
- D. Disconnection. If any Attachment by Licensee jeopardizes or leads to the termination of the rights of CPS and/or Other Licensees to occupy the real property on which CPS Poles are located, Licensee agrees to immediately disconnect all of Licensee's Facilities from the CPS Poles at Licensee's sole cost. Licensee also agrees to use its best efforts to restore CPS and/or Other Licensees to their original status before such Attachment and agrees to pay CPS and/or Other Licensees all losses, damages and costs (including punitive, special, indirect and/or consequential damages) resulting from the Attachment and/or termination.

IV. Attachment Permits and Application Fees.

- A. Permits. Before Licensee may make an Attachment to a CPS Pole, Licensee must apply for and receive an Attachment Permit. Licensee must have an Attachment Permit covering (1) each CPS Pole to which Licensee's Facilities are attached; and (2) each separate Attachment to the CPS Pole. However, it is not necessary for Licensee to obtain a new Attachment Permit for Attachments authorized under permits obtained under prior agreements between Licensee and CPS. The procedure for applying for an Attachment Permit is found at Exhibit A. The form of Attachment Permit is found at Exhibit B. CPS shall identify the date on which the permit is approved in accordance with Exhibit A ("Permit Approval Date"). Upon receiving such permit, Licensee may make the Attachment or Attachments to the CPS Poles covered by the Attachment Permit in conformance with this Agreement. CPS reserves the right to refuse to grant an Attachment Permit when CPS, in its sole discretion, determines that (1) the granting of the Attachment Permit will adversely affect the provision of services by CPS or Other Licensees or their ability to meet their duties and obligations; (2) the Attachment Permit should not be issued due to aesthetic or beautification considerations or goals of CPS or any other governmental body having jurisdiction over the matter; or (3) Licensee has breached or is in default of this Agreement. CPS, in making this decision as to whether to issue an Attachment Permit, may consider, among other things, economy, safety, aesthetics and the future needs of CPS and Other Licensees. In no instance will CPS grant an Attachment Permit if the Attachment of Licensee's Facilities to a CPS Pole would jeopardize the rights of CPS or Other Licensees to occupy the real property on which the CPS Pole is located. In addition, if CPS sets a new or acquired pole in an existing line or if CPS acquires the ownership of a pole in an existing line, Licensee must apply for and receive an Attachment Permit for all Attachments on these new CPS Poles. Upon notification from CPS that a new pole has been set or that CPS has acquired ownership of an existing pole, Licensee must submit an application for an Attachment Permit (along with the appropriate Application Fee) to CPS within 30 days of the date the Licensee receives such notification.
- B. Application Fees. Each application for an Attachment Permit must be accompanied by an Application Fee to compensate CPS for administrative and other work required to process an application and for the initial inspection by CPS of the Attachment after Licensee has made the Attachment. The Application Fee is set forth in Exhibit I to this Agreement.
- C. Termination of Attachment Permit. The Licensee's Attachment Permit for a CPS Pole will terminate in the following situations. No adjustments, proration or refund of any Application Fees will be due on account of any termination of the Attachment Permit.
1. Abandonment. If Licensee (a) abandons its use of the CPS Pole; (b) no longer provides services through or with the Licensee's Facilities on the CPS

Pole; or (c) does not attach to the CPS Pole as permitted within sixty (60) days from the Permit Approval Date of the Attachment Permit, CPS may terminate the Attachment Permit for the CPS Pole(s) so affected.

2. Removal by CPS. If CPS removes or discontinues its use of any CPS Pole, Licensee's Attachment Permit for the CPS Pole terminates immediately upon written notification to Licensee by CPS of such termination.
3. Removal by Licensee. When Licensee removes Licensee's Facilities from a CPS Pole, the Licensee's Attachment Permit for that pole ceases. Licensee must give CPS written notice of all removals on an "Attachment Application and Permit" form found at Exhibit B of this Agreement. In order for Licensee to make Attachments to a CPS Pole at a later date, Licensee must apply for a new Attachment Permit for such CPS Pole(s).
4. Substitution by Licensee. Licensee must obtain a new Attachment Permit if Licensee wants to replace Licensee's Facilities with new or different facilities not described in the Attachment Permit. However, Licensee need not seek and obtain a new Attachment Permit to replace Licensee's Facilities which are worn out or damaged, if the replacement facilities are identical to the type of facilities originally installed by Licensee.

V. Connection Fees.

- A. Connections for Which Fees are Payable. Licensee agrees to pay CPS, at the offices of CPS in San Antonio, Bexar County, Texas, a Connection Fee for each Connection to a CPS Pole. Connection Fees are payable for each such Connection for which Licensee has an Attachment Permit, even if Licensee has not made the Connection under such Permit and regardless of whether Licensee is providing service through its Facilities. CPS shall calculate the number of Connections on December 1 of each year. For purposes of this calculation, CPS will include Connections with Permit Approval Dates prior to November 30, even if Licensee has not physically connected Licensee's Facilities to CPS Poles on or prior to November 30.
- B. Payment of the Connection Fees. CPS shall send a bill to Licensee on or before December 15th listing all Connection Fees due. Connection Fees are delinquent if not received in CPS' offices on or before the following January 15th.
- C. Payment in Advance; Exception. Connection Fees are payable annually in advance on or before January 15th. However, if Licensee adds Connections at any time after the December 1 calculation date, Licensee shall pay the full annual Connection Fee for the additional Connections at the next calculation date, as well as for existing Connections, as follows. At each December 1, CPS shall calculate the additional attachments from the prior December 1, and Licensee agrees to pay the full annual

Connection Fee for both the previous year and the upcoming year for such additional attachments. For example, if Licensee has no Connections for which an Connection Fee is due on December 1, 1996, and has 20 such Connections on December 1, 1997, the payment due in January of 1998 is equal to 40 times the Connection Fee in effect (20 Connection Fees for 1997, 20 Connection Fees payable in advance for 1998). If the Licensee has 100 Connections on December 1, 1996, and 200 Connections on December 1, 1997, the payment due in January of 1998 is equal to 300 times the current Connection Fee (100 additional Connection Fees for 1996, 200 Connection Fees payable in advance for 1998). There is no proration or reduction of the Connection Fee due to the fact that the Connection was in place for only part of the year.

D. Amount of the Connection Fee. Licensee agrees to pay the annual Connection Fee as set forth in Exhibit I for each Connection for which a Connection Fee is due under this Agreement.

VI. Unauthorized Attachments. If Licensee's Facilities are attached to CPS Poles but Licensee does not have a proper Attachment Permit from CPS for such Attachment, the provisions of this section shall apply.

A. Application. CPS will send Licensee a written notice of the Unauthorized Attachment. Licensee must submit an application for an Attachment Permit, the correct Application Fee, and the Unauthorized Attachment Charge (described below) to CPS within fifteen (15) calendar days after the date CPS sends Licensee the written notice of the Unauthorized Attachment. If such Attachment Fees and associated completed Attachment Applications are not received by the CPS within fifteen (15) calendar days of the date the notice was sent, Licensee must remove Licensee's Facilities which constitute the Unauthorized Attachment within thirty (30) calendar days from the date CPS sent Licensee the written notice of the Unauthorized Attachment. If Licensee does not remove Licensee's Facilities, CPS may remove Licensee's Facilities without liability, and Licensee will promptly reimburse CPS for the expense of such removal.

B. Unauthorized Attachment Charge. Licensee agrees to pay CPS an Unauthorized Attachment Charge equal to five times the yearly Connection Fee (in effect at the time the Unauthorized Attachment is discovered) for each Unauthorized Attachment for which a proper Attachment Permit has not been issued by CPS. The Unauthorized Attachment Charges are due and payable whether or not an Attachment Permit is subsequently issued to Licensee for the Attachment(s).

C. No Ratification of Unauthorized Use. No act or failure to act by CPS with regard to an Unauthorized Attachment or any other unauthorized use of CPS Poles or CPS Facilities shall be deemed as a ratification, licensing or permitting of the unauthorized use. If an Attachment Permit is subsequently issued after the discovery of the Unauthorized Attachment, the Attachment Permit does not relieve

Licensee to pay any Unauthorized Attachment Charges and does not operate retroactively or constitute a waiver by CPS of any of CPS' rights or privileges under this Agreement or otherwise. However, if CPS does subsequently issue an Attachment Permit for such use, Licensee agrees to be subject to all liabilities, obligations and responsibilities of this Agreement in regard to such use from the inception of such use.

- D. Excessive Unauthorized Attachments. If Licensee is determined by CPS to have made more than thirty (30) Unauthorized Attachments cumulatively during the term of this Agreement, Licensee shall be considered to be in breach of this Agreement and CPS will have the right to terminate this Agreement and require removal of all of Licensee's Facilities in accordance with Section XIX of this Agreement.

VII. Compliance with Standards. This Agreement is subject to all applicable laws, ordinances, and regulations, which in any manner affect the rights and obligations of the parties set forth in this Agreement. Licensee agrees to comply at all times with all applicable laws, ordinances, and obligations (including, but not limited to, the provisions of Texas Health & Safety Code, Chapter 752 (Veron 1992) and any subsequent amendments which relate to the maintenance of proper clearances and related safety issues). Licensee's Facilities must be in conformity with CPS construction standards and ANSI document C2-1997 entitled "National Electrical Safety Code," as revised. Licensee's Facilities also must conform with the National Electrical Safety Code, as revised, the National Electrical Code, as revised, the Occupational Health and Safety Act and any other applicable governing law and/or authority having jurisdiction over the subject matter. All cable and service drops used by Licensee in its outside distribution system must be of a type that meets Federal Communications Commission requirements regarding radiation and must not cause radiation interference in or to CPS Facilities or the facilities of Other Licensees. If a difference or conflict in specification or practices exists among these documents, the following rules will apply: (1) if one specification or practice is more stringent than the other, the more stringent will apply; (2) if one of the conflicting specifications or practices is not more stringent than the other, the specification or practice of the National Electrical Safety Code will apply; (3) if the conflict cannot be resolved under the first two rules, CPS will determine in good faith which specification or practice shall apply, with safety concerns given the highest priority in such determination.

VIII. Attachment of Licensee's Facilities.

- A. Location. All of Licensee's Facilities must be installed and remain placed within the space, at the location and in the manner described on the attached Exhibits D, E, F, G and H. CPS will specify the type of construction required under any other conditions or circumstances not described in Exhibits D-H. However, notwithstanding anything else in this Agreement, Licensee has the sole responsibility and obligation to maintain Licensee's Facilities in a manner which will ensure that proper clearances are in existence at all times.

B. Identification. All of Licensee's Facilities must be marked as specified in Exhibit D in a manner so that they may be identified by CPS as the property of Licensee. Licensee's Facilities, which are not marked, may be subject to removal by CPS at any time.

IX. **Replacement of Poles; Rearrangement of Facilities.** CPS is under no obligation to add, build, maintain, replace or rearrange poles or related facilities for the use of or convenience of Licensee. The maintenance, replacement, removal, relocation or addition of CPS Poles shall remain within the sole discretion of CPS. However, CPS may undertake these activities, if CPS so desires, in response to a request by Licensee and in accordance with this section IX. In addition, CPS will require Licensee to rearrange Licensee's Facilities at Licensee's expense in certain situations, which are also governed by this section IX.

A. Pole Replacement for Licensee. If Licensee desires to attach Licensee's Facilities to any of CPS Poles which would be inadequate to support Licensee's Facilities (whether or not such inadequacy is caused by one or more Other Licensees occupying CPS Poles), Licensee must file an "Attachment Application and Permit" in the form attached as Exhibit B requesting that CPS replace the Poles. The request must contain the number of CPS Poles proposed to be replaced and their location. If CPS is willing to provide replacement poles, CPS will complete the "Authorization for Make-Ready Work" form shown in Exhibit C as it may exist from time to time and return it to Licensee. This form lists the charges, which Licensee must pay in advance if Licensee wishes to proceed with the pole replacement. The charges are based on the good faith estimate by CPS of the increased cost and expense of the poles, including the increased cost of different size or class poles and the cost of removal of the existing poles (less any salvage recovery), plus all charges of transferring the facilities of CPS and Other Licensees from the old to the new poles. If the charges listed on the form are acceptable to Licensee, Licensee must complete and return the form to CPS, together with the payment in full for the make-ready work. CPS will not schedule the work until payment is received. Licensee is not entitled to any reimbursement of the charges because the additional pole space thus provided is later used by CPS or Other Licensees or for any other reason.

B. Rearranging Facilities or Strengthening Poles. If Licensee desires to attach Licensee's Facilities to a CPS Pole, and the Attachment requires that existing facilities on the CPS Pole be rearranged or that the CPS Pole be strengthened (by guys, wires, or other means), Licensee must file an "Attachment Application and Permit" in the form attached as Exhibit B requesting that CPS make such rearrangement or strengthening at Licensee's expense. The request must contain the number and location of CPS Poles on which existing facilities are proposed to be rearranged or which are proposed to be strengthened. If CPS is willing to do the requested work, CPS will complete the "Authorization for Make-Ready Work" form shown in Exhibit C as it may exist from time to time and return it to Licensee. This form will set out the charges, which Licensee must pay in advance if Licensee

wishes CPS to proceed with the work. If the charges listed on the form are acceptable to Licensee, Licensee must complete and return the form to CPS, together with the payment in full for the make-ready work. CPS will not schedule the work until CPS has obtained payment in full.

- C. CPS or Joint User Changes. If CPS or a Joint User determines that it is necessary or desirable to make changes and rearrangements in its poles or facilities, and CPS or Joint User requests that Licensee rearrange or move Licensee's Facilities, Licensee, at Licensee's expense, shall promptly remove Licensee's Facilities, rearrange Licensee's Facilities on such poles or move Licensee's Facilities to new poles provided by CPS or the Joint User.

- D. Aesthetics. Licensee agrees it will be required to bear all expenses associated with the relocation, re-routing, abandonment or upgrading of Licensee's Facilities required by a decision of CPS (or any other governmental body having jurisdiction over the matter) to beautify and/or improve the aesthetics of a given location. Licensee acknowledges that it has been informed that CPS from time to time undertakes aesthetic or underground projects and that Licensee specifically recognizes that Licensee is responsible for bearing the expenses required to move, abandon, upgrade or place underground Licensee Facilities under these projects.

- E. Action by CPS. In the two circumstances listed below, CPS may relocate, replace, renew or remove Licensee's Facilities, transfer them to substituted poles or perform any other work in connection with Licensee's Facilities that CPS deems desirable or necessary. CPS shall not be liable to Licensee for any actions CPS takes pursuant to this paragraph. Licensee shall reimburse CPS for the expenses which CPS incurs relating to such work within 30 days of the date CPS sends Licensee an invoice for such work.
 - 1. In Cases of Emergency. The determination of whether an emergency exists shall be made solely by CPS, and Licensee shall be bound by such determination.

 - 2. Licensee Default. If Licensee does not rearrange or remove its facilities within thirty (30) calendar days from the receipt of a request from CPS or Joint Users to rearrange or remove the facilities.

- F. Charges for Work.
 - 1. CPS' Charges. All CPS' charges under this section are based on estimated costs of engineering, material, labor, equipment, capital investment, overhead and other expenses and will be made according to CPS' standard estimating practices.

2. Other Licensees. If the property or facilities of an Other Licensee or any other entity must be modified, rearranged, replaced, added, or strengthened in order for the Licensee to make an Attachment, Licensee must obtain authorization from the Other Licensee or other owner of the property or facilities and pay any charges required by the Other Licensee or other owner directly to such Other Licensee or other owner. CPS will have no liability for such charges or any other expenses of Licensee or others in such rearrangement, replacement addition or strengthening.
 3. No Charges in Certain Cases. The Licensee will not be charged for any additional pole height or strength that is greater than that specified by CPS' construction practices, if the additional pole height or strength is required solely by CPS or Joint Users.
- G. Removal of Abandoned Facilities. Licensee agrees to remove, at Licensee's expense, all property or other facilities which Licensee has placed or in the future places on CPS Poles (1) which Licensee does not utilize for providing Licensee's services; (2) which Licensee abandons or has abandoned; or (3) if the operating capacity of the facilities has been replaced by other facilities.
- X. Inspection. CPS reserves the right, but assumes no obligation, to inspect Licensee's Facilities on CPS Poles. CPS may conduct these inspections for any purpose relating to this Agreement, including, but not limited to, the following: (1) to determine compliance by Licensee with design and installation requirements; (2) to determine compliance with code requirements; or (3) for auditing purposes, including financial audits. If CPS conducts such inspections, Licensee agrees to reimburse CPS for the total expense of such inspections. Except in cases of emergency, CPS will notify Licensee of the time and place of such inspections before the inspections are conducted, and Licensee may have a representative of Licensee accompany CPS on any such inspection. CPS agrees that it will not make more than one system-wide inspection of Licensee's Facilities in any calendar year. The making of inspections or the omission to do so shall not operate in any manner to relieve Licensee or Licensee's insurer of any responsibility, obligation, or liability assumed under this Agreement or otherwise. In the event the inspection reveals that corrections or other actions under this Agreement are required of the Licensee's Facilities, Licensee shall make the corrections or take the required actions within thirty (30) calendar days after the day CPS sends a written notice to Licensee informing Licensee of the corrections to be made. The expense of the corrections or actions will be borne by the Licensee. Should Licensee, despite its best efforts, be unable to complete such corrections within such 30-day period, but Licensee has begun and is diligently prosecuting such corrections or actions in such 30-day period, Licensee will be given a reasonable amount of additional time (not to exceed 30 days and determined in the sole discretion of CPS) to complete such corrections or actions.
- XI. No Damage. Licensee shall not cause damage to CPS Facilities and/or the facilities of Other Licensees and/or any equipment associated or connected with their operations. In the

event Licensee, its contractors, agents, employees or facilities cause damage to CPS Facilities and/or the facilities of Other Licensees, Licensee assumes all responsibility for, and agrees promptly to reimburse CPS and/or Other Licensees for all loss and expense occasioned by such damage. Licensee shall make an immediate report to CPS and/or Other Licensees of the occurrence of any damage caused to any of their respective facilities.

XII. **Indemnification--Interruption of Service and Customer Claims.** Licensee and Licensee's independent contractors and agents shall indemnify, defend, protect and save harmless CPS and its independent contractors, directors, officers, agents, and employees ("CPS and/or CPS' Agents") from and against any and all claims, demands for damage (including punitive, special, indirect, or consequential damages), suits, judgments, liabilities, losses, and/or court costs and expenses (including attorney's fees of any kind) (1) of any type which are brought or asserted by any person or entity which is Licensee's customer, client or other user of facilities, services or products of Licensee; or (2) with respect to claims of Licensee, or any other claiming through Licensee, relating to interruption, interference, or termination of the services provided by Licensee. It is the expressed intention of both CPS and Licensee that Licensee indemnify, defend, protect and save harmless CPS and/or CPS' Agents from the consequences of CPS' and/or CPS' Agents own negligence, strict liability or fault that is the joint, concurrent or sole cause of such claim(s). This section XII shall survive the termination of this Agreement.

XIII. **Indemnification--Other Claims.** Licensee and Licensee's independent contractors and agents shall indemnify, defend, protect and save harmless CPS and its contractors, officers, agents, and employees ("CPS and/or CPS' Agents") from and against any and all claims, demands for damage (including punitive, special, indirect, or consequential damages), suits, judgments, liabilities, losses, payments made under any workers' compensation law or any plan for employee's disability and death benefits, court costs and expenses (including attorney's fees of any kind) (all of the foregoing collectively referred to as "Claims") of the following types (except for claims governed by Section XII of this Agreement):

- A. **Property and Bodily Injury Claims.** Claims for damage to or destruction of property or injury to or death of any person or persons that arise out of or are caused by the erection, installation, maintenance, presence, operation, use, rearrangement or removal of or from CPS Poles of Licensee's Facilities or by the proximity of Licensee's Facilities to CPS Facilities or the facilities of Other Licensees or by any act, omission, or negligence of Licensee or its contractors, agents and employees on or in the vicinity of CPS Poles or Joint Users' poles.
- B. **Intellectual Property and Related Claims.** Claims for infringement of copyrights, for defamation, libel, slander, business disparagement, unauthorized or improper use or treatment of television broadcast programs or other program materials and infringements of patents with respect to the manufacture, use and operation of Licensee's Facilities, whether arising from the use of Licensee's Facilities in combination with CPS Poles or otherwise, and any other Claims concerning other intellectual property rights or issues.

- C. Claims Relating to Right to Occupy. Claims of governmental bodies, property owners or others alleging that Licensee does not have a sufficient right or authority for placing and maintaining Licensee's Facilities at the locations of poles owned by CPS or Joint Users.
- D. Taxes. Claims for taxes or special charges by others which arise directly or indirectly from the construction, maintenance or operation of Licensee's Facilities.
- E. Persons Working on Poles. Claims for injury to or death of any agent, officer, employee, or independent contractor of Licensee or employee or employer, officer or agent of Licensee's independent contractors, who goes upon the poles or who in any way comes in contact with CPS Facilities or the facilities of Other Licensees for any purpose.
- F. Breach of Contract. Claims caused by or relating in any manner to a breach of this Agreement or a failure to follow the terms of this Agreement by Licensee or its agents and employees or by Licensee's contractors or their agents and employees.

This section XIII shall survive the termination of this Agreement.

- XIV. **Bare Licensees.** Licensee and Licensee's agents and contractors, and the officers and employees of Licensee and Licensee's agents and contractors shall be deemed to have no greater rights than the rights of bare licensees on the property of CPS for all purposes and Licensee agrees that CPS owes no duty to them whatsoever except to refrain from willfully injuring them.
- XV. **Limitations of Liability.** AS A MATERIAL PART OF THE CONSIDERATION OF THIS AGREEMENT, LICENSEE TAKES AND ACCEPTS CPS POLES "AS IS" IN THE CONDITION IN WHICH LICENSEE FINDS THE CPS POLES, WITH ANY AND ALL LATENT AND PATENT DEFECTS AND WITH NO EXPRESS OR IMPLIED WARRANTIES BY CPS OF MERCHANTABILITY, FITNESS, SUITABILITY OR THAT THE POLES ARE FIT FOR ANY PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT OR OTHER ASSERTION WITH RESPECT TO THE CONDITION OF THE CPS POLES, BUT IS RELYING UPON ITS EXAMINATION OF THE CPS POLES. Neither CPS nor Other Licensees shall be liable to Licensee, its customers, or anyone else for any interruption to service of Licensee or any interference with the operation of Licensee's Facilities. Except as provided in sections XII and XIII of this Agreement, neither party to this agreement shall be liable to the other for any indirect, special, incidental or consequential damages suffered by the other party, such as, but not limited to, loss of any anticipated profits, claims of customers, loss of revenue, loss of use of Licensee's Facilities or system, cost of capital, increased expenses or operation of other facilities, or cost of replacement equipment, facilities or power.

XVI. Insurance.

- A. Insurance Coverage. Licensee agrees at all times to carry and maintain in full force insurance sufficient to fully protect CPS and its directors, officers, employees and agents from and against any and all claims or demands for damages (including special, indirect, incidental or consequential damages), suits, judgments, liabilities, loss, court costs and expenses (including attorney fees of whatsoever kind or character):

(1) of any type which are brought or asserted by any person or entity which is Licensee's customer, client or other user of facilities, services or products of Licensee; or

(2) for damage to or destruction of property or for injury to or death of any person or persons, that may arise out of or be caused (a) by the erection, installation, maintenance, presence, use, rearrangement or removal of Licensee's Facilities on or from CPS Poles or by the proximity of Licensee's Facilities to the facilities of CPS or Other Licensees; or (b) by any act of Licensee, its independent contractors, agents and employees on or in the vicinity of CPS Poles,

including those under (1) or (2) which are caused or claimed to have been caused in whole or in part by, or relating, to the sole, joint or concurrent errors, omission, fault, strict liability or negligence of CPS, its directors, officers, agents or employees, whether or not covered by any indemnity or by any other provision of this Agreement. It is the expressed intention of the parties, both CPS and Licensee, that with respect to the insurance obligation specified above, Licensee is to provide insurance that will protect CPS and its directors, officers, agents and/or employees from the consequences of CPS' or its officers', employees', directors' or agents' own negligence, strict liability errors, omissions or fault, whether such is joint, concurrent or sole cause of the claim in question. The insurance also shall be, at a minimum, in the amounts and types set forth in Exhibit J and shall comply with the other requirements of Exhibit J and this Section XVI.

- B. Review and Approval of Documents. Certificates of Licensee's insurance coverage must be submitted to, and approved by, the Property Insurance Administrator of CPS prior to any Attachment by Licensee, and annually thereafter during the Term of this Agreement. Licensee shall allow CPS to review and approve all underlying policies associated with this Agreement prior to execution of this Agreement at a location in the State of Texas determined by Licensee. In addition, Licensee shall similarly furnish such policies for CPS' review upon request by CPS during the term of this Agreement. CPS' review and approval of the underlying policies shall not be construed as a waiver or relinquishment of any terms, conditions, or remedies otherwise available to CPS under this Agreement.

- C. Other Insurance Requirements. If any policy required by this Agreement is canceled or changed so that it no longer meets the requirements of this Agreement, Licensee shall, prior to the effective date of such cancellation or change, obtain and submit to CPS evidence of replacement insurance that will meet all such requirements. All insurance required by this Agreement shall be furnished by Licensee at its own expense. The Licensee's insurance shall be primary over any insurance or self-insurance maintained by CPS and will name CPS as an additional insured, but CPS being so named shall not obligate CPS to pay any portion of premiums which may become due under such policies. Failure of Licensee to carry and maintain in effect continuously during the life of this Agreement the insurance required by the Agreement shall constitute a default of this Agreement. All insurance must be effective before CPS will authorize Licensee to attach Licensee's Facilities to any CPS Pole and shall remain in force until such facilities have been removed from CPS Poles.
- D. Indemnification. Licensee agrees to indemnify CPS for any loss suffered by CPS resulting from the failure of Licensee to carry the insurance required by this Agreement. CPS' damages for the breach of these insurance provisions in Section XVI by Licensee shall include, but not be limited to, reimbursement for recovery which would have been provided by such insurance if properly maintained, together with reasonable attorneys' fees associated with defense of claims or in prosecuting any action for breach of these provisions.
- XVII. Surety. Licensee agrees to obtain, submit to CPS, and keep in effect a surety bond in the greater of the following two amounts: (1) \$25,000; or (2) one (1) year's estimated total Connection Fees and Application Fees. The first bond must be submitted to CPS within thirty (30) days of the Effective Date of this agreement, and must be effective until the following March 1. The bond must be renewed and submitted annually to CPS on or before March 1 of each year this agreement is effect, and the term of each renewal of the bond must be for a period of one year. The bond must be in the form and issued by a surety satisfactory to CPS. The surety bond must guarantee payment of all sums that may become due to CPS under this Agreement, including, but not limited to, the removal of Licensee's Facilities upon termination of its Attachment rights under this Agreement. Licensee agrees to maintain the surety bond in full force and effect during the entire term of this Agreement and until CPS is reimbursed for all costs and expenses incurred as a result of removing Licensee's Facilities upon termination of Licensee's Attachment rights under this Agreement. CPS may require a change in the amount of the bond upon thirty (30) calendar days written notice to Licensee, and Licensee agrees to provide a surety bond in such new amount. The amount of the bond or financial security does not operate as a limitation upon obligations of the Licensee under this Agreement.
- XVIII. Dispute Resolution. Disputes between the Licensor and Licensee arising out of this Agreement shall be submitted to arbitration pursuant to this Section.

- A. Demand for Arbitration and Arbitration Panel. Either party may submit a demand for arbitration to the other party identifying the dispute to be resolved. Within 3 business days of the receipt of the demand, each party shall select one arbitrator. Within 7 business days of the receipt of the demand, the two arbitrators shall select a third arbitrator, who shall serve as chairman of the panel. The third arbitrator must be a disinterested, neutral arbitrator and shall be a prominent jurist or attorney who has practiced in Texas and is well qualified and available to serve as chairman of the panel.
- B. Arbitration Position. Within 14 business days of the receipt of the demand, both parties shall submit a written statement to the arbitration panel concerning the controversy. Within 21 business days of the receipt of the demand, the arbitration panel shall meet to hear oral presentations of each party. The arbitration panel shall issue its decision, by a majority vote of the members of the panel, within 28 business days of the receipt of the demand. The decision of the arbitrator, which the parties agree to promptly implement, shall be the final resolution of the controversy and may be enforced in any court of competent jurisdiction.
- C. Arbitration Rules. Except if otherwise provided in this Agreement, the arbitration shall be conducted consistent with the American Arbitration Association's Commercial Arbitration Rules, to the extent deemed necessary by the arbitration panel.
- D. Arbitration Expenses. Each party to the arbitration shall bear its own expenses, including the fees of the member of the arbitration panel which the party selected, with the fees of the third arbitrator paid equally by the two parties, unless otherwise decided by the arbitration panel.

XIX. Term and Termination.

- A. Term of Agreement. This Agreement shall become effective upon the Effective Date shown on the signature page. If not otherwise terminated in accordance with the other provisions of this Agreement or other applicable law, this Agreement shall remain in effect until November 1, 2001.
- B. Termination Without Cause. Either party to this Agreement may terminate this Agreement without cause at any time by giving written notice of termination to the other party at least ninety (90) calendar days prior to such termination.
- C. Termination for Nonuse or Unlawful Use. All of Licensee's rights under this Agreement shall terminate effective immediately upon receipt by Licensee of written notification by CPS of such termination if (1) Licensee ceases to furnish its service; or (2) Licensee uses Licensee's Facilities for any unlawful purpose,

- D. Termination for Breach. If Licensee fails to comply with any of the provisions of this Agreement (including the specifications required by this Agreement) or otherwise breaches the terms of this Agreement, CPS may issue a written notice of default. If Licensee fails to remedy the default within thirty (30) calendar days after the day that CPS sends such written notice of default, CPS will have the option to terminate this Agreement or Licensee's Attachment Permits in part or in whole. After the end of such thirty-day period, CPS can exercise its option to terminate the Agreement at any time by giving Licensee written notice of termination and the extent of such termination. The termination is effective on the day CPS sends the written notice. However, any termination of this Agreement, in part or in whole, will not affect Licensee's payment obligations incurred prior to such termination and does not affect Licensee's other obligations or CPS' rights under this Agreement until all of Licensee's Facilities are removed from CPS' property and full reimbursement for such removal is made to CPS.
- E. Removal Upon Termination. Licensee agrees to remove Licensee's Facilities from all CPS Poles at Licensee's expense within ninety (90) calendar days after termination of this Agreement.

XX. Miscellaneous Provisions.

- A. Notices. Any notices, demands or requests required or authorized by this Agreement shall be deemed to be properly given if delivered by a professional delivery or courier service or mailed, postage prepaid as follows:

Licensee:	Company Name	Western Integrated Networks, LLC
	Address	2000 S. Colorado Blvd., Ste. 2-800
	City, State Zip code	Denver, Colorado 80222
	Attention:	Vice President of Engineering

CPS:	General Manager
	City Public Service
	P. O. Box 1771
	San Antonio, Texas 78296-1771

- B. Payments. Payments to CPS are effective when received, by mail or otherwise, in CPS' offices. All payments must include the top portion of the billing statement. If sent by mail, the payments must be addressed to:

City Public Service
P. O. Box 2678
San Antonio, Texas 78289-0001

If this Agreement does not state a specific deadline for Licensee to make a payment to CPS, the payment shall be due in CPS' offices thirty (30) calendar days after the

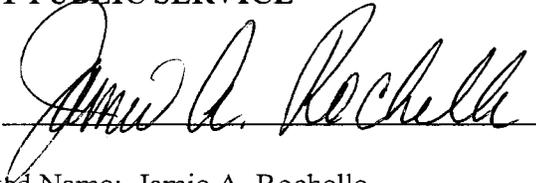
date that CPS sends a bill or invoice to Licensee for such payment. Bills are payable to City Public Service of San Antonio at its offices in San Antonio, Bexar County, Texas. Delinquency of any payment shall constitute a default of this Agreement. In addition, Licensee agrees to pay the following late charges for payments which are not paid by the date the payment is due under this Agreement. On the day after the payment due date, a late charge equaling 1.17% simple interest on the unpaid balance will be added to the amount due under the bill. Every thirty days after the first late charge is assessed, an additional late charge of 1.17% simple interest on the unpaid balance will be added to the bill until CPS has received payment in full.

- C. Successors and Assigns. This Agreement shall bind the successors and assigns of the parties except as follows. Licensee may not assign, transfer or sublicense this Agreement or any of the rights and privileges granted under this Agreement unless Licensee has obtained the written consent of CPS prior to the assignment, transfer or sublicense, which consent will not be unreasonably withheld. Licensee must request such written consent from CPS at least sixty (60) calendar days prior to the proposed effective date of the assignment, transfer or sublicense.
- D. Revisions to Exhibits. The Exhibits to this Agreement are part of the Agreement. CPS may revise any of the Exhibits to this Agreement at any time. Upon acceptance by the Licensee and Joint Users, the revised exhibits will become a part of this Agreement. Licensee will be deemed to accept the revised exhibits if CPS does not receive a written rejection of the exhibits from Licensee within thirty (30) calendar days of the date CPS sends the revised exhibits to Licensee. If CPS receives a written rejection within the thirty (30) calendar day period, and Licensee and CPS are unable to reach a compromise, this Agreement shall terminate upon written notice by CPS to Licensee. In the event of such termination, Licensee agrees to remove Licensee's Facilities from CPS Poles within ninety (90) calendar days after CPS has given written notice to Licensee of the termination.
- E. Severability. If any provision of this Agreement is held illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, it is the intention of the parties that the remainder of the Agreement shall remain in effect.
- F. Texas Law. This Agreement is governed by the laws of the State of Texas. Both parties agree that venue for any litigation arising from this Agreement shall be in Bexar County, Texas.
- G. Entire Agreement. This Agreement contains the final and entire Agreement between CPS and Licensee and contains all of the terms and conditions agreed upon.

- H. Cumulative Remedies. The specific remedies to which CPS may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies to which CPS is or may be lawfully entitled in case of breach of this Agreement.
- I. No Oral Amendments. All modifications or amendments to this contract must be in writing and signed by both parties.
- J. No Waiver. The failure of CPS or Licensee to enforce or to insist upon compliance with any of the terms or conditions of this Agreement does not constitute a waiver or relinquishment of any terms or conditions of the Agreement.
- K. Prior Agreements. Except as to any payments or credits due under prior agreements as of the Effective Date of this Agreement, this Agreement supersedes all prior agreements, oral or otherwise, between the parties providing for Attachment of Licensee's Facilities to CPS Poles. All Attachments existing at the execution of this Agreement and all future Attachments are governed by this Agreement, except that it is not necessary for Licensee to obtain a new Attachment Permit for Attachments authorized prior to the Effective Date of this Agreement under permits obtained under prior agreements between Licensee and CPS.
- L. Contractors and Agents Bound. Licensee agrees to include in all its contracts and agreements with independent contractors or agents provisions which are consistent with and which will fulfill the requirements of this Agreement, including, without limitation, the indemnities, all waivers of liability and insurance requirements.
- M. No Third Party Beneficiaries. The terms and provisions of this Agreement are intended to be for the benefit of CPS and Licensee except as otherwise provided in this Agreement, and nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties to the Agreement, any benefits, rights or remedies under or by reason of this Agreement.

The Effective Date of this Agreement is 5-22-00.

CITY PUBLIC SERVICE

By: 

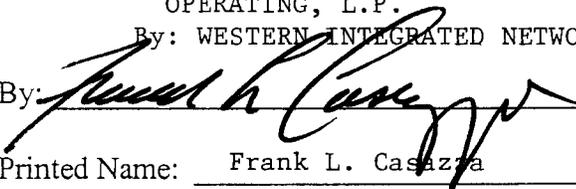
Printed Name: Jamie A. Rochelle

Title: General Manager and CEO

Date Signed: 5-22-00

Licensee WESTERN INTEGRATED NETWORKS OF TEXAS
OPERATING, L.P.

By: WESTERN INTEGRATED NETWORKS, LLC- Its
General Partner

By: 

Printed Name: Frank L. Casazza

Title: President and COO

Date Signed: April 26, 2000

LIST OF EXHIBITS

- Exhibit A -- Attachment Permit Procedure
- Exhibit B -- Attachment Application and Attachment Permit
- Exhibit C -- Authorization for Make-Ready Work
- Exhibit D -- Specifications for Licensee's Attachments
- Exhibit E -- 40' Pole Specifications
- Exhibit F -- 45' Street Pole Specifications
- Exhibit G -- 45' Corner Pole Specifications
- Exhibit H -- 50' Corner Pole Specifications
- Exhibit I -- Application and Connection Fees
- Exhibit J -- Minimum Insurance Requirements

Exhibit A

ATTACHMENT PERMIT PROCEDURE

- XXI. **Determining Ownership of Poles.** When Licensee desires to make an Attachment to a utility pole, Licensee must determine who owns the pole. In the area served by CPS, the majority of utility poles are owned by CPS and Southwestern Bell Telephone Company ("SWB"). CPS and SWB have been jointly using poles for many years. In various locations, space has been provided for the future use of SWB on CPS Poles and for CPS use on SWB' Poles. The Traffic Division of the City of San Antonio and MCI Metro also own or control poles. The United States Government owns poles located in military bases.
- XXII. **Attachment Permit Application.** When Licensee desires to install or remove an Attachment on or from a CPS Pole, to rearrange facilities on a CPS Pole, or to request that CPS add, replace or strengthen a pole, Licensee must complete, sign and submit to CPS the "Attachment Application and Permit" form shown in Exhibit B. The Attachment Permit Application must be reviewed, signed and sealed by a Registered Professional Engineer in Texas, who shall ensure the Attachment complies with all applicable standards and codes and meets all applicable specifications in Exhibits D-H of this Agreement.
- A. **Numbering.** The Licensee must number Licensee's Applications in sequential ascending order. CPS will process the Applications in sequential ascending order according to the application numbers assigned by the Licensee.
- B. **Contents.** The Application consists of the "Attachment Application and Permit" form and map shots of the CPS Poles marked as described below. Licensee must submit CPS map shots marked to show the location of the CPS Poles and the action being requested by Licensee regarding the CPS Poles as follows: +E to indicate new Attachments on existing CPS Poles; -E to indicate Attachments to be removed; +R to indicate a request for replacement of existing CPS Poles; +A to indicate a request for an additional CPS Pole; +S to indicate strengthening of the CPS Poles; and +X to indicate rearrangement of facilities on the CPS Poles. The total number of symbols on each map shot must be shown at the top of the map shot.
- C. **Application Fee.** Licensee must submit the original Application to CPS, along with the correct Application Fee.
- D. **Inspection.** Upon receipt of the Application, CPS will conduct a field inspection of the location.
- E. **Make-Ready Work.** If CPS determines that the Attachment Application requires make-ready work, CPS will complete and sign the "Authorization for Make-Ready Work" form shown in Exhibit C. This Authorization will state the amount of payment which Licensee must pay CPS to accomplish the make-ready work necessary so that the

Attachment can be accomplished (i.e., to add, replace or strengthen CPS Poles or to rearrange existing CPS Facilities on CPS Poles). CPS will forward the completed "Authorization for Make-Ready Work" to the Licensee for its approval and signature.

1. Other Licensees. The CPS "Authorization for Make-Ready Work Form" describes only the costs associated with the rearrangement, replacement, addition or strengthening of CPS Facilities. If the property or facilities of an Other Licensee or any other entity must be rearranged, replaced, added or strengthened, Licensee must obtain authorization from the owner of the property or facilities and pay the owner any charges required by the owner.

2. Licensee's Agreement. If Licensee agrees to the charges shown on the "Authorization for Make-Ready Work," an authorized representative of the Licensee must indicate Licensee's acceptance of the charges by signing and dating such Authorization. Licensee must return the original Authorization to CPS, along with payment in full for the charges shown in the Authorization. When CPS receives the signed and dated Authorization from Licensee and the payment, the CPS Overhead Engineering Department will issue the "Job Order Package" to the CPS Construction Department. The CPS Construction Department will notify the CPS Overhead Engineering Department when construction is completed, which in turn will notify Licensee.

XXIII. Issuance of the Permit. If CPS determines that there is adequate space to make the Attachment and that the other terms and conditions of the Standard Pole License Agreement with Licensee have been met, CPS will issue an Attachment Permit to Licensee for the Attachments by completing and signing the Attachment Permit form shown in Exhibit B. If CPS has undertaken Make-Ready Work in connection with the Attachment, CPS will issue an Attachment Permit to Licensee after CPS has completed its Make-Ready Work. If CPS issues the Attachment Permit, CPS will assign a CPS permit number, will date the permit ("Permit Approval Date") and will fill in the "Attachment Status" portion of the permit. The Permit Approval Date will be used for determining the date of Licensee's obligation to pay a Connection Fee relating to the Attachments. CPS will retain the original permit. A copy of the permit will be sent to the Licensee, which may then make the Attachment to the CPS Poles covered by the permit as soon as all other entities, if any, have completed their necessary make-ready work.

A. Delay of Permit Approval Date. If Licensee is delayed in making its Attachment to a CPS Pole because of a delay caused by another entity completing its work, Licensee may request in writing to the CPS Overhead Engineering Department that the Permit Approval Date be adjusted (for purposes of determining when the Connection Fee for the Attachment begins). CPS, in its sole discretion, may delay the Permit Approval Date for no more than sixty (60) days from the original Permit Approval Date.

- B. Requirement to Attach in Sixty Days. Notwithstanding whether CPS has granted a delay of the Permit Approval Date under paragraph A of this section, Licensee must complete its Attachments within 60 days of the original Permit Approval Date. If the Licensee fails to make the Attachments within such 60 day period, Licensee will lose its Attachment Permit for those Attachments and Other Licensees may apply for the space on the CPS Poles.

Exhibit B

ATTACHMENT APPLICATION AND ATTACHMENT PERMIT

Exhibit D

SPECIFICATIONS FOR LICENSEE'S ATTACHMENTS

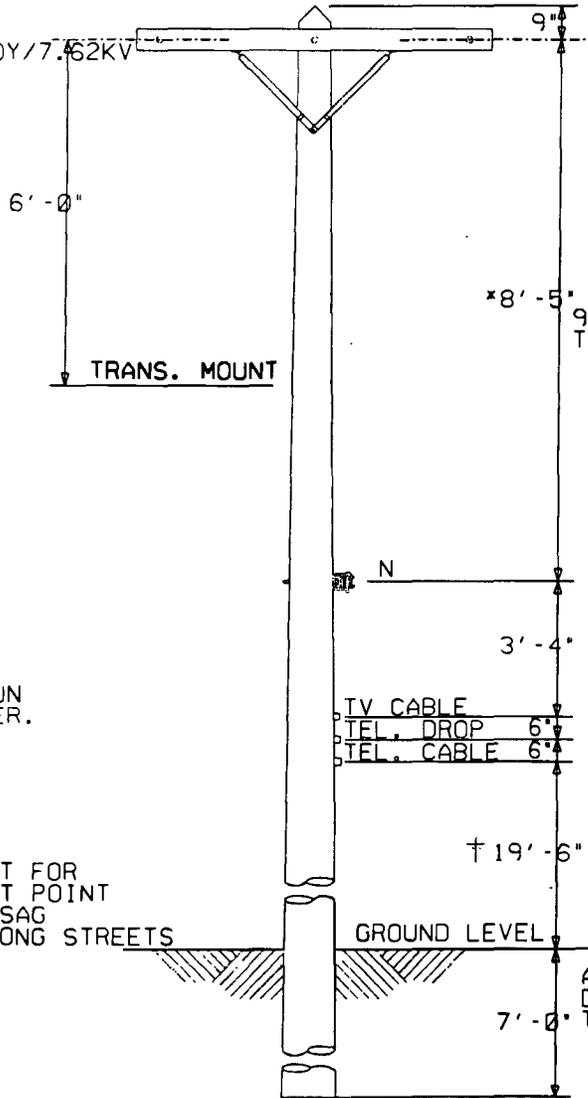
The following engineering and construction practices will be followed by Licensee when making Attachments to CPS Poles.

1. Attachment and Cable Clearances: Licensee's Attachments on CPS Poles, including metal attachment clamps and bolts, metal cross arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the National Electrical Safety Code and in drawings and specifications CPS may from time to time furnish Licensee.
2. Sag and Mid-Span Clearances: Licensee will be particularly careful to leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are (a) achieved at poles located on both ends of the span; and (b) retained throughout the span. At mid-span, a minimum of 12" of separation must be maintained between any other cables. At the pole support, a 12" separation must be maintained between Licensee and any other connection.
3. Vertical Runs on Poles: All vertical runs on poles, including those for power feed for TV amplifiers, shall be placed on the quarter faces of the pole and shall be covered by a riser guard with a two-inch (2") clearance in any direction from cable, bolts clamps, metal supports and other equipment. Secondary cable providing service to streetlights may be covered with non-metallic conduit to allow minimum clearances to communication cables as permitted in the National Electric Safety Code.
4. Cable Bonding: Licensee's messenger cable shall be bonded to Licensor's pole ground wire at each CPS Pole that has a ground wire.
5. Down Guys and Anchors:
 - a. Licensee's down guys shall not be bonded to ground or neutral wires of the CPS Pole and shall not provide a current path to ground from the pole ground or power system neutral.
 - b. Licensee's down guys shall not be attached to a CPS anchor. Licensee must provide its own anchor.
6. Service Drop Clearance: The parallel minimum separation between Licensee's service drops and telephone service drops shall be twelve (12) inches, and the crossover separation between the drops shall be twenty-four (24) inches.
7. Customer Premises: Licensee's service drop into customer premises shall be protected as required by the most current edition of the National Electrical Code.

8. Service Clearances: A four-inch (4") separation shall be maintained between CPS' service cable and/or any Other Licensee's facilities located on the customer's private property in accordance with the National Electrical Code.
9. Climbing Space: A clear climbing space must be maintained at all times on the face of the pole. All Attachments must be placed as to allow and maintain a clear and proper climbing space on the face of the CPS Pole. Licensee's cable Attachments shall be placed on the same side of the pole as telephone cable. In general, all other Attachments and vertical runs should be placed on pole quarter faces.
10. Riser Installations: All Licensee's riser installations shall be placed on metal stand-off brackets.
11. Identification. All Licensee's Facilities, including all cable, shall be identified with a band type marker or other identification acceptable to CPS at each Attachment. The marker must identify the Licensee and must contain Licensee's emergency phone number.
12. Telecommunication Cables. All telecommunication cables not owned by CPS shall be attached within the communication space that is located 40 inches below the CPS neutral or the lowest CPS-owned effectively grounded messenger which can include CPS figure eight communication cable or CPS fiber optic cable.
13. Safety Zone. No mounting brackets are permitted in the safety zone. The safety zone between communication facilities and supply facilities on the same pole extends horizontally out to the boundaries of the climbing space and working space. The safety zone is measured vertically from the level of the closest surface of the communication facility to the level of the closest surface of the supply facility. The required clearance of the safety zone is measured vertically between the levels of the equipment involved. Stand off bracket installation will not be allowed to meet the 40" clearance requirement.

EXHIBIT - E

PRIMARY VOLTAGE
 4.2GRDY/2.4KV, 13.2GRDY/7.62KV
 OR 34.5GRDY/19.92KV.



*8'-5" *
 9'-5" IS REQUIRED FOR
 TRANSFORMER(S) INSTALLATION

TELEPHONE DROP TO BE RUN
 FROM TELEPHONE MESSENGER.

TV CABLE DROP TO BE RUN
 FROM TV CABLE MESSENGER.

† THIS WILL BE 18'-6"
 IF TRANSFORMER(S)
 IS/ARE INSTALLED.

NOTE:
 MINIMUM ALLOWABLE HEIGHT FOR
 CPS NEUTRAL CONDUCTOR AT POINT
 OF MAX. SAG UNDER MAX. SAG
 CONDITIONS IS 22'-0" ALONG STREETS
 OR ROADWAYS.

ALLEY OR EASEMENT WITH
 DESIRED SEPARATION BETWEEN
 TELEPHONE AND CABLE TV.

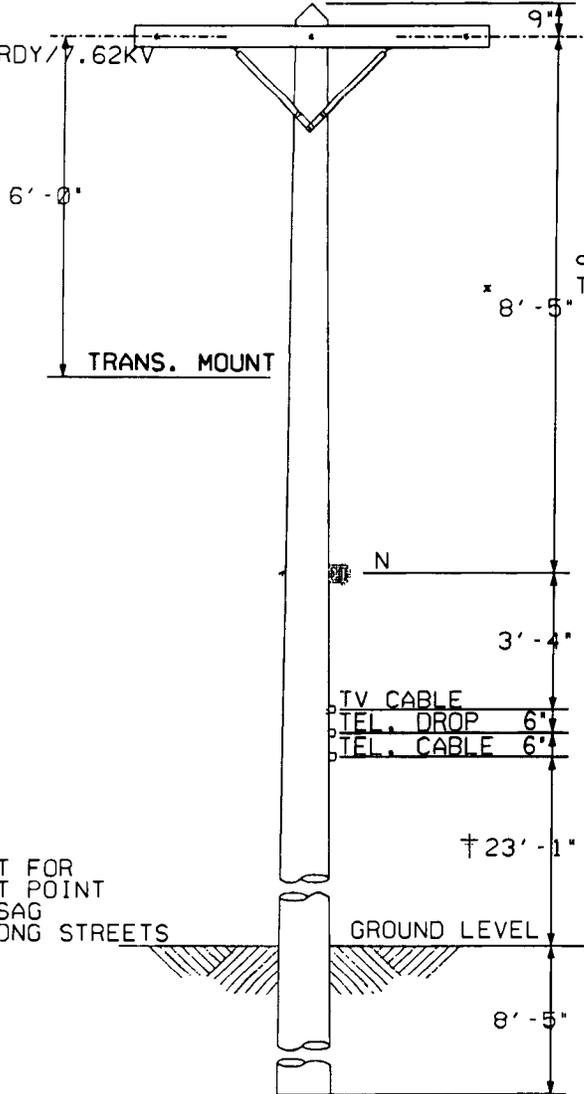
40' POLE

ALLEY, EASEMENT OR PRIVATE PROPERTY
 WITH MINIMUM SEPARATION BETWEEN
 TELEPHONE AND CABLE TV.

APPROVED									
DATE									

EXHIBIT - F

PRIMARY VOLTAGE
 4.2GRDY/2.4KV, 13.2GRDY/7.62KV
 OR 34.5GRDY/19.92KV



* 9'-5" IS REQUIRED FOR TRANSFORMER(S) INSTALLATION

† THIS WILL BE 22'-1" IF TRANSFORMER(S) IS/ARE INSTALLED.

NOTE:
 MINIMUM ALLOWABLE HEIGHT FOR
 CPS NEUTRAL CONDUCTOR AT POINT
 OF MAX. SAG UNDER MAX. SAG
 CONDITIONS IS 22'-0" ALONG STREETS
 OR ROADWAYS.

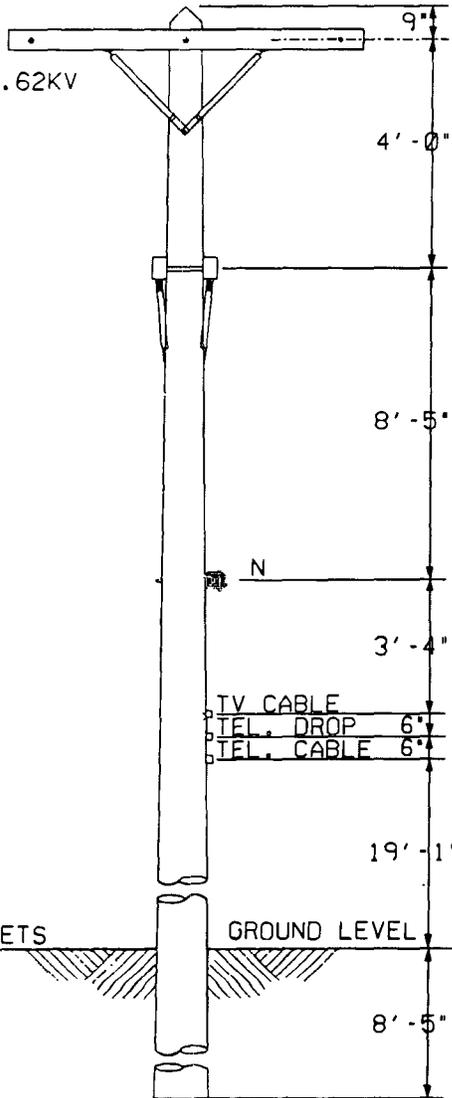
45' POLE

45' POLE STREET OR STREET
 CROSSING WITH CABLE TV.

APPROVED									
DATE									

EXHIBIT - G

PRIMARY VOLTAGE
 4.2GRDY/2.4KV, 13.2GRDY/7.62KV
 OR 34.5GRDY/19.92KV



NOTE:
 MINIMUM ALLOWABLE HEIGHT FOR
 CPS NEUTRAL CONDUCTOR AT POINT
 OF MAX. SAG UNDER MAX. SAG
 CONDITIONS IS 22'-0" ALONG STREETS
 OR ROADWAYS.

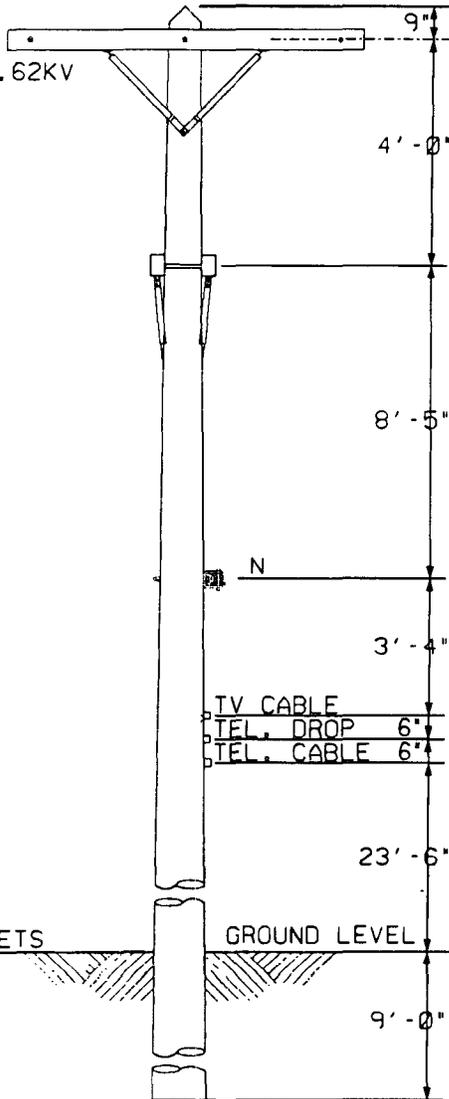
45' POLE

45' CORNER POLE ON
 STREET WITH CABLE TV.

APPROVED									
DATE									

EXHIBIT - H

PRIMARY VOLTAGE
 4.2GRDY/2.4KV, 13.2GRDY/7.62KV
 OR 34.5GRDY/19.92KV



NOTE:
 MINIMUM ALLOWABLE HEIGHT FOR
 CPS NEUTRAL CONDUCTOR AT POINT
 OF MAX. SAG UNDER MAX. SAG
 CONDITIONS IS 22'-0" ALONG STREETS
 OR ROADWAYS.

50' POLE

50' CORNER POLE ON
 STREET WITH CABLE TV.

APPROVED										
DATE										

Exhibit I

APPLICATION AND CONNECTION FEES

Application Fees

Effective January 15, 1997

The Application Fee consists of two components: a trip charge component and a pole charge component. The trip charge component is \$45.00 for each 24 poles (or increment of 24 poles) in the application for the Attachment Permit. The pole charge component is \$6.05 per pole in the application for the Attachment Permit.

For example, if the application requests an Attachment Permit for 20 poles, the Application Fee is \$166.00 [\$45.00 trip charge plus \$121.00 (20 poles @ \$6.05 per pole)]. If the Attachment Permit application covered 36 poles, the Application Fee is \$307.80 [\$90.00 (two trip charges @ \$45.00 per trip) plus \$217.80 (36 poles @ \$6.05 per pole)].

Effective January 15th of Each Subsequent Year

Both components of the Application Fee will be increased by the increase in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average for All Items for All Urban Consumers ("CPI-U") for previous calendar years since January 1, 1997. For example, the Application Fee effective January 15, 1999 will be the Application Fees above, increased by the CPI-U for calendar years 1997 and 1998.

Connection Fees

Effective January 15, 1997

\$5.17 per connection

Effective January 15, 1998

\$5.88 per connection

Effective January 15, 1999

\$5.88 per connection, increased by the increase in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average for All Items for All Urban Consumers ("CPI-U") for calendar year 1998.

Effective January 15, 2000

\$5.88 per connection, increased by the increase in the CPI-U for calendar years 1998 and 1999.

Exhibit J

MINIMUM INSURANCE REQUIREMENTS

Coverage Required	Limits of Liability and Additional Requirements
A. Workers' Compensation Employers Liability Waiver of Subrogation	Statutory \$1,000,000/\$1,000,000/\$1,000,000 Required
B. Commercial General Liability to include coverage where the exposure exists:	Occurrence Basis
1. Bodily Injury	\$1,000,000/occurrence } Combined
2. Property Damage	\$2,000,000/aggregate } Single Limits
3. Personal/Advertising Injury	
CPS as an Additional Insured	Required
C. Business Automobile Liability to include coverage where the exposure exists:	
1. Any Auto	Combined Single Limit for
2. All Owned Autos	Bodily Injury and
3. Scheduled Autos	Property Damage
4. Hired Autos	\$1,000,000
5. Non-Owned Auto	
6. Garage Liability	
CPS as an Additional Insured	Required
D. Umbrella Liability To include: Employers Liability Commercial General Liability and Business Auto Liability	\$4,000,000/occurrence \$4,000,000/aggregate

Additional Provisions

- A. Commercial General Liability Contractual coverage must be provided for the hold-harmless provisions contained in the Indemnification Sections XII and XIII in the Agreement.
- B. Coverage must be sufficient to cover risks as provided for in Section XVI of this Agreement, whether or not such protection is required by any indemnification or other provision of this Agreement. The limits enumerated in the foregoing Paragraph I of this Exhibit are minimum requirements and shall not be construed as changing or limiting the extent of coverage required elsewhere in this Agreement.
- C. Details of coverage and other necessary information sufficient to certify all insurance requirements of this Schedule must be provided on Certificates of Insurance.
- D. A statement that thirty-day notice of policy cancellation or material change must be given to CPS.
- E. Renewal Certificates of Insurance must be submitted to CPS for review and approval within a minimum of 15 days of expiration.
- F. All coverage's must be with companies licensed or qualified to do business in the State of Texas, listed in the current Bests' Key Rating Guide (National or International), and be acceptable to CPS.
- G. The above requirements represent only the minimum insurance acceptable to CPS and are not intended to represent the maximum risk involved or the maximum liability.

**MASTER AGREEMENT FOR ACCESS
TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY (TEXAS)**

This Agreement dated April 21, 2000, is made by and between Southwestern Bell Telephone Company ("SWBT") and the undersigned Applicant. As provided in this Agreement, SWBT will provide Applicant nondiscriminatory access, in accordance with the Pole Attachment Act, the Telecommunications Act of 1996, and applicable rules, regulations, and commission orders, to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT and located in this state.

ARTICLE 1: PARTIES

1.01 Southwestern Bell Telephone Company. Southwestern Bell Telephone Company is a corporation chartered in the State of Missouri. SWBT's principal office is located at 1010 Pine Street, St. Louis, Missouri 63101.

1.02 Applicant. Applicant is a telecommunications carrier or cable television system doing business or operating in this State under the following name(s):

Western Integrated Networks of Texas Operating, L.P.

Applicant maintains offices in this State at the following address: _____

To be provided.

Applicant is more fully described in APPENDIX II ("Identification of Applicant").

ARTICLE 2: PURPOSE OF AGREEMENT

2.01 Primary Purpose of Agreement. The primary purpose of this Agreement is to set forth the rates, terms, conditions, and procedures under which SWBT will provide Applicant access to SWBT's poles, ducts, conduits, and rights-of-way located in this State.

2.02 Applicability. This Agreement applies to all poles, ducts, conduits, and rights-of-way subject to the Pole Attachment Act, 47 U.S.C. § 224, as amended by the Telecommunications Act of 1996, and further amendments.

2.03 Construction in Accordance with Purpose. All provisions of this Agreement shall be construed and applied consistently with the requirements of the Pole Attachment Act and those provisions of the Telecommunications Act of 1996, including but not limited to 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii), which mandate access to SWBT's poles, ducts, conduits, and rights-of-way.

2.04 Uniform Application and Nondiscriminatory Access. In Paragraph 1156 of the First Interconnection Order in CC Docket No. 96-98, the FCC has ordered that “[W]here access is mandated, the rates, terms, and conditions of access must be uniformly applied to all telecommunications carriers and cable operators that have or seek access.” In Paragraph 1157 of the First Interconnection Order, the FCC has further stated that except as specifically noted elsewhere in that order, “a utility may not favor itself over other parties with respect to the provision of telecommunications or video programming services.” This Agreement has been drafted and shall be construed to effectuate these nondiscriminatory access requirements.

2.05 Effect on Rights and Remedies under Law. This Agreement is intended by the parties to implement, rather than abridge, their respective rights under federal and state law. In the event of an irreconcilable conflict between any provision of this Agreement and any applicable federal or state laws, rules, regulations, or commission orders, the parties’ rights and remedies under such laws, rules, regulations, and orders shall take precedence over the terms of this Agreement.

2.06 Additional Negotiations. This Agreement is one of many agreements between SWBT and parties seeking access to SWBT’s poles, ducts, conduits, and rights-of-way in this State. Nothing contained in this Agreement shall preclude SWBT from negotiating additional or different terms of access with third parties. Applicant may, at any time, seek amendments to this Agreement to conform to the terms of agreements between SWBT and third parties. In addition, the parties acknowledge that it may be necessary to amend or supersede this Agreement to conform to changes in the law, streamline procedures for granting access, address issues not addressed in this Agreement, and resolve operational concerns arising by virtue of the presence of competing providers of telecommunications and cable television services on, within, or in the vicinity of SWBT’s poles, ducts, conduits, and rights-of-way. Each party shall, therefore, at the request of the other party, engage in good faith negotiations to supplement, amend or replace this Agreement.

2.07 Relationship to Interconnection Agreement. SWBT has provided Applicant the option of executing this Agreement either as a standalone agreement or as part of the interconnection agreement, if any, between the parties. Applicant’s election is reflected in this section, and this Agreement shall be construed in accordance with Applicant’s election. If this Agreement has been executed as part of an interconnection agreement, Applicant shall have the additional option of replacing this Agreement at any time with SWBT’s then-current Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way.

This Agreement has been entered into as a standalone Agreement.

This Agreement has been entered into, at Applicant’s request, as an appendix, attachment, or exhibit to an interconnection agreement

between the parties. Except as otherwise specifically stated in this Agreement, the terms of this Agreement, which are specific to poles, ducts, conduits, and rights-of-way, shall apply in the event of conflict between the terms of this Agreement and the general terms and conditions set forth in the interconnection agreement.

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

ARTICLE 3: DEFINITIONS

3.01 Definitions in general. As used in this Agreement, the terms defined in this article shall have the meanings set forth below in Sections 3.02 to 3.48 except as the context otherwise requires.

3.02 Agreement. The term "Agreement" refers to this Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way. The term "Agreement" includes all appendices, attachments, and addenda to this Agreement, including but not limited to addenda, if any, reflecting state-specific requirements or Applicant-specific requirements imposed by interconnection arbitration orders.

3.03 Anchor. The term "anchor" refers to a device, structure, or assembly which stabilizes a pole and holds it in place. An anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or guy wire which, in turn, is attached to the pole. The term "anchor" does not include the guy strand which connects the anchor to the pole.

3.04 Appendix. The capitalized term "APPENDIX" refers to one of the following appendices to this Agreement.

APPENDIX I:	Schedule of Rates, Fees, and Charges
APPENDIX II:	Identification of Applicant
APPENDIX III:	Administrative Forms and Notices
SW-9433:	Pole Attachments

SW-9434:	Access Application and Make-Ready Authorization
SW-9435:	Conduit Occupancy
SW-9436A:	Notification of Surrender or Modification of Pole Attachment License by Licensee
SW-9436B:	Notification of Surrender or Modification of Conduit Occupancy License by Applicant
SW-9436C:	Notification of Unauthorized Attachments by Applicant
APPENDIX IV:	Insurance Requirements
APPENDIX V:	Nondisclosure Agreement
APPENDIX VI:	Notices to Applicant
APPENDIX VII:	Notices to SWBT
APPENDIX VIII:	Identification of Utility Liaison Supervisor (ULS)

3.05 Assigned. When used with respect to pole, duct, conduit, or right-of-way space, the term “assigned” refers to space that is occupied by, or has been designated for occupancy by, either party or by a third party. Except as otherwise specifically provided in this Agreement, no person or entity shall have the right to occupy space assigned to another person or entity (other than on a temporary basis in the event of emergency as provided in Section 15.02 of this Agreement) until the assignment has been released or lapsed. Assignment procedures are described in Section 8.02 of this Agreement.

3.06 Authorized contractor. “Authorized contractors” are contractors selected by Applicant who may, subject to Applicant’s direction and control, perform facilities modification or make-ready work which would ordinarily be performed by SWBT or persons acting on SWBT’s behalf. As used in this Agreement, the term “authorized contractor” does not refer to contractors performing routine installation, maintenance, or repair work on Applicant’s behalf or other contractors who may be selected by Applicant to perform work on Applicant’s behalf without SWBT’s approval. More specifically, the term “authorized contractor” refers only to those contractors included on a list of contractors mutually approved by Applicant and SWBT to perform one or more of the following tasks within a specified SWBT construction district: (a) installation of those sections of Applicant’s ducts or facilities which connect to SWBT’s conduit system as provided in Section 6.08(c); (b) installation of inner duct as provided in Section 10.02(b); (c) excavation work in connection with the removal of retired or inactive (dead) cables as provided in Section 10.02(c); or (d) make-ready work as provided in Sections 10.04 and 10.05. A person or entity approved as an authorized contractor is only an authorized

contractor with respect to those tasks for which such person or entity has been approved by both parties and is an authorized contractor only in those SWBT construction districts agreed to by both parties. Designation of an authorized contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an authorized contractor for other purposes, nor shall approval of an authorized contractor by one SWBT construction district constitute approval of such authorized contractor for the area served by a different SWBT construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an authorized contractor shall, for the purposes of that job, be deemed to have been approved by all SWBT construction districts in which the work is to be performed. If, by agreement of the parties or commission order, Applicant has been approved as an authorized contractor, such approval shall be noted by an addendum to this Agreement.

3.07 Available. When used with respect to pole, duct, conduit, and right-of-way space, the term “available” refers to space that is not occupied or assigned. In conduit systems owned or controlled by SWBT, maintenance ducts will not be considered “available” for assignment. All other unassigned ducts, inner ducts, sub-ducts, and partitioned conduits in a conduit system owned or controlled by SWBT will be deemed available for assignment.

3.08 Cables. The term “cable” includes but is not limited to twisted-pair copper, coaxial, and fiber optic cables. Cables are transmissions media which may be attached to our placed in poles, ducts, conduits, and rights-of-way but are not themselves poles, ducts, conduits, or rights-of-way. Nothing contained in this Agreement shall be construed as a grant of access to cables attached to SWBT’s poles or placed in SWBT’s ducts, conduits, or rights-of-way.

3.09 Conduit. The term “conduit” refers to all SWBT conduits subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, conduits are tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. Except as the context otherwise requires, the term “conduit” refers only to conduit owned or controlled by SWBT, including the re-enterable manholes and handholes used to connect ducts and provide access to cables, wires, and other facilities within the ducts. 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 SWBT structures (such as huts and cabinets) which branch off from or are connected to SWBT’s conduit.

3.10 Conduit occupancy. The term “conduit occupancy” refers to the presence of wire, cable, optical conductors, or other equipment within any part of SWBT’s conduit system.

3.11 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” refers only to conduit systems owned or controlled by SWBT and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other SWBT structures (such as huts and cabinets) which branch off from or are connected to SWBT’s conduit.

3.12 Construction District. The term “construction district” refers to the SWBT organization responsible for outside plant construction in a specified geographic area. The term “construction district” connotes responsibility for handling a function and not to the official name of the organization responsible for outside plant construction matters.

3.13 Cost/Cost-based. The terms “cost” and “costs” refer to costs determined in a manner consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders. The term “cost-based” refers to rates, fees, and other charges which are based on costs and determined in a manner consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders.

3.14 Duct. The term “duct” refers to all SWBT ducts subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, a “duct” is a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Agreement, the term “duct” includes “inner ducts” created by subdividing a duct into smaller channels. Except as the context otherwise requires, the term “duct” refers only to ducts owned or controlled by SWBT and space within those ducts and does not include cables and other telecommunications equipment located within such ducts.

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

3.16 FCC. The acronym “FCC” refers to the Federal Communications Commission.

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

3.18 Handhole. The term “handhole” refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Agreement, the term “handhole” refers only to handholes which are part of SWBT’s conduit system and

does not refer to handholes which provide access to buried cables not housed within SWBT ducts or conduits. As used in this Agreement, the term “handhole” refers only to handhole structures owned or controlled by SWBT and does not include cables and other telecommunications equipment located within handhole structures.

3.19 Hazardous substances. The term “hazardous substances” refers to hazardous and toxic substances, waste, pollutants, contaminants, and materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601(14), as amended, and other federal, state, and local health, safety, and environmental laws, ordinances, statutes, rules, and regulations applicable to sites subject to this Agreement, including but not limited to the Occupational Safety and Health Act (“OSHA”). In general, the term “hazardous substances” refers to any substance the presence, use, transport, abandonment or disposal of which (a) requires investigation, remediation, compensation, fine, or penalty under health, safety, and environmental laws, ordinances, statutes, rules, and regulations applicable to sites subject to this Agreement or (b) poses risks to human health, safety, or the environment and is regulated under any such laws, ordinances, statutes, rules, and regulations. For the purposes of this Agreement, the term “hazardous substances” shall also include petroleum, natural gas, and other combustible or noxious liquids, gases, or solids which may accumulate at sites subject to this Agreement.

3.20 Interconnection agreement. The term “interconnection agreement” refers to the interconnection agreement, if any, to which this Agreement has been made an appendix, attachment, or exhibit, or, as the context may require, any other interconnection agreement between the parties.

3.21 Jacket. The term “jacket” refers to a single enclosed outer covering containing communications wires, fibers, or other communications media. As used in this Agreement, the term “jacket” refers to the outermost sheath or jacket of a cable.

3.22 Joint user. The term “joint user” refers to any person or entity which has entered or may enter into an agreement or arrangement with SWBT permitting it to attach its facilities to SWBT’s poles or place its facilities in SWBT’s ducts, conduits, or rights-of-way.

3.23 License. The term “license” refers to a written instrument confirming that SWBT has granted the application of Applicant or a third party for access to pole, duct, conduit, or right-of-way space and that, based on Applicant’s or such third party’s representations (and SWBT’s field inspection, if any), it appears that no further facilities modification, capacity expansion or make-ready work by SWBT is required before facilities described in the application are installed in the space requested. The term “license” refers to licenses issued by SWBT pursuant to this Agreement and may, if the context requires, refer to licenses issued by SWBT before the date of this Agreement. The parties’ use of the term “license” in this Agreement shall not be construed as conferring authority or discretion on SWBT’s part to deny access to Applicant in any

manner inconsistent with the requirements of the Pole Attachment Act, the Telecommunications Act of 1996, and applicable rules, regulations, and commission orders.

3.24 Local service provider (“LSP”). The terms “local service provider” and “LSP” refer only to telecommunications carriers authorized by applicable federal and state laws and regulations to provide local exchange service. As used in this Agreement, these terms include SWBT.

3.25 Maintenance duct. The term “maintenance duct” generally refers to a full-sized duct (typically three inches in diameter or larger) which may be used, on a short-term basis, for maintenance, repair, or emergency restoration activities. Maintenance ducts will be available, on a nondiscriminatory basis, to all persons and entities (including SWBT, Applicant, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located for (a) short-term emergency repairs as provided in Article 15 of this Agreement and (b) short-term non-emergency maintenance or repair activities as provided in Articles 12 and 13 of this Agreement. No more than one full-sized duct within any given conduit section will be designated by SWBT as the maintenance duct. In those locations where, on the effective date of this Agreement, there is not a full-sized duct available to be used as a maintenance duct, SWBT will designate an inner duct, if one is available, as the maintenance duct although such inner duct may be too small to accommodate some of the cables occupying the conduit section in which such inner duct is located. The term “maintenance duct” does not include ducts and conduits extending from a SWBT manhole to customer premises. Maintenance ducts will not be considered “available” (as defined in Section 3.07) for assignment to SWBT, Applicant, or joint users for purposes other than short-term uses contemplated in this section; provided, however, that SWBT may assign the duct currently designated as a maintenance duct if another suitable full-sized duct will be made available to serve as a replacement maintenance duct and may assign an inner duct currently designated as a maintenance duct if another inner duct will be made available to serve as a replacement maintenance duct. Maintenance duct designations may change from time to time and may or may not be reflected in SWBT’s outside plant records. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.

3.26 Make-ready work. The term “make-ready work” refers to all work performed or to be performed to prepare SWBT’s poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Applicant’s facilities. Make-ready work does not include the actual installation of Applicant’s facilities. “Make-ready work” includes, but is not limited to, clearing obstructions (e.g., by “rodding” ducts to ensure clear passage), and rearranging, transferring, replacing, and removing existing facilities on a pole or in a conduit system where such work is required to accommodate Applicant’s facilities (as contrasted with work performed on SWBT’s behalf in furtherance of SWBT’s own business needs or convenience). “Make-ready work” may require “dig-ups” of existing facilities and may include the repair,

enlargement or modification of SWBT's facilities (including, but not limited to, poles, ducts, conduits, handholes, and manholes), consolidating services into fewer cables, or the performance of other work required to make a pole, anchor, duct, conduit, manhole, handhole, or right-of-way usable for the initial placement of Applicant's facilities. As used in this Agreement, the term "make-ready work" also includes associated planning and engineering work required to confirm or determine the extent of make-ready work required and to plan make-ready projects.

3.27 Manhole. The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron, cast aluminum, steel, or concrete manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in ducts or conduits which are parts of SWBT's conduit system. As used in this Agreement, the term "manhole" refers only to manhole structures owned or controlled by SWBT and does not include cables and other telecommunications equipment located within manhole structures.

3.28 Occupancy. The term "occupancy" refers to the presence of cables or other facilities on a pole, in a duct or conduit, or within a right-of-way.

3.29 Overlashing. The term "overlashing" refers to the practice of placing an additional cable or inner duct by lashing such cable or inner duct with spinning wire over an existing cable and strand.

3.30 Person acting on Applicant's behalf. The terms "person acting on Applicant's behalf," "personnel performing work on Applicant's behalf," and similar terms include both natural persons and firms and ventures of every type, including, but not limited to, corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on Applicant's behalf," "personnel performing work on Applicant's behalf," and similar terms specifically include, but are not limited to, Applicant, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by Applicant and their respective officers, directors, employees, agents, and representatives. An authorized contractor selected by Applicant to perform make-ready work shall be deemed to be a person acting on Applicant's behalf while performing such work at Applicant's request.

3.31 Person acting on SWBT's behalf. The terms "person acting on SWBT's behalf," "personnel performing work on SWBT's behalf," and similar terms include both natural persons and firms and ventures of every type, including but not limited to corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on SWBT's behalf," "personnel performing work on SWBT's behalf," and similar terms specifically include, but are not limited to, SWBT, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by SWBT and their respective officers, directors, employees, agents, and

representatives. An authorized contractor selected by SWBT to perform make-ready work shall be deemed to be a person acting on SWBT's behalf while performing such work at SWBT's request.

3.32 Pole. The term "pole" refers to all SWBT poles subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). Except as the context otherwise requires, the term "pole" refers only to poles (and associated anchors) which are owned or controlled by SWBT and does not include cables and other telecommunications equipment attached to pole structures.

3.33 Pole Attachment. As defined in the Pole Attachment Act, 47 U.S.C. § 224(a)(4), the term "pole attachment" refers to "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." In this Agreement, except as the context otherwise requires, the term "pole attachment" refers to any attachment by a cable television system or provider of telecommunications service to a pole (and associated anchors) owned or controlled by SWBT. The term "pole attachment" includes all such facilities attached to or supported by a SWBT pole, including but not limited to cables, risers and U-guards, equipment boxes, drop wires, anchors, bolts, clamps, drive rings, guys, hooks, strands, and other hardware affixed to the pole. Groupings of associated pole attachments for billing purposes shall be consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders. Except as otherwise authorized by applicable FCC rules, regulations, or orders, Applicant's pole attachments occupying the same usable space (or otherwise associated with facilities occupying the same usable space on a pole) shall be treated as a single attachment for billing purposes.

3.34 Pole Attachment Act. The term "Pole Attachment Act" refers to those provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, now codified as 47 U.S.C. § 224, as those provisions may be amended from time to time.

3.35 Pre-license survey. The term "pre-license survey" refers to work and activities performed or to be performed by SWBT or by persons acting on SWBT's behalf for the primary purpose of:

- (a) confirming or determining the existing availability and capacity of a pole, duct, conduit, or right-of-way and identifying capacity, safety, reliability, or engineering concerns, if any, relating to Applicant's application;
- (b) confirming or determining the extent, if any, to which modifications to SWBT's poles, ducts, conduits, or right-of-ways are required to accommodate Applicant's facilities;

- (c) confirming or determining what make-ready work, if any, will be required to prepare SWBT's poles, ducts, conduits, or rights-of-way to accommodate Applicant's facilities; and
- (d) estimating the costs, if any, that Applicant will be required to pay for any such facilities modification, capacity expansion, or make-ready work.

3.36 Pre-occupancy survey. The term "pre-occupancy survey" refers to work and activities performed or to be performed by Applicant or persons acting on Applicant's behalf for the primary purpose of enabling Applicant to determine:

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

3.37 Primary point of contact. The term "primary point of contact" refers to the persons designated by Applicant and SWBT, respectively, to coordinate arrangements for Applicant's access to SWBT's poles, ducts, conduits, and rights-of-way and records relating to such poles, ducts, conduits, and rights-of-way. SWBT's designated primary point of contact shall be the Utility Liaison Supervisor unless the parties have arranged for that function to be performed by a designated account representative who will serve as an intermediary between Applicant and the Utility Liaison Supervisor.

3.38 Rights-of-way. The term "rights-of-way" refers to all SWBT rights-of-way subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, rights-of-way are legal rights to pass over or through property of another party for limited purposes as defined in a statute, ordinance, easement, grant or other conveyance. Rights-of-way include but are not limited to (a) public rights-of-way which SWBT may occupy as permitted by law for the placement of its facilities (e.g., rights-of-way on, under, or over streets, highways, and other public roads) and (b) easements or servitudes granted by property owners or obtained through the exercise of eminent domain authority authorizing SWBT to pass over, place facilities on, and have rights of ingress and egress to the property of such property owners. Rights-of-way may also include easements which, at the time of land development or subdivision, were dedicated for use by public or private utilities and are being occupied, in whole or in part, by SWBT's facilities. Except as the context otherwise requires, the term "rights-of-way" as used in this

Agreement refers only to rights-of-way owned or controlled by SWBT and does not include (a) cables and other telecommunications equipment buried or located on such rights-of-way, (b) public rights of way (which are owned by and subject to the control of governmental entities), or (c) any space which is owned and controlled by a third-party property owner and occupied by SWBT with permission from such owner rather than as a matter of legal right. As used in this Agreement, the term "right-of-way" may also include certain fee-owned or leased property acquired by SWBT for the specific purpose of installing poles, ducts, or conduits or burying underground cables which are part of SWBT's network distribution facilities.

3.39 Sheath. The term "sheath" refers to an enclosed covering containing communications wires, fibers, or other communications media. A cable may include both inner and outer sheaths.

3.40 Spinning. The term "spinning" refers to a method of attaching a cable or inner duct to a supporting strand. "Spinning" is sometimes referred to as "lashing."

3.41 State. When capitalized, the term "State" (as used in terms such as "this State") refers to the State of Texas.

3.42 State Commission. The term "State Commission" refers to the Texas Public Utility Commission.

3.43 Strand. The term "strand" refers to support wires, typically stranded together, or other devices attached to a pole and connecting that pole to an anchor or to another pole for the purpose of increasing pole stability or supporting wires, cables, and associated facilities. The term "strand" includes, but is not limited to, strands sometimes referred to as "anchor strands," "anchor/guy strands," "down guys," "guy strands," "pole-to-pole guys," and "messengers."

3.44 Telecommunications Act of 1996. The term "Telecommunications Act of 1996" refers to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, enacted February 8, 1996.

3.45 Third party. The terms "third party" and "third parties" refer to persons and entities other than the parties to this Agreement (that is, persons and entities other than Applicant and SWBT).

3.46 Utility Liaison Supervisor ("ULS"). The terms "Utility Liaison Supervisor" and "ULS" refer to the person or persons designated by SWBT to be responsible for handling and processing requests for access to SWBT's poles, ducts, conduits, and rights-of-way in this State. The term "ULS" connotes responsibility for handling a function and is not a job title. Except as otherwise specifically provided in this Agreement or in the parties' interconnection agreement, if any, the ULS shall serve as Applicant's single point of contact for arranging access to SWBT's poles, ducts, conduits, and rights-of-way and

access to SWBT's records relating to SWBT's poles, ducts, conduits, and rights-of-way. The Utility Liaison Supervisor for this State is identified in APPENDIX VIII.

3.47 Vault. The term "vault" includes central office vaults and controlled environment vaults ("CEVs"). Vaults may be connected to, but are not considered part of, SWBT's conduit system. Access, if any, to vaults (and to ducts, conduits, and risers which serve no purpose other than to provide a means of entry to and exit from such vaults) shall be governed by the tariffs, agreements, or commission orders, if any, establishing arrangements for interconnection, collocation, and access to unbundled network elements, and not by this Agreement.

3.48 "Vicinity of ...". When used in terms such as "vicinity of SWBT's conduit system," "vicinity of SWBT's poles," "vicinity of SWBT's rights-of-way," or "vicinity of SWBT's poles, ducts, conduits, or rights-of-way," the term "vicinity of ..." includes sites on, within, near to, surrounding, or adjoining SWBT's poles, ducts, conduits, and rights-of-way. These sites include, but are not limited to, all sites within a distance of 10 feet of any SWBT pole, duct, conduit, or right-of-way.

ARTICLE 4: NATURE AND SCOPE OF AGREEMENT

4.01 Scope of Agreement. This Agreement establishes the rates, terms, conditions, and procedures for access to SWBT's poles, ducts, conduits, and rights-of-way located within this State, without regard to whether such poles, ducts, conduits, or rights-of-way are located on public or private property; provided, however, that nothing contained in this Agreement shall be construed as a grant of access to any facilities which are not poles, ducts, conduits, or rights-of-way subject to the Pole Attachment Act or to any poles, ducts, conduits, rights-of-way, facilities, or property owned and controlled by parties other than SWBT. Separate tariffs or agreements, including other portions of the parties' interconnection agreement, and not this Agreement, shall govern Applicant's access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Agreement:

- (a) SWBT's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from SWBT's central offices;
- (b) 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;
- (c) ducts and conduits located within buildings owned by SWBT; and
- (d) ducts, conduits, equipment rooms, and similar spaces located in space leased by SWBT from third-party property owners for purposes other

than to house cables and other equipment in active service as part of SWBT's network distribution operations.

4.02 No Transfer of Property Rights to Applicant. Nothing contained in this Agreement or any license 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. The payment of fees and charges as provided by this Agreement and licenses subject to this Agreement shall not create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other. No use, however extended, of SWBT's poles, ducts, conduits, or rights-of-way shall create or vest (or be construed as creating or vesting) in Applicant any right, title, or interest in or to any real or personal property owned by SWBT, and the placement of Applicant's facilities on or in SWBT's poles, ducts, conduits and rights-of-way shall not create or vest in SWBT any right, title, or interest in such facilities.

4.03 No Effect on SWBT's Right to Abandon, Convey or Transfer Poles, Ducts, Conduits, or Rights-of-Way. Except as provided in subsections (a)-(d) of this section, nothing contained in this Agreement or any license subject to this Agreement shall in any way affect SWBT's right to abandon, convey, or transfer to any other person or entity SWBT's interest in any of SWBT's poles, ducts, conduits, or rights-of-way.

- (a) SWBT shall give Applicant no less than 60 days written notice prior to abandoning, conveying, or transferring any pole, duct, conduit, or right-of-way (1) to or in which Applicant has attached or placed facilities pursuant to this Agreement or (2) with respect to which Applicant has been assigned pole attachment or conduit occupancy space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or right-of-way is to be conveyed or transferred.
- (b) SWBT represents that prior to the effective date of this Agreement, and prior to enactment of the Telecommunications Act of 1996, SWBT entered into one or more "joint use pole agreements" with electric utilities located in this State and that such agreements may require SWBT to transfer or convey poles to such electric utilities from time to time. Nothing contained in this Agreement shall abridge the rights of SWBT or any electric utility under any contract executed prior to the effective date of this Agreement. In the event of any transfer or conveyance of poles to an electric utility pursuant to such a joint pole agreement, SWBT will, at Applicant's request, provide Applicant and the transferee utility with such information as may be necessary to minimize any burdens to Applicant which may arise out of or in connection with the transfer or conveyance.

- (c) Transfers of SWBT's poles, ducts, conduits, and rights-of-way shall be subject to Applicant's rights at the time of transfer. Applicant shall, at the request of SWBT or the transferee, provide SWBT or the transferee with all information required to assess Applicant's rights, post-transfer intentions with respect to continued occupancy, and willingness to negotiate new rates, terms, and conditions of access. Applicant shall not unreasonably refuse to negotiate with the transferee. If the transferee itself is a local exchange carrier or other utility subject to the Pole Attachment Act, Applicant shall, at the request of the transferee, negotiate in good faith new rates, terms, and conditions of access.
- (d) Transfers or conveyances of poles, ducts, conduits, or rights-of-way to any entity controlling, controlled by, or under common control with SWBT or to any entity which acquires or succeeds to ownership of substantially all of SWBT's assets shall be subject to Applicant's rights under this Agreement and licenses subject to this Agreement.

4.04 No Effect on SWBT's Rights to Manage its Poles, Ducts, Conduits, and Rights-of-Way. Subject to Applicant's rights under this Agreement and applicable federal and state laws, rules, regulations, and commission orders, including, but not limited to, 47 C.F.R. §1.1403 (requiring 60 days' notice of contemplated modifications), SWBT may (a) locate, relocate, move, replace, modify, maintain, and remove all poles, ducts, conduits, and rights-of-way subject to this Agreement at any time and in any manner as SWBT deems appropriate and (b) enter into new agreements or arrangements with other persons or entities permitting them to attach facilities to SWBT's poles or place facilities in or on SWBT's ducts, conduits, or rights-of-way.

4.05 No Right to Interfere. Except to the extent expressly provided by the provisions of this Agreement, the provisions of this Agreement shall not be construed as authorizing either party to this Agreement, or persons acting on their behalf, to rearrange or interfere in any way with (a) the facilities of the other party or joint users, (b) the use of or access to such facilities by the other party or joint users, or (c) the ability of either party or joint users to conduct normal business operations, serve their respective customers, or avail themselves of new business opportunities.

4.06 Required Franchises, Permits, Certificates, and Licenses. This Agreement shall not be construed as relieving either party from any obligations it may have to obtain legal authority to construct, operate, maintain, repair, and remove its facilities on public or private property (including but not limited to any required franchises, permits, certificates, licenses, easements, or the like) from all appropriate public authorities and private persons or entities.

4.07 DISCLAIMER OF WARRANTIES. SWBT MAKES NO REPRESENTATIONS THAT SWBT'S POLES, DUCTS, CONDUITS, OR RIGHTS-OF-WAY ARE SUITABLE FOR APPLICANT'S INTENDED USES. SWBT MAKES

NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN THIS AGREEMENT, SWBT MAKES NO IMPLIED WARRANTIES OF ANY KIND.

4.08 Third-party Beneficiaries. Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

ARTICLE 5: ACCESS TO RIGHTS-OF-WAY

5.01 Public Rights-of-Way. SWBT and Applicant agree that neither party has the right to restrict or interfere with the other party's lawful access to and use of public rights-of-way, including public rights-of-way which pass over property owned by either party. Except as otherwise specifically provided in this Agreement, SWBT and Applicant shall each be responsible for obtaining their own rights-of-way and permission to use real or personal property owned or controlled by any governmental body.

5.02 Private Rights-of-Way Not Owned or Controlled by Either Party. SWBT and Applicant agree that 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. Subject to the procedures set forth in Section 5.04 below, 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.

5.03 Access to Rights-of-Way Generally. Each pole attachment and conduit occupancy assignment or license made, issued, or subject to this Agreement shall include access to and use of all associated rights-of-way including, but not limited to, rights-of-way required by Applicant for ingress, egress, or other access to any sites where SWBT's poles or any part of SWBT's conduit system are located, but only to the extent, if any, that SWBT has the legal authority to grant such access and use. At locations where SWBT has access to third-party property pursuant to non-exclusive rights-of-way, SWBT shall not interfere with Applicant's negotiations with third-party property owners for similar access or with Applicant's access to such property pursuant to easements or other rights-of-ways obtained by Applicant from the property owner; provided, however, that neither party shall conduct activities on such right-of-way which interfere with the facilities of the other party or with the other party's access to and use of its own facilities. At locations where SWBT has obtained exclusive rights-of-way from third-party property owners or otherwise controls the right-of-way, SWBT shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Applicant and third parties on a nondiscriminatory, first-come, first-served basis, provided that the underlying agreement with the property owner permits SWBT to provide such access, and provided further that Applicant agrees to indemnify, on request

defend, and hold SWBT harmless from any injury, loss, damage, claim, or liability arising out of or in connection with such access or use. Such access shall be granted, on a case-by-case basis, in the form of a license, sublicense, sub-easement, or other mutually acceptable writing. Except as otherwise agreed to by the parties, SWBT's charges for such access (obtained from SWBT rather than from the third-party property owner) shall include (a) a pro rata portion of the charges (including but not limited to one-time charges and recurring charges), if any, paid by SWBT to obtain the right-of-way plus (b) any other documented legal, administrative, and engineering costs incurred by SWBT in obtaining the right-of-way and processing Applicant's request for access. Applicant's pro rata portion of the charge paid by SWBT shall be negotiated on a case-by-case basis and shall take into account the size of the area used by Applicant and the number of users occupying the right-of-way.

5.04 Special Procedures for Obtaining Access to Third-party Property. Although SWBT will afford access to rights-of-way owned or controlled by it and permit Applicant to utilize SWBT's rights-of-way to the extent that SWBT has legal authority to do so, Applicant acknowledges that SWBT may not own or control certain rights-of-way to the extent necessary to permit Applicant full access to such rights-of-way. The following general principles shall be applied with respect to access to rights-of-way on third-party property in those situations in which SWBT does not have authority to permit Applicant access or either party has a good faith belief that SWBT does not have such authority:

- (a) Applicant will first attempt to obtain right-of-way directly from the property owner.
- (b) If Applicant has the right of eminent domain under state law, Applicant will independently attempt to obtain the right-of-way it seeks through the exercise of that right.
- (c) If Applicant is unable to obtain access to a right-of-way under subsections (a) or (b) above, Applicant may request in writing that SWBT exercise its right of eminent domain to condemn the right-of-way for Applicant's use and SWBT will respond to Applicant's written request within 45 days. SWBT will exercise its right of eminent domain on Applicant's behalf only if permitted to do so under applicable state law, and only if Applicant agrees to bear all costs and expenses, including but not limited to legal fees, arising out of or in connection with the condemnation proceedings.

5.05 Access to Rights-of-Way Incident to the Use of CEVs and Similar Structures. SWBT will provide Applicant nondiscriminatory access, consistent with the requirements of the Pole Attachment Act and Telecommunications Act of 1996, and as provided in Sections 5.03 and 5.04 above, to rights-of-way containing Controlled Environment Vaults (CEVs), huts, cabinets, and other similar structures. SWBT will place no restrictions on access to such rights-of-way that are more restrictive than those

SWBT places on itself; provided, however, that neither party shall conduct activities on such rights-of-way which interfere with the facilities of the other party, with the privacy of communications carried over the other party's network, or with the other party's access to and use of its own facilities. This section relates only to access to rights-of-way and shall not be construed as granting access to the CEVs, huts, cabinets, and similar structures located on such rights-of-way. Access, if any, to CEVs, huts, cabinets, and similar structures, and to ducts, conduits, and risers which serve no purpose other than to provide a means of entering or exiting such structures, shall be governed by the tariff, agreement, or order, if any, granting Applicant access to such structures.

5.06 Access to Building Entrance Facilities, Building Distribution Facilities, and Equipment Rooms. The parties acknowledge that ownership and control of building entrance and distribution ducts, building entrance and distribution conduits, building entrance and building distribution space, equipment rooms, equipment closets, mechanical rooms, telephone communications rooms, and similar spaces will vary from location to location and that the respective rights of third-party property owners, tenants in buildings owned by third-party property owners, telecommunications carriers, cable television systems, and other providers of telecommunications services with respect to such ducts, conduits, and spaces must be determined on a case-by-case basis. Each party shall, when feasible, directly obtain from third-party property owners such access to building entrance and building distribution ducts, building entrance and building distribution conduits, building entrance and distribution space, equipment rooms, equipment closets, mechanical rooms, telephone communications rooms, and other similar areas as may be needed by such party to serve the building owner and tenants located within buildings owned by third parties or to access other space in the building occupied or to be occupied by such party. In those situations in which Applicant cannot obtain from the building owner access on terms satisfactory to Applicant, Applicant may request access from SWBT as provided in Sections 5.03-5.04 of this Agreement; provided, however, that a separate, building-specific notice of intent to occupy under Section 8.02(b) or license application under Section 9.02, including such additional information as may be necessary to identify the space to be occupied and the facilities to be placed in such space, shall be required for access to the facilities and space subject to this section. Any such notice or application shall conspicuously note on its face that access to building entrance or building distribution facilities or space is being sought. Applicant acknowledges that SWBT must, before providing access to building space and facilities located on or within third-party property, review applicable legal documents and physical arrangements relating to the property, including physical arrangements within the building. Upon completion of that review, SWBT will notify Applicant whether Applicant's request can be granted under this Agreement, will require access arrangements under a tariff or other applicable agreement, or will require other special handling (e.g., direct negotiations with the third-party property owner). Pending such notice, Applicant may not occupy any duct, conduit, or space subject to this section pursuant to Section 8.03 without SWBT's express written consent but may exercise occupancy rights obtained directly from the building owner. If SWBT has lawful authority to provide such access and is required by the Pole Attachment Act to do so,

SWBT shall provide Applicant access under this Agreement. Such access shall be negotiated on a case-by-case basis taking into account any special legal, technical, security, or construction considerations applicable to the ducts, conduits, or space which Applicant seeks to access. Such access, when provided, shall only include access to ducts, conduits, and available space (as distinguished from access to cables and other equipment not subject to the Pole Attachment Act). Such access shall be subject to such reasonable terms and conditions as may be appropriate to protect the equipment and other property of the parties and third parties, the reliability of the parties' networks and the networks of third parties, and the privacy of communications carried over the parties' networks and networks of third parties.

- (a) Applicant's access, if any, to building entrance ducts and building entrance conduits entering SWBT-owned buildings (including but not limited to central offices) and access, if any, to other building entrance and building distribution facilities and space located within such buildings shall be arranged under and shall be subject to tariffs, agreements, and, if applicable, commission or court orders establishing such access rights rather than this Agreement.

- (b) Applicant's access to and use of building entrance ducts, building entrance conduits, building entrance space, and other building entrance facilities owned and controlled by third-parties shall be obtained by Applicant through direct negotiations between Applicant and the third-party property owners who own and control access to such facilities. If SWBT owns a building entrance duct, building entrance conduit, or other building entrance space, or if SWBT has sufficient control over a building entrance duct, building entrance conduit, or other building entrance space to permit other telecommunications carriers or cable television systems to have access to such ducts, conduits, or space without approval or consent from the third-party property owner, SWBT shall, if adequate capacity is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Applicant and other telecommunications carriers and cable television systems on a nondiscriminatory, first-come, first-served basis; provided, however, that Applicant agrees to indemnify, on request defend, and hold SWBT harmless from any injury, loss, damage, claim or liability arising out of or in connection with Applicant's access to or use of such building entrance ducts, building entrance conduits, or other building entrance space. Such access shall be granted, on a case-by-case basis, in the form of a license, sublicense, easement, sub-easement, or other mutually acceptable writing and shall not include access to or the right to use SWBT's cables or other SWBT telecommunications equipment occupying such ducts, conduits, or space. Except as otherwise agreed to by the parties, SWBT's charge for such access (obtained from SWBT rather than from the third-party property owner) shall include (1) a pro

rata portion of all charges (including but not limited to one-time charges and recurring charges), if any, paid by SWBT to obtain the building entrance duct, building entrance conduit, or building entrance space and (2) any other documented legal, administrative, engineering and construction costs incurred by SWBT to obtain such duct, conduit, or space, process Applicant's request for access, or prepare the facilities for Applicant's occupancy or use. SWBT's charges to Applicant under this subsection shall be calculated and negotiated on a case-by-case basis.

- (c) Applicant's access to and use of building distribution ducts, building distribution conduits, building distribution space, and other building distribution facilities owned and controlled by third-parties shall be obtained by Applicant through direct negotiations between Applicant and the third-party property owners who own and control access to such facilities. If SWBT owns a building distribution duct, building distribution conduit, or other building distribution space, or if SWBT has sufficient control over a building distribution duct, building distribution conduit, or other building distribution space to permit other telecommunications carriers or cable television systems to have access to such duct, conduit, or space without approval or consent from the third-party property owner, SWBT shall, if adequate capacity is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Applicant and other telecommunications carriers and cable television systems on a nondiscriminatory, first-come, first-served basis; provided, however, that Applicant agrees to indemnify, on request defend, and hold SWBT harmless from any injury, loss, damage, claim or liability arising out of or in connection with Applicant's access to or use of such building distribution ducts, building distribution conduits, or other building distribution space. Such access shall be granted, on a case-by-case basis, in the form of a license, sublicense, easement, sub-easement, or other mutually acceptable writing and shall not include access to or the right to use SWBT's cables or other SWBT telecommunications equipment occupying such ducts, conduits, or space. Except as otherwise agreed to by the parties, SWBT's charges for such access (obtained from SWBT rather than from the third-party property owner) shall include (1) a pro rata portion of all charges (including but not limited to one-time charges and recurring charges) paid by SWBT to obtain the building distribution duct, building distribution conduit, or building distribution space and (2) any other documented legal, administrative, engineering costs and construction costs incurred by SWBT to obtain such duct, conduit, or space, process Applicant's request for access, or prepare the facilities for Applicant's occupancy or use. SWBT's charges to Applicant under this subsection shall be calculated and negotiated on a case-by-case basis.

- (d) Access to equipment rooms, equipment closets, mechanical rooms, telephone communications rooms, and similar areas located in buildings owned and controlled by third-parties shall be subject to access as provided in subsection (c); provided, however, that when any such room or space is leased to SWBT on an exclusive basis (as may be the case if the room or space will be used to house remote switching equipment, pair gain equipment, or other network equipment used to provide or support telecommunications services to customers at locations outside the building in which such room is located), access, if any, shall be also subject to facilities collocation tariffs, agreements, or arrangements.
- (e) Nothing contained in this section shall be construed as authorizing Applicant to occupy space owned or controlled by third parties or to utilize third-party facilities or property without permission or authority from the owner of such property, where such permission or authority is required. Neither this section nor any license or permission granted under or subject to this section shall be construed as a representation by SWBT to Applicant that Applicant has the right to have access to or occupy any duct, conduit, or space owned and controlled by a third-party property owner or to utilize any telecommunications equipment owned or controlled by SWBT or any third party (including but not limited to owner- or tenant-owned cables, wires, and equipment located on the customer side of any network interface device).
- (f) If Applicant has been granted access to a building entrance or building distribution duct, conduit, or space pursuant to this section, Applicant shall, at SWBT's request, relinquish such access to SWBT if it is subsequently determined that Applicant's use of such space will preclude SWBT from meeting carrier- or provider-of-last-resort obligations to customers on the premises affected.

ARTICLE 6: SPECIFICATIONS

6.01 Compliance with Requirements, Specifications, and Standards. Applicant agrees that Applicant's facilities attached to SWBT's poles or occupying space in SWBT'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.

6.02 Design to Minimize the Need for Access to SWBT's Poles, Ducts, and Conduits. The parties shall each design their facilities to minimize the need for the parties to access SWBT's poles, ducts, and conduits.

6.03 Infrequent Construction Techniques and Connectivity Solutions. Unless precluded by documented engineering criteria or written guidelines SWBT applied to

itself as of January 1, 1996, and consistent with considerations of safety, reliability, and sound engineering practice, SWBT will permit Applicant at its own expense to utilize the following techniques to avoid high or unusual expenditures: (a) placement of pole attachments on both the "field" side and "road" side of a pole; (b) placement of extension arms or stand-off brackets on poles; and (c) building conduit branches into SWBT's conduit systems. Applicant acknowledges that use of the above techniques will be rare, will be permitted only on a case-by-case basis, and must be performed in a manner which does not jeopardize the structural integrity of SWBT's facilities, the safety of personnel working on or in SWBT's poles, ducts, or conduits, and does not render unusable other available space on the pole or in the duct or conduit. Except as otherwise agreed to by the parties in writing, extension arms or stand-off brackets, if utilized, shall be installed as make-ready work in accordance with SWBT's specifications and at Applicant's expense. Once installed, extension arms and stand-off brackets shall become part of the pole and shall be owned by SWBT. Unused capacity on any such extension arms or stand-off brackets shall be deemed "available" (as defined in Section 3.07) for assignment.

6.04 Published Standards. SWBT and Applicant agree that the following standards equally apply to either party with respect to facilities attached to or placed in SWBT's poles, ducts, conduits, and rights-of-way and further agree that facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:

- (a) the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book";
- (b) the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE"); and
- (c) the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA").

6.05 Additional Electrical Design Specifications: Conduit. The parties agree that, in addition to the specifications and requirements referred to in Sections 6.01-6.04 above, facilities placed in SWBT's conduit system after the effective date of this Agreement shall meet the electrical design specifications set forth in this section.

- (a) No facilities shall be placed in SWBT's conduit system in violation of FCC regulations, including regulations relating to electrical interference. In addition, neither party shall place any facility in SWBT's conduit system which causes or may cause electrical interference with the facilities of the other party or joint users sufficient to jeopardize network integrity or degrade the quality of any communications services offered by either party or a joint user. If either party is notified by the other party or a joint user that its facilities are causing, or have the potential to

cause, unacceptable levels of electrical interference, the party notified shall either correct the problem, remove the facility, or initiate good faith negotiations with the complaining party or joint user to resolve the issue.

- (b) Facilities placed in SWBT's conduit system shall not be designed to use the earth as the sole conductor for any part of the circuits.
- (c) Facilities placed in SWBT's conduit system and carrying more than 50 volts AC (rms) to ground or 135 volts DC to ground shall be enclosed in an effectively grounded sheath or shield.
- (d) No coaxial cable shall be placed in SWBT's conduit system unless such cable meets the voltage limitations of Article 820 of the National Electrical Code.
- (e) Coaxial cable placed in SWBT's conduit system may carry continuous DC voltages up to 1800 volts to ground where the conductor current will not exceed one-half ampere and where such cable has two separate grounded metal sheaths or shields and a suitable insulating jacket over the outer sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer sheath shall not exceed 200 microamperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.
- (f) The integrity of SWBT's conduit system and overall safety of personnel require that "dielectric cable" be used within SWBT's conduit system when a cable facility utilizes a duct or route shared in the same trench by any electric transmission facilities such as the facilities of a power utility.

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

- (a) Except as otherwise specifically agreed in this Agreement or licenses subject to this Agreement, Applicant's facilities shall enter SWBT's conduit system at locations consistent with the physical design specifications that SWBT applies to itself (typically through a manhole) or at such other designated locations agreed upon in writing (e.g., through the licensing process) by the parties in accordance with Section 6.03 (infrequent construction techniques and connectivity solutions).
- (b) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in SWBT's conduit or ducts.

- (c) Neither party shall circumvent the corrosion mitigation measures of the other party or joint users.
- (d) New construction splices in cables (including but not limited to fiber optic and twisted pair cables) shall be located in manholes, pull boxes or handholes.

6.07 Efficient Use of Conduit. To ensure efficient use of conduits, SWBT will, when cable diameters permit, install inner ducts in multiples that fully utilize duct space (typically three or four inner ducts in a full four-inch duct) as needed for SWBT's own business purposes and to accommodate Applicant and other joint users; provided, however, that SWBT will not be required to install inner duct in advance of need or in anticipation of potential future requests for access by Applicant and other joint users. In addition, the parties shall, in accordance with SWBT's duct selection standards, install cables in inner duct when cable diameters permit.

6.08 Specifications Applicable to Connections: Conduit. Except as otherwise specifically agreed in this Agreement or licenses subject to this Agreement, or as mutually agreed upon by the parties in writing, the following specifications apply to connections of Applicant's ducts and conduits to SWBT's conduit system:

- (a) Applicant shall not bore, make, or enlarge any hole in, or otherwise structurally modify or alter any manhole, handhole, duct, conduit, or other facility which is part of SWBT's conduit system except as provided in this Agreement, in licenses subject to this Agreement, or as mutually agreed upon by the parties in writing.
- (b) Nothing contained in subsection (a) shall be construed as precluding Applicant or qualified personnel acting on Applicant's behalf from reattaching cable racks or performing similar routine work which is minor in nature and associated with the placement and splicing of Applicant's cable.
- (c) Where Applicant's duct or facility physically connects with SWBT's conduit system, the section of Applicant's duct or facility which connects to SWBT's conduit system shall be installed by SWBT or its contractor at Applicant's expense (which will be SWBT's actual costs or the price charged SWBT by the contractor performing such work). SWBT will perform this work in an interval consistent with the intervals SWBT performs the same or similar types of work for itself. If SWBT's interval for beginning or completing this work does not meet Applicant's needs, Applicant may arrange for the work to be performed by an authorized contractor selected by Applicant from a list, jointly developed by Applicant and SWBT, of mutually agreed contractors qualified to

perform such work. Work performed by an authorized contractor selected by Applicant to perform work under this subsection shall be performed in accordance with both parties' specifications and in accordance with both parties' standards and practices. Each party shall indemnify, on request defend, and hold the other party harmless from any injuries, losses, damages, claims, or liabilities resulting from the performance of work by the indemnifying party or by persons acting on the indemnifying party's behalf under this subsection.

- (d) SWBT will have the option to monitor the entrance and exit of Applicant's facilities into SWBT's conduit system and the physical placement of Applicant's facilities in and removal of such facilities from any part of SWBT's conduit system. Notice requirements for such monitoring are addressed in Section 6.11 of this Agreement.
- (e) If Applicant constructs or utilizes a duct (other than a duct owned or controlled by SWBT) which is connected to SWBT's conduit system, the duct and all connections between that duct and SWBT's conduit system shall be sealed to prevent the entry of gases or liquids into SWBT's conduit system. If Applicant's duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids into SWBT's conduit system.

6.09 General Requirements Relating to Personnel, Equipment, Materials, and Public Safety. Except as otherwise specifically provided in this Agreement, Applicant shall be responsible for selecting the employees and contractors who will perform work on Applicant's behalf on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. Applicant, its contractors, subcontractors, and other vendors acting on Applicant's behalf shall also be responsible for selecting the personnel who perform work on Applicant's behalf at such sites, directing the work performed by such personnel, compensating their respective employees, and complying with all applicable laws, rules, regulations, and agency orders relating to withholding taxes, social security taxes, and other employment-related taxes. The provisions of this section are intended to protect the integrity of the networks, facilities and operations of SWBT, Applicant and joint users, to protect the health and safety of persons working on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, to assure the financial responsibility of all persons and entities performing work on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, and to protect the public at large. The requirements of this section (other than the provisions of subsection (h)) shall be reciprocal and shall apply to SWBT and personnel acting on SWBT's behalf to the same extent they apply to Applicant.

- (a) Contractors, subcontractors, and other vendors, including authorized contractors, performing work on Applicant's behalf on, within, or in the

vicinity of SWBT's poles, ducts, conduits, or rights-of-way shall meet the same financial responsibility (insurance and bonding) requirements generally applicable to contractors, subcontractors, and vendors performing work on SWBT's behalf on, within, or in the vicinity of such poles, ducts, conduits, or rights-of-way. SWBT shall advise Applicant of SWBT's requirements and any changes in such requirements. Applicant shall be solely responsible for assuring compliance with such requirements by contractors, subcontractors, and other vendors acting on Applicant's behalf and shall be liable to SWBT for any injury, loss, or damage suffered by SWBT as a result of its failure to do so.

- (b) Only properly trained persons shall work on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. Applicant shall be responsible for determining that all such persons acting on Applicant's behalf have proper training.
- (c) Neither Applicant nor any person acting on Applicant's behalf shall permit any person to climb or work on SWBT's poles or in the vicinity of SWBT's poles, or enter SWBT's manholes or work within or in the vicinity of SWBT's conduit system, unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to the pole or conduit system and to perform the work safely.
- (d) Neither Applicant nor any person acting on Applicant's behalf shall permit any person acting on Applicant's behalf to perform any work on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way without first verifying, to the extent practicable, on each date when such work is to be performed, that conditions at the work site (including but not limited to the physical condition of the pole or any part of SWBT's conduit system) are sufficiently safe for the work to be performed. If Applicant or any person acting on Applicant's behalf determines that the condition of any pole, duct, conduit, conduit system, or right-of-way is not safe enough for the work to be performed, Applicant shall notify SWBT of conditions at the site and shall not proceed with the work until Applicant is satisfied that the work can be safely performed.
- (e) Neither Applicant nor any person acting on Applicant's behalf shall knowingly permit defective equipment or materials to be used on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.
- (f) When Applicant or personnel performing work on Applicant's behalf are working on, within, or in the vicinity of SWBT's poles, ducts, conduits,

or rights-of-way located within, under, over, adjacent to, or in the vicinity of streets, highways, alleys or other traveled rights-of-way, such personnel shall follow procedures which Applicant deems appropriate for the protection of persons and property. Applicant and its contractors shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. Applicant and its contractors shall provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers, and property from danger. Applicant and its contractors shall have sole responsibility for the safety of all personnel performing work on Applicant's behalf, for the safety of bystanders, and for insuring that all operations performed by persons acting on Applicant's behalf conform to current OSHA regulations and all other governmental rules, ordinances or statutes.

- (g) Neither Applicant nor any persons acting on Applicant's behalf shall engage in any conduct which damages public or private property in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, interferes with the use or enjoyment of such public or private property except as expressly permitted by the owner of such property, or creates a hazard or nuisance on such property (including but not limited to a hazard or nuisance resulting from any abandonment of Applicant's facilities, failure to remove such facilities or any construction debris from the property, failure to erect warning signs or barricades as may be necessary to exclude others from the premises or give notice to others of unsafe conditions on the premises while work performed on Applicant's behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).
- (h) Applicant shall promptly suspend activities on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way (other than sites owned or controlled by Applicant) if notified by SWBT that such activities create an unreasonable risk of injury to persons or property (including unreasonable risks of service interruptions). Applicant shall not resume such activities on or in the vicinity of SWBT's poles or rights-of-way until Applicant is satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified and shall not resume such activities within or in the vicinity of SWBT's conduit system until both Applicant and SWBT are satisfied that the work may safely proceed and that hazardous conditions at the site have been rectified. In the event that SWBT requires Applicant to suspend work activities and it is later determined that there was no reasonable basis for the work suspension, SWBT shall reimburse Applicant for actual costs resulting from the delay.

- (i) All personnel acting on Applicant's behalf shall, while working on or in SWBT's poles, ducts, conduits, or rights-of-way, carry with them suitable identification and shall, upon the request of any SWBT employee or representative, produce such identification.
- (j) Applicant and persons acting on Applicant's behalf are encouraged to report unsafe conditions on, within, or in the vicinity of SWBT's poles or conduit system to SWBT.
- (k) Applicant shall establish sufficient controls and safeguards to assure compliance with all provisions of this section.

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

- (a) Except as may be mutually agreed upon by the parties in writing, Applicant shall not "rod" or clear any duct or inner duct in SWBT's conduit system other than a duct or inner duct assigned to Applicant. Following the assignment of a specific duct or inner duct to Applicant, Applicant may request that SWBT rod or clear the duct or inner duct. If the duct or inner duct cannot be cleared, SWBT will assign the next available duct or inner duct to Applicant. Applicant's request for assignment of the next available duct shall be in writing, may be transmitted to SWBT via fax or other transmission media mutually agreed upon by the parties, and shall be processed within the same intervals applicable to the processing of similar requests by SWBT's own personnel.
- (b) Personnel performing work within SWBT's conduit system on either party's behalf shall not climb on, step on, or otherwise disturb the cables, air pipes, equipment, or other facilities located in any manhole or other part of SWBT's conduit system.
- (c) Personnel performing work within or in the vicinity of SWBT's conduit system (including any manhole) on either party's behalf shall, upon completing their work, make reasonable efforts to remove all tools, unused materials, wire clippings, cable sheathing and other materials brought by them to the work site.
- (d) All of Applicant's facilities shall be firmly secured and supported in accordance with Bellcore and industry standards and any applicable

construction standards adopted by SWBT and applicable to SWBT's own facilities.

- (e) Applicant's facilities shall be plainly identified with Applicant's name in each manhole with a firmly affixed permanent tag that meets the identification standards set by SWBT for its own facilities.
- (f) Manhole pumping and purging required in order to allow Applicant's work operations to proceed shall be performed by Applicant or its contractor in accordance with the requirements of Sections 6.14 and 6.15 of this Agreement.
- (g) Planks or other types of platforms shall be supported only by cable racks.
- (h) Any leak detection liquid or device used by Applicant or personnel performing work on Applicant's behalf within or in the vicinity of SWBT's conduit system shall be of a type approved by SWBT and included on SWBT's then-current list of approved types of leak-detection liquids and devices; provided, however, that Applicant may use any type of leak detection liquid or device which meets Bellcore's published standards if SWBT has not provided Applicant SWBT's list of approved types of leak detection liquids or devices at least 60 days in advance of Applicant's work.
- (i) Applicant and its contractors shall be responsible for providing proper ventilation while work is being performed in SWBT's conduit system on Applicant's behalf. Except for protective screens, no temporary cover shall be placed over an open manhole unless it is at least four feet above the surface level of the manhole opening.
- (j) Smoking or the use of any open flame is prohibited in manholes, in any other portion of the conduit system, or within 10 feet of any open manhole entrance.
- (k) Artificial lighting, when required by Applicant, will be provided by Applicant. Only explosion-proof lighting fixtures shall be used.
- (l) Neither Applicant nor personnel performing work on Applicant's behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in SWBT's conduit system (including any manhole) during work operations performed within or in the vicinity of SWBT's conduit system.
- (m) Applicant shall comply with the standards set by SWBT for its own personnel restricting the use of spark producing tools, equipment, and

devices (including but not limited to such tools as electric drills and hammers, meggers, breakdown sets, induction sets, and the like) in manholes and other portions of SWBT's conduit system, provided that such standards have been communicated in writing to Applicant at least 60 days in advance of the construction, installation, or placement of Applicant's facilities within SWBT's conduit system.

- (n) Cable lubricants used in conduit systems shall be of a type or types approved by SWBT and included on SWBT's then-current list of approved types of cable lubricants; provided, however, that Applicant may use any type of cable lubricant which meets Bellcore's published standards if SWBT has not provided Applicant SWBT's list of approved types of cable lubricants at least 60 days in advance of Applicant's work.

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

- (a) Applicant will notify SWBT not less than 48 hours in advance before entering SWBT'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. As a courtesy, Applicant shall, when feasible, provide SWBT with 10 working days advance notice before entering SWBT's conduit system. SWBT shall, within 10 working days after the effective date of this Agreement, advise Applicant of the manner in which notices required by this section shall be given.
- (b) An authorized employee or representative of SWBT may be present as a construction inspector at any time when Applicant or personnel acting on Applicant's behalf enter or perform work within SWBT's conduit system. Such inspectors may inspect the performance and quality of the work and monitor the work for compliance with the terms, conditions, and specifications of this Agreement or, in the case of facilities modification, capacity expansion or make-ready work, the plans and specifications of the facilities modification, capacity expansion, or make-ready project. When SWBT inspectors are present, Applicant and its contractors shall have sole authority, responsibility, and control over the method or manner by which the work is to be performed. SWBT's inspectors may call violations to Applicant's attention but shall have no authority to direct or advise Applicant or personnel acting on Applicant's behalf concerning the method or manner by which the work is to be performed; provided, however, that nothing contained in this subsection shall relieve Applicant from complying with any requirements of this Agreement.

- (c) The parties contemplate that Applicant may need to perform operations in SWBT's conduit system other than during normal business hours and may on occasion require access to manholes on shorter notice than contemplated in subsection (a) above. Under these circumstances, Applicant shall notify SWBT as soon as is reasonably possible of its intent to enter and perform work in the conduit system and SWBT shall not, without due cause and justification, insist on literal compliance with scheduling requirements of subsection (a). SWBT will establish procedures enabling SWBT to receive notices from Applicant under this subsection 24 hours a day, seven days a week.
- (d) Each party must obtain any necessary authorization from appropriate authorities to open manholes for such party's own conduit work and operations therein.
- (e) Applicant shall reimburse SWBT for costs associated with the presence of construction inspectors only as specified in APPENDIX I and only as permitted by applicable laws, rules, regulations, and commission orders. SWBT shall not charge Applicant for more than one such construction inspector per site at any given time.
- (f) If the presence of SWBT personnel at the site is requested by Applicant or, in Applicant's opinion, is integral to successful completion of the work, Applicant shall pay the costs of having such personnel present.

6.12 OSHA Compliance. The parties agree that:

- (a) facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the Occupational Safety and Health Act (OSHA) and all rules and regulations promulgated thereunder;
- (b) all persons acting on such party's behalf shall, when working on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, comply with OSHA and all rules and regulations thereunder; and
- (c) Applicant shall establish appropriate procedures and controls to assure compliance with all requirements of this section.

6.13 Hazardous Substances. Applicant acknowledges that, from time to time, hazardous substances (as defined in Section 3.19 of this Agreement) may enter SWBT's conduit system and accumulate in manholes or other conduit facilities and that hazardous substances may be present at other sites where SWBT's poles, ducts, conduits, or rights-of-way are located.

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

6.14 Compliance with Environmental Laws and Regulations. Applicant and SWBT agree to comply with the following provisions relating to compliance with environmental laws and regulations.

- (a) Facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way following the effective date of this Agreement shall be constructed, placed, maintained, repaired, and removed in accordance with all applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws.
- (b) All persons acting on Applicant's or SWBT's behalf, including but not limited to the parties' employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations. Applicant and personnel acting on Applicant's behalf are expected to be familiar with their obligations under environmental laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Toxic Substance Control Act (15 U.S.C. §§ 2601-2629), the Clean Water Act (33 U.S.C. §§ 1251 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j).
- (c) The parties shall each establish appropriate procedures and controls to assure compliance with all requirements of this section.
- (d) From and after the effective date of this Agreement, neither party nor personnel acting on either party's behalf shall discharge or release hazardous substances onto or from the site of any SWBT pole, duct, conduit, or right-of-way. Neither Applicant nor SWBT nor personnel acting on either party's behalf shall discharge water or any other substance from any SWBT manhole or other conduit facility onto public or private property, including but not limited to any storm water drainage system, without first determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person. Applicant will be expected to test such water or substance for hazardous substances in accordance with then-applicable SWBT standards and practices.
- (e) Applicant and SWBT and all personnel performing work on Applicant's or SWBT's behalf shall, when working on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, comply with such additional standards, practices, and requirements as SWBT may from time to time adopt to comply with environmental laws, provided that such standards are communicated in writing to Applicant at least 60 days in advance of Applicant's work.

6.15 Compliance with Other Governmental Requirements (Including Aeronautical Navigation Safeguards). Facilities attached to SWBT's poles or placed in

SWBT's ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter (including but not limited to any valid ordinances, rules, and regulations requiring permits, certificates, licenses or the like). Applicant and SWBT shall comply with all statutes, ordinances, rules, regulations, and other laws requiring the marking and lighting of aerial wires, cables, and other structures to ensure that such wires, cables, and structures are not a hazard to aeronautical navigation.

6.16 Differences in Specifications. To the extent that there may be differences in the specifications, the most stringent specification will apply except as otherwise specifically provided by SWBT in writing. Applicant will consult with SWBT when Applicant is uncertain as to which specification is to be followed.

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

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

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

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

7.03 Access to Records Relating to SWBT's Poles, Ducts, Conduits, and Rights-of-Way. This section establishes procedures through which certain records and information relating to SWBT's poles, ducts, conduits, and rights-of-way will be made available to Applicant for planning and other purposes. Access to such records and information will be conditioned on Applicant's execution of a nondisclosure agreement equivalent in substance to the Nondisclosure Agreement attached to this Agreement as

APPENDIX V or such other nondisclosure agreement as shall be mutually acceptable to the parties, and no person acting on Applicant's behalf will be granted access to such records and information without first signing such a nondisclosure agreement. Applicant will reimburse SWBT for all reasonable costs incurred by SWBT in granting Applicant's requests for access to records and information under this section.

- (a) Applicant may, at any time after the effective date of this Agreement, request permission to inspect SWBT's pole and conduit maps and records, cable plat maps, and other plant location records, if any, recording or logging assignments of pole, duct, and conduit space. Applicant will be permitted to examine these records during regular business hours at a location where copies of such records are maintained or at such other location as may be mutually agreed upon by the parties. Access to such maps and records will be by appointment only, and SWBT will make such maps and records available for inspection by Applicant on two business days advance notice; provided, however, that Applicant will, as a courtesy, when feasible, provide SWBT with 10 business days advance notice of its intent to examine such records.
- (b) The access described in subsection (a) shall include the right to make copies, at Applicant's expense, except for cable plat maps, which shall be made available for inspection only. In all instances, such access shall include the ability to take notes and make drawings with references to those maps and records. No references to cable counts or circuit information may be included in any such copies, notes, or drawings. With respect to other cable-specific or customer-specific information, Applicant's copies, notes, or drawings may include only such information as needed for bona fide engineering and construction purposes (e.g., proposing cable consolidations and identifying plant discrepancies) and not for sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities. Applicant's copies, notes, and drawings may include estimates regarding the physical characteristics (such as size and weight) of cables when necessary to make engineering determinations regarding the capacity, safety, reliability, or suitability of SWBT's poles, ducts, conduits, and rights-of-way for Applicant's intended uses.
- (c) SWBT will provide Applicant the best information available from SWBT's current pole and conduit maps and records, cable plat maps, and other outside plant and construction records. SWBT represents that such records reflect approximate geographical locations of the facilities depicted and may not accurately reflect information such as:
 - (1) the exact location of the facilities depicted;

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

7.04 Pre-occupancy Inspection of Poles, Ducts, Conduits, and Rights-of-Way.

Applicant shall be permitted to view and inspect specified poles, ducts, conduits, and rights-of-way on a pre-occupancy basis as provided in this section.

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

ARTICLE 8: POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

8.01 Selection of Space. Applicant will select the space Applicant will occupy on SWBT's poles or in SWBT's conduit systems. Applicant's selections will be based on the same criteria SWBT applies to itself. To enable Applicant to make such selections in accordance with SWBT's criteria, SWBT will provide Applicant information about the network guidelines and engineering protocols used by SWBT in determining the placement of facilities on SWBT's poles and in SWBT's conduit systems. In conduit systems owned or controlled by SWBT, maintenance ducts (as defined in Section 3.25) shall not be considered available for Applicant's use except as specifically provided

elsewhere in this Agreement. All other ducts, inner ducts, sub-ducts, and partitioned conduits which are not assigned or occupied shall be deemed available for use by SWBT, Applicant, and third parties entitled to access under the Pole Attachment Act.

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

(a) After Applicant's application for a pole attachment or conduit occupancy license has been received by SWBT, the pole, duct, and conduit space selected by Applicant in such application will be assigned to Applicant for a pre-occupancy period not to exceed 12 months. The assignment (and date and time of assignment) will be logged and recorded in the appropriate SWBT records. If such space has been provisionally assigned to Applicant as authorized below in subsection (b), the 12-month pre-occupancy assignment period will begin on the date the provisional assignment is recorded in SWBT's records or the date of SWBT's receipt of Applicant's notice of intent to occupy under subsection (b), whichever date first occurs.

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

- (1) Before giving SWBT notice of its intent to occupy unassigned space, Applicant shall make a good faith determination that it actually plans to occupy such space. The assignment process shall not be used by either party for the purpose of holding or reserving space which such party does not plan to use or for the purpose of precluding SWBT or any other person or entity from utilizing or having access to SWBT's poles, ducts, conduits, or rights-of-way.

- (2) With respect to unassigned conduit occupancy space, the notice must include all information required to enable SWBT and joint users, including other persons or entities which may from time to time seek space in the same ducts and conduits, to determine the specific space which Applicant desires to occupy. The notice must, therefore, include, at a minimum, the following information:
 - (i) the specific conduit sections, and each manhole, to be occupied;
 - (ii) the number of ducts, and number of inner ducts, to be occupied by Applicant within each conduit section;
 - (iii) the physical size (diameter) of the cables to be placed in such duct, if known, or the maximum and minimum sizes of the cables which may be placed if more than one size cable is being considered for the space to be occupied;
 - (iv) the anticipated use by Applicant of any infrequent construction techniques and connectivity solutions authorized under Section 6.03 to avoid high or unusual expenditures;
 - (v) Applicant's best estimates of the dates when Applicant plans to begin and complete construction at the sites specified in the notice;
 - (vi) if applicable, a conspicuous statement that Applicant intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement; and
 - (vii) if applicable, a conspicuous statement, as required by Section 5.06 of this Agreement, that the notice pertains to a building entrance or building distribution duct or conduit or other space within a building.

- (3) With respect to unassigned pole space, such notice must include all information required to enable SWBT and other joint users, including other persons or entities seeking space on the same poles, to determine the specific space which Applicant desires to occupy. The notice must, therefore, include, at a minimum, the following information:
- (i) the specific poles to be occupied;
 - (ii) the specific space on each pole to be occupied, including the height (distance from the ground) of the attachment and the side (road or field) where the attachment is to be made;
 - (iii) the anticipated number and types of cables to be attached, together with the anticipated physical size (diameter) and weight (weight per foot) of such cables, and the anticipated number and types of strands, if any, to be used to support the cables, such information to be sufficient to give notice to SWBT and other joint users of the remaining space on the pole available and what facilities modification, capacity expansion, or make-ready work may be required of subsequent applicants as a result of the provisional assignment of space to Applicant;
 - (iv) the anticipated use by Applicant of any infrequent construction techniques and connectivity solutions authorized under Section 6.03 to avoid high or unusual expenditures;
 - (v) Applicant's best estimates of the dates when Applicant plans to begin and complete construction at the sites specified in the notice; and
 - (vi) if applicable, a conspicuous statement that Applicant intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement.
- (4) No later than 30 days after giving such notice, Applicant shall file an application under Section 9.02 or the provisional assignment will lapse.
- (5) As stated in Section 7.03(c), SWBT does not represent that its records accurately reflect the information necessary to enable Applicant to rely upon a records-based assignment process. SWBT shall have no duty to verify that space provisionally assigned pursuant to this subsection is actually available.

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

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

- (g) If facilities modifications, capacity expansions, or other make-ready work are required due to the assignment of space to either party under this section, the party to whom such space has been assigned will reimburse the person or entity incurring the costs for such facilities modifications, capacity expansions, or make-ready work if the party to whom such space has been assigned fails to occupy the assigned space within the 12-month assignment period or any extension thereof.
- (h) Except as provided in subsections (e)-(f) above, assignments shall not be extended, renewed, or sequentially repeated in any manner (other than by actual occupancy) that enables Applicant, SWBT, or any joint user to preclude access by others to unused pole attachment or conduit occupancy space for any period greater than 12 months after the date of initial assignment.
- (i) At Applicant's election, Applicant may file an application for access which specifically requests that the space sought by Applicant not be assigned to Applicant immediately and not be recorded immediately in the SWBT records available for inspection by other telecommunications carriers, cable television systems, or other providers of telecommunications services under Section 7.03 of this Agreement. In that event, the space sought by Applicant will not be assigned to Applicant and will remain available for assignment to others without restriction until such time as such space is formally assigned to Applicant in accordance with Applicant's written instructions and the assignment is recorded in the records available for inspection under Section 7.03. The assignment shall be made no later than the date of issuance to Applicant of a license confirming that Applicant has the right to occupy the space described in the license. In the event that Applicant elects to proceed under this subsection, Applicant's obligation to pay pole attachment and conduit occupancy fees shall not commence until the date the assignment is recorded in the appropriate SWBT records and Applicant shall bear the risks that (1) the space sought by Applicant will be assigned to and occupied by another person or entity or (2) circumstances will occur which may require that SWBT reevaluate

Applicant's application and repeat the field inspection portion of the pre-license survey at Applicant's expense.

- (j) Notices and applications including assignment requests will be date- and time-stamped on receipt. Because space will be selected and further assignments made based on entries logged and recorded in the appropriate SWBT records, the date and time of assignment will be the date and time when the assignment is recorded rather than the date and time of receipt of the application or notice requesting such assignment. Although SWBT's clerical personnel will promptly process assignment requests included in applications and notices transmitted to SWBT by mail, courier, fax, or other transmission media, SWBT shall not be liable for any failure by Applicant to obtain the space desired by Applicant due to delay in logging assignment requests. Applicant acknowledges that, to maximize the probability that Applicant will be assigned the space Applicant desires, Applicant should, when possible, submit applications and notices including assignment requests in person to SWBT at the site where the applicable records are maintained and should countersign the entry reflecting the assignment and time of assignment.

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

- (a) Upon giving SWBT the notice required by this subsection, Applicant may immediately occupy space assigned or provisionally assigned to Applicant pursuant to Section 8.02 of this Agreement. The notice shall be contained in either a notice of intent to occupy as provided in Section 8.02(b) or a license application under Section 9.02. Applicant shall not give such notice or occupy such space without first reviewing SWBT's records and determining that the records reflect that the space sought is available.

(b) Applicant shall not occupy space which has not been assigned or provisionally assigned to Applicant. The assignment must be recorded on the appropriate SWBT records, as provided in Section 8.02, prior to Applicant's occupancy. If Applicant subsequently determines that the records are inaccurate and that the space assigned to Applicant is not available, or that the space assigned is not suitable for Applicant's intended use, Applicant shall, within one business day, notify SWBT in writing that it no longer intends to occupy the space earlier assigned and is releasing the assignment. Except as otherwise provided in this subsection, Applicant shall not occupy other space on the pole or in the duct or conduit without first obtaining an assignment or provisional assignment of the space which Applicant will occupy. To avoid high or unusual expenditures resulting from unanticipated conditions at the site, Applicant may occupy space not assigned to Applicant subject to the following terms and conditions.

- (1) Applicant may occupy the next available space shown on SWBT's records as available at the time of Applicant's last review of the records. Applicant shall not knowingly occupy space occupied by or assigned to SWBT or any third party without consent of the party to whom the space has been assigned.
- (2) Within one business day after occupying such space, Applicant shall submit to SWBT a written notice of intent to occupy or an application for the space occupied showing the reason for Applicant's use of the space occupied.
- (3) Applicant shall bear the risk that space occupied by Applicant pursuant to this section was assigned to SWBT or a third party during the period between Applicant's last review of the records and Applicant's occupancy of such space. After occupying space not previously assigned to Applicant, Applicant shall review the records and promptly notify the affected party if Applicant determines that it has occupied space assigned to such party. At the request of the party to whom such space has been assigned, Applicant shall, within 24 hours, or within such other period of time mutually agreed to by the parties affected, remove its facilities from the space in question if the parties affected cannot reach an acceptable alternative solution. SWBT and Applicant anticipate that all parties affected will act in good faith to work out acceptable solutions and that the parties affected will not insist on strict adherence to the 24-hour removal requirement unless there is a legitimate business need for compelling removal within such time period.

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

ARTICLE 9: APPLICATIONS AND PRE-LICENSE SURVEYS

9.01 Licenses Required. Except as otherwise specifically permitted in this Agreement, Applicant shall apply in writing for and receive a license before attaching facilities to specified SWBT poles or placing facilities within specified SWBT ducts, conduits, manholes, or handholes. License applications and information received by SWBT in connection with such applications shall be subject to the provisions of Article 28 of this Agreement (Confidentiality of Information).

9.02 Application Form. To apply for a pole attachment or conduit occupancy license under this Agreement, Applicant shall submit to SWBT two signed copies of the appropriate application forms. SWBT represents that the forms specified in subsections

(a)-(b) are forms in use prior to the effective date of this Agreement and that SWBT is in the process of revising such forms to conform to the provisions of this Agreement and to streamline the application process. The parties therefore agree that the forms specified in subsections (a) and (b) will be interim forms only. SWBT reserves the right to change the format and content of these forms upon 60 days written notice to Applicant.

- (a) To apply for a pole attachment license, Applicant shall submit to SWBT two signed copies of SWBT's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9433 ("Pole Attachments"). An application for a pole attachment license will not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that such forms will be deemed to be substantially complete if they contain the information specified in subsections (c)-(h) below, as applicable. Copies of Forms SW-9433 and SW-9434 are attached to this Agreement as parts of APPENDIX III.
- (b) To apply for a conduit occupancy license, Applicant shall submit to SWBT two signed copies of SWBT's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9435 ("Conduit Occupancy"). An application for a conduit occupancy license will not be complete or subject to processing by SWBT until these forms have been submitted to SWBT; provided, however, that such forms will be deemed to be substantially complete if they contain the information specified in subsections (c)-(h) below, as applicable. Copies of Forms SW-9434 and SW-9435 are attached to this Agreement as parts of APPENDIX III.
- (c) Each application for a license under this Agreement shall include, at a minimum, the following information:
 - (1) the poles, ducts, and conduits (including all manholes) along Applicant's proposed route to or within which Applicant desires to attach or place its facilities;
 - (2) a description of the facilities to be attached to SWBT's poles and a description of the facilities to be placed within each component of SWBT's conduit system (including but not limited to ducts, conduits, manholes, and handholes) along the proposed route;
 - (3) for poles, the proposed points of attachment;
 - (4) for building entrance or building distribution ducts or conduits or other space within a building, a conspicuous statement, as required by Section 5.06 of this Agreement, that the application pertains to a

building entrance or building distribution duct or conduit or other space within a building;

- (5) if applicable, a conspicuous notation that the space requested is not to be assigned (or billed) to Applicant until SWBT has received Applicant's written instruction to make such assignment or issued a license authorizing Applicant to occupy the space requested; and
 - (6) if applicable, a conspicuous statement that Applicant intends to occupy the space before the issuance of a license, as provided in Section 8.03 of this Agreement.
- (d) Facilities descriptions which apply to multiple pole attachments or conduit occupancies need only be described once on any form. Facilities descriptions shall include, at a minimum, the following information:
- (1) the number and types of cables, including the physical size (diameter) and weight (weight per foot);
 - (2) the number and types of strands, if any, which will be used to support the cables, including the rated holding capacity expressed in thousand pound increments (e.g., 2.2M) of such strands; and
 - (3) sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to SWBT's poles or placed in SWBT's conduit system.
- (e) When it appears to Applicant that facilities modification, capacity expansion, or make-ready work may be required to accommodate Applicant's access requests, Applicant shall describe the facilities modification, capacity expansion, or make-ready work which Applicant proposes. Applicant shall also describe its plans, if any, to use any infrequent construction technique or connectivity solution authorized under Section 6.03 to avoid high or unusual expenditures and state its reasons for the use of such technique or solution.
- (f) Applicant acknowledges that the poles along a particular pole line or route may include poles owned by firms (such as electric utilities) other than SWBT, that it may be necessary for SWBT to rearrange its facilities or perform other make-ready work on poles other than poles it owns or controls in order to accommodate Applicant's request for access to SWBT's poles and that, at the time an application is submitted, it may be difficult for Applicant to determine with certainty whether a particular pole is owned or controlled by SWBT or by another entity. Accordingly,

the application shall, to the extent feasible, identify all poles utilized by SWBT (without regard to ownership) along Applicant's proposed route.

- (g) Each application for a license under this Agreement shall be accompanied by a construction schedule showing Applicant's projected dates for beginning and completing construction at the sites specified in the application. Information on this schedule may be used by SWBT's engineering and outside plant construction personnel in scheduling work required to process Applicant's applications and scheduling such capacity expansions, make-ready work, and facilities modifications, if any, as may be necessary to accommodate Applicant's facilities.
- (h) Applicant may include multiple cables in a single license application and may provide multiple services (e.g., CATV and non-CATV services) under the same cable sheath or jacket. When both CATV and non-CATV services are provided under the same cable sheath or jacket, or CATV and non-CATV services are provided using different cables attached or lashed to the same strand or otherwise occupying the same space on a pole or the same duct or inner duct within a conduit, Applicant will so advise SWBT and SWBT shall, if permitted by law, adjust its charges to enable SWBT to charge Applicant the rate applicable to telecommunications carriers rather than the rate applicable to cable television systems solely to provide cable service.

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

- (a) Before submitting a formal written application for access to SWBT's poles, ducts, conduits, and rights-of-way, the firm submitting the application shall make a good faith determination that it actually plans to attach facilities to or place facilities within the poles, ducts, conduits, or rights-of-way specified in the application. Applications shall not be submitted for the purpose of holding or reserving space which the applicant does not plan to use or for the purpose of precluding SWBT or any other provider of telecommunications or cable television services from using such poles, ducts, conduits, or rights-of-way.
- (b) Applicant shall only submit applications for access to poles, ducts, conduits, and rights-of-way which it plans to use within one year following the date access is granted and shall use its best efforts to

submit applications in an orderly manner in accordance with Applicant's needs. If Applicant contemplates the need to submit more than 10 applications within any 45-day period with respect to poles, ducts, conduits, and rights-of-way within the territory of any single SWBT construction district, Applicant shall give SWBT advance notice as promptly as is reasonably practicable.

- (c) No more than 300 poles shall be the subject of any single pole attachment license application.
- (d) No more than 20 manholes shall be the subject of any single conduit occupancy license application.

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

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

- (a) The field inspection portion of the pre-license survey, which includes the visual inspection of existing pole and conduit facilities, shall be performed by SWBT or its authorized representative. Primary purposes of the field inspection will be to enable SWBT to (1) confirm or determine the facilities modification, capacity expansion, and make-ready work, if any, necessary to accommodate Applicant's facilities; (2) plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare SWBT's poles, ducts, conduits, rights-of-way, and associated facilities for Applicant's proposed attachments or occupancy; and (3) estimate the costs associated with such facilities modification, capacity expansion, or make-ready work. SWBT may dispense with the field inspection if it appears that the information necessary to process Applicant's license application is already available from existing sources, including the application forms and such other information as may be available to SWBT. If Applicant, pursuant to Section 8.03, has occupied the space requested before the issuance of a license, a post-installation inspection of Applicant's facilities may be performed, in place of the field inspection portion of the pre-license survey, to determine whether such facilities are in compliance with the specifications of Article 6 and other

provisions of this Agreement. In performing such inspection, SWBT will not, without due cause and justification, repeat pre-occupancy survey work performed by Applicant.

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

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

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

- (a) If access is granted, SWBT shall, no later than 45 days after Applicant's submission of the license application, further advise Applicant in writing (1) what facilities modifications, capacity expansions, or make-ready work, if any, will be required to prepare SWBT's pole or conduit facilities, (2) provide Applicant an estimate of charges for such facilities modifications, capacity expansions, or make-ready work and (3) disclose to Applicant any hazardous substances known by SWBT to be present at the site.
- (b) SWBT may take into account issues of capacity, safety, reliability, and engineering when considering requests for access, provided the assessment of such factors is done in a nondiscriminatory manner. If access is denied, SWBT shall confirm the denial in writing by the 45th day after the receipt by SWBT of Applicant's completed application. A denial of access shall be specific, shall include all relevant evidence and

information supporting the denial, and shall explain how such evidence and information relates to a denial of access for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. If Applicant in its completed application sets forth in writing specific proposals for expanding capacity, the denial statement shall specifically address such proposals.

- (c) Applicant agrees that if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific poles, ducts, or conduit facilities, Applicant shall promptly withdraw or amend its application, thereby minimizing the administrative burdens on SWBT of processing and responding to the application.
- (d) Notwithstanding the 45-day deadline, SWBT will, pursuant to Section 8.03 of this Agreement, make available to Applicant for immediate occupancy any pole, duct, or conduit space which is not currently assigned, not designated as a maintenance duct, and not subject to applicable make-ready requirements.
- (e) If SWBT fails to respond in writing within 30 days of SWBT's documented receipt of a license application pursuant to Section 9.02 of this Agreement, or within such other period of time as may be mutually agreed upon in writing by the parties, Applicant may by written notice inquire whether SWBT intends to deny Applicant's request for access. After such notice has been given and receipt by SWBT of a properly submitted license application has been confirmed, SWBT's failure to respond in writing within 15 days after receipt of the notice shall be deemed to constitute approval of the request for access. In such event, Applicant shall be entitled to occupy the space requested without the formality of a license; provided, however, that nothing contained in this subsection shall authorize Applicant to occupy space already occupied or subject to a prior valid space assignment to SWBT or any third-party; and provided further that nothing in this subsection authorizes Applicant, without first obtaining SWBT's written authorization, to (1) place its facilities on any pole or in any duct or conduit that requires make-ready work (other than third-party make-ready work arranged directly by Applicant) or (2) utilize any infrequent construction technique or connectivity solution described in Section 6.03.

10.02 Obligation to Construct or Modify Facilities; Capacity Expansions. SWBT may grant access subject to Applicant's approval of such make-ready work (including facilities modifications) as may be required to expand capacity to accommodate Applicant's request, in which event Applicant shall either accept such conditions, initiate good faith negotiations to explore other potential accommodations, or withdraw its request for access. If SWBT does not offer to expand capacity and denies Applicant's

request for access, SWBT shall promptly notify Applicant of such determination. SWBT shall not deny Applicant's request for access on lack of capacity grounds when capacity can be expanded as provided in this section and in Section 6.03 (infrequent construction techniques and connectivity solutions).

- (a) At Applicant's request, SWBT will replace, expand, or modify its poles and conduit system, or otherwise expand the capacity of such facilities to accommodate the placement of Applicant's facilities; provided, however, that such modifications shall be consistent with the capacity, safety, reliability, and engineering considerations which SWBT would apply to itself if the work were performed for SWBT's own benefit. Outside plant facilities modifications and capacity expansions contemplated by this subsection include, but are not limited to, installation of inner duct, cable consolidations and the removal of cables that are retired or inactive (dead). Except as otherwise specifically provided in this section, SWBT may recover from Applicant the costs of facilities modifications and capacity expansions to make space available for Applicant's facilities and charges for such modifications and expansions shall be determined and billed as provided in APPENDIX I of this Agreement.

- (b) SWBT will, at its own expense, install inner duct in SWBT's conduit system as necessary to make space available for Applicant's facilities. Inner duct installations to accommodate Applicant's facilities will be performed by SWBT within the same time intervals which would apply if SWBT were performing such installations for itself. If SWBT's intervals for beginning or completing inner duct installation do not meet Applicant's needs, Applicant may arrange for the inner duct installation to be performed by an authorized contractor selected by Applicant from a list, jointly developed and maintained by the parties, of contractors mutually approved as qualified to perform inner duct installations. Applicant may install the inner duct itself if Applicant is on the list of mutually approved contractors at the time the work is performed. When inner duct is installed in SWBT's conduit system by Applicant or an authorized contractor selected by Applicant, SWBT will provide the inner-ducting materials to be installed and Applicant shall bear all other installation expenses. Applicant shall give SWBT sufficient advance notice of the materials needed to enable SWBT to provide such materials to Applicant on a timely basis. Applicant shall return all unused materials, including unused inner duct and reels, to SWBT or purchase them from SWBT. Inner duct installed by Applicant or an authorized contractor selected by Applicant shall be installed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if the inner duct were being installed by SWBT or SWBT's contractors. Applicant shall indemnify, on

request defend, and hold SWBT harmless for any injuries, losses, damages, claims, or liabilities directly resulting from the installation of inner duct by Applicant or any authorized contractor selected by Applicant under this subsection. Applicant shall not, without SWBT's prior written approval, arrange for inner duct installation to be performed by subcontractors who are not authorized contractors.

- (c) SWBT shall, at its expense, remove cables that are retired or inactive (dead) to free-up requested duct and pole space, provided that such removal is reasonably feasible (i.e., cable pulls easily without incident). If a section of cable is "frozen" in a duct and would require excavation to remove, Applicant may, at its option, request that SWBT excavate the obstruction or, in the alternative, arrange for excavation of the obstruction to be performed by an authorized contractor selected by Applicant from a list, jointly developed and maintained by the parties, of contractors mutually approved as qualified to perform such excavations. Applicant may excavate the obstruction itself if Applicant is on the list of mutually approved contractors at the time the work is performed. Such excavations will be at Applicant's expense. Removal of the remainder of the cable will be at SWBT's expense. Excavation work performed by Applicant or an authorized contractor selected by Applicant shall be performed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if such excavation work were being performed by SWBT or SWBT's contractors. Neither Applicant nor any authorized contractor selected by Applicant to perform excavation work under this subsection shall conduct facility excavation activities in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of the facilities. Applicant shall indemnify, on request defend, and hold SWBT harmless for any injuries, losses, damages, claims, or liabilities directly resulting from the performance of excavation work by Applicant or any authorized contractor selected by Applicant under this subsection. Applicant shall not, without SWBT's prior written approval, arrange for excavation work to be performed under this subsection by subcontractors who are not qualified contractors.

10.03 Issuance of Licenses and Immediate Access When No Make-ready Work is Required. If, on the basis of Applicant's representations or SWBT's field inspection, if any, SWBT determines that no make-ready work is necessary to accommodate Applicant's facilities, SWBT will issue a license without performing make-ready work and pole attachment or conduit occupancy space will be made available to Applicant for immediate occupancy. Immediate occupancy prior to the issuance of a license shall be governed by Section 8.03.

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

- (a) The notice shall be given in writing no later than 45 days after the receipt by SWBT of Applicant's completed application pursuant to Section 9.02 of this Agreement or within such other period of time as may be mutually agreed upon in writing by the parties.
- (b) The notice will include SWBT's estimate of make-ready charges, which estimate shall be stated on SWBT Form SW-9434 ("Access Application and Make-Ready Authorization"), a copy of which is attached hereto as part of APPENDIX III.
- (c) Applicant shall have 20 days (the "acceptance period") after receiving SWBT's estimate of make-ready charges to authorize completion of the make-ready work proposed by SWBT or to advise SWBT of its willingness to perform the proposed make-ready work itself. If Applicant advises SWBT that it is willing to perform the make-ready work proposed by SWBT in accordance with a design approved by SWBT, and SWBT's specifications, SWBT will not, without due cause and justification, refuse to accept Applicant's offer to perform the work. Authorization shall be accomplished by Applicant's signing the estimate and returning it to SWBT within the 20-day acceptance period.
- (d) Within the 20-day acceptance period, the parties may negotiate modifications of the make-ready work to be performed. If the parties reach agreement through negotiation, a new estimate shall be prepared and authorization shall be accomplished by Applicant's signing the revised estimate and returning it to SWBT within the original 20-day acceptance period, or within such period of time as may be mutually agreed upon by the parties.
- (e) If Applicant does not sign and return the estimate within the 20-day acceptance period, or within such other period of time as may be mutually agreed upon in writing by the parties, Applicant shall notify SWBT in writing by the 20th day whether Applicant is withdrawing its application, electing to perform the make-ready work itself as provided in subsection (c) or electing to treat SWBT's make-ready requirements as a denial of access.
 - (1) If no such notice is given by the 20th day, or such later date as may be mutually agreed upon by the parties, SWBT shall contact Applicant to determine whether Applicant intends to withdraw its application. Applicant shall be deemed to have withdrawn its

application if, in response to SWBT's inquiry, Applicant does not immediately sign and return the estimate to SWBT.

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

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

- (a) Applicant and SWBT will mutually establish and maintain for each SWBT construction district lists of authorized contractors which may be selected by Applicant to perform make-ready work when SWBT's interval for beginning or completing such make-ready work does not meet Applicant's needs. At Applicant's request, Applicant will be included on such lists upon Applicant's demonstrating that (1) its personnel are qualified to perform such work in accordance with SWBT's specifications and (2) Applicant meets the financial responsibility (insurance and bonding) requirements generally applicable to contractors, subcontractors, and other vendors performing the same or similar work on SWBT's behalf or the self-insurance requirements of Section 23.02.
- (b) If SWBT's interval for beginning or completing make-ready work does not meet Applicant's needs, Applicant may (1) perform the make-ready work itself, if Applicant is on the applicable list of authorized contractors at the time the work is to be performed or (2) arrange for the work to be performed by an authorized contractor selected by Applicant from the applicable list of authorized contractors. Subject to the availability of personnel, Applicant may also request that SWBT perform the work on an expedited basis; provided, however, that make-ready work will not be performed on an expedited basis unless Applicant

first approves any overtime or premium rates or charges associated with performance of the work on an expedited basis.

- (c) From time to time, additional contractors, subcontractors or other vendors may be jointly approved by Applicant and SWBT to perform specific make-ready work in the event that the work load exceeds the capacity of the authorized contractors on the approved list to perform the make-ready work in a timely manner.
- (d) Make-ready work performed by Applicant, by an authorized contractor selected by Applicant, or by a contractor, subcontractor, or other vendor jointly approved by the parties under subsection (c) shall be performed in accordance with SWBT's specifications and in accordance with the same standards and practices which would be followed if such excavation work were being performed by SWBT or SWBT's contractors. Neither Applicant nor authorized contractors selected by Applicant to perform make-ready work under this section shall conduct such work in any manner which jeopardizes or degrades the integrity of SWBT's structures or interferes with any existing use of SWBT's facilities. Applicant and any authorized contractor selected by Applicant to perform make-ready work shall indemnify, on request defend, and hold SWBT harmless from any and all injuries, losses, damages, claims, or liabilities directly resulting from their activities under this section.
- (e) Nothing contained in this section authorizes Applicant, any authorized contractor selected by Applicant, or any other person acting on Applicant's behalf to consolidate SWBT's cables.

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

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

10.08 Reimbursement for the Creation or Use of Additional Capacity. As a result of facilities modification, capacity expansion, or other make-ready work performed to accommodate Applicant's facilities, additional capacity may become available on SWBT's poles or in its conduit system. In such event, Applicant shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any pole attachment or conduit occupancy fees subsequently paid to SWBT for the use

of such additional capacity. SWBT shall, however, establish procedures for giving Applicant notice of the subsequent use by SWBT or third parties of additional space or capacity created at Applicant's expense. If SWBT utilizes additional space or capacity created at Applicant's expense, SWBT will reimburse Applicant on a pro-rata basis for SWBT's share, if any, of Applicant's capacity expansion costs, to the extent reimbursement is required by the Pole Attachment Act and applicable rules, regulations, and commission orders. If any third party later utilizes any such additional space or capacity, SWBT shall, at the request of Applicant or such third party, provide such information as may be available to SWBT to assist Applicant and such third party in determining the amount, if any, which such third party may owe Applicant as its pro-rata share of Applicant's capacity expansion costs. Nothing contained in this section shall be construed as conferring or imposing on SWBT any right or duty to determine the amounts owing by a third party to Applicant, to collect or remit any such amounts to Applicant, to resolve or adjudicate disputes over reimbursement between Applicant and third parties, to deny a third party access to SWBT's poles, ducts, conduits, or rights-of-way due to such third party's failure to satisfy Applicant's reimbursement demands, or to take any other action to enforce Applicant's reimbursement rights against any third party. In like manner, for additional capacity created by SWBT from and after the date of enactment of the Telecommunications Act of 1996, SWBT shall be entitled to recover from Applicant and third parties, to the full extent permitted by law, their pro-rata shares of such capacity expansion costs incurred by SWBT. To the extent that either party seeks to avail itself of this cost-saving mechanism, such party shall be responsible for maintaining adequate records documenting the costs subject to reimbursement, including but not limited to costs incurred for facilities modification and capacity expansion work performed directly by such party or contractors performing work on such party's behalf.

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

ARTICLE 11: CONSTRUCTION OF APPLICANT'S FACILITIES

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

such party's behalf while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

11.02 Construction Schedule. After the issuance of a license, Applicant shall provide SWBT with an updated construction schedule and thereafter keep SWBT informed of anticipated changes in the construction schedule. Construction schedules received by SWBT shall be subject to the provisions of Article 28 of this Agreement (Confidentiality of Information). Construction schedules required by this section shall include, at a minimum, the following information:

- (a) the name, title, business address, and business telephone number of the manager responsible for construction of the facilities;
- (b) the names of each contractor and subcontractor which will be involved in the construction activities;
- (c) the estimated dates when construction will begin and end; and
- (d) the approximate dates when Applicant or personnel working on Applicant's behalf will be performing construction work in connection with the attachment of Applicant's facilities to SWBT's poles or the placement of Applicant's facilities in any part of SWBT's conduit system.

ARTICLE 12: USE AND ROUTINE MAINTENANCE OF APPLICANT'S FACILITIES

12.01 Use of Applicant's Facilities. Each license subject to this Agreement authorizes Applicant to have access to Applicant's facilities on or within SWBT's poles, ducts, and conduits as needed for the purpose of serving Applicant's customers.

12.02 Routine Maintenance of Applicant's Facilities. Each license subject to this Agreement authorizes Applicant to engage in routine maintenance of facilities located on or within SWBT's poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Applicant's facilities in any manner which results in Applicant's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Applicant's license.

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

- (a) Drive rings and J-hooks may be installed as specified in pole attachment licenses issued to Applicant.

- (b) If attachment space has already been licensed to Applicant on a given SWBT pole, Applicant may install drive rings and J-hooks within the space assigned to Applicant (typically six inches above and six inches below Applicant's point of attachment on the pole if the point of attachment is in the center of the space assigned to Applicant) without applying for or obtaining a new or amended license. No additional attachment charges shall apply with respect to drive rings and J-hooks installed in Applicant's licensed attachment space.
- (c) Applicant's first choice for placement of drive rings and J-hooks shall be the licensed attachment space assigned to Applicant as provided in subsection (b) above; provided, however, that if attachment space already licensed to Applicant on a given SWBT pole is not adequate for Applicant's drive rings or J-hooks, Applicant may, when necessary, and without applying for or obtaining a new or amended license, install such drive rings and J-hooks above or below Applicant's licensed attachment space as described in subsection (b) above. No additional attachment charges shall apply with respect to drive rings and J-hooks installed outside Applicant's licensed attachment space as permitted in this subsection.
- (d) If Applicant has not already been licensed attachment space on a given SWBT pole, Applicant may, when necessary, install drive rings and J-hooks to unassigned space on such pole without first obtaining a license for such attachment and shall, promptly following such installation, notify SWBT of the attachment. Such notification shall be made on a form to be developed by SWBT for this purpose and shall constitute an application for a license. Such application may be conditionally granted without a pre-license survey or other inquiry by SWBT, and SWBT shall not be required to process the application, log the attachment as an assignment in its outside plant records, or issue a permanent license for the attachment unless specifically requested by Applicant to do so; provided, however, that a conditionally granted application under this subsection shall be subject to revocation if it is subsequently determined that such attachment has been made in violation of subsection (e) of this section or other provisions of this Agreement. Drive-rings and J-hooks installed pursuant to this subsection are pole attachments and charges for such attachments shall be determined in accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders.
- (e) Notwithstanding the provisions of subsections (c)-(d) above, Applicant may not install drive rings and J-hooks in space assigned to SWBT or another joint user without the approval of SWBT or such other joint user and may not install drive rings and J-hooks in unassigned space in any

manner which will block or preclude the subsequent occupancy or use of space by SWBT or other joint users. If the presence of Applicant's facilities in space not assigned to Applicant will block or preclude the use of assigned or otherwise assignable space by SWBT or other joint users, Applicant shall, on SWBT's request, promptly relocate the facilities in order to accommodate the facilities of other users and shall bear all expenses associated with such relocation.

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

12.04 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed 30 days) non-emergency maintenance or repair activities by any person or entity (including but not limited to SWBT, Applicant, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by SWBT. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify SWBT of such use and must either vacate the maintenance duct within 30 days or, with SWBT's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if 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.

12.05 Responsibility for Maintenance of Facilities. Each party shall be solely responsible for maintaining its own facilities and (a) paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the maintenance of such party's facilities and (b) directing the activities

of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

12.06 Information Concerning the Maintenance of Applicant's Facilities.

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

ARTICLE 13: MODIFICATION OF APPLICANT'S FACILITIES

13.01 Notification of Planned Modifications. Applicant shall notify SWBT in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities already attached to a SWBT pole or located in any SWBT duct or conduit. The notice shall contain sufficient information to enable SWBT to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Applicant's present license or requires a new or amended license. No notice shall be required for such routine modifications as the installation or placement of drive rings or J-hooks, terminals, and other ancillary apparatus routinely used in providing service to customers, having no effect on the structural integrity of SWBT's poles, ducts, or conduits, and having no effect on the ability of SWBT or joint users to use or have access to SWBT's poles, ducts, conduits, or rights-of-way.

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

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

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

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

13.05 Streamlined Procedures for the Issuance of Amended Licenses. SWBT may streamline procedures for the issuance of amended licenses with respect to proposed additions, relocations, replacements, or modifications of Applicant's facilities when it appears to SWBT that the proposed additions, relocations, replacements, or modifications will not require make-ready work by SWBT, will not interfere with SWBT's use of its poles, conduit systems, or facilities attached or connected thereto or contained therein, and will not interfere with the use of existing facilities attached or connected thereto or contained therein by joint users.

ARTICLE 14: REQUIRED REARRANGEMENTS OF APPLICANT'S FACILITIES

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

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

- (a) Applicant agrees that Applicant will cooperate with SWBT and joint users in making such rearrangements as may be necessary to enable such changes to be made and that costs incurred by Applicant in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the parties in accordance with then applicable statutes, rules, regulations, and commission orders, including the Pole Attachment Act, rules, regulations, and commission orders thereunder.
- (b) Whenever feasible, SWBT shall give Applicant not less than 60 days prior written notice of the need for Applicant to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Applicant shall complete such rearrangements within the time prescribed in the notice; provided, however, that the date of removal may be extended upon request by Applicant, which request will not be unreasonably refused by SWBT, if Applicant advises SWBT of the reason for the need for the extension and proposes a reasonable completion date. SWBT may request that such modification be made within a shorter period of time, in which event Applicant shall not refuse to comply such request without due cause and justification. In determining due cause and justification, the following factors, among others, may be considered:
- (1) the circumstances under which the rearrangements are sought (e.g., street-widening project, request by a competing provider for access);
 - (2) the timeliness of SWBT's request to Applicant;
 - (3) the nature and number of rearrangements sought;
 - (4) the impact on the ability of the parties and joint users to meet customer service needs; and
 - (5) risks of service interruption to customers of the parties and joint users.
- (c) Nothing contained in this article shall preclude Applicant from advising SWBT, within 60 days from the date of the notice, of its desire to add to or modify its existing attachment.

ARTICLE 15: EMERGENCY REPAIRS AND POLE REPLACEMENTS

15.01 Applicability. The parties acknowledge that in the event of an emergency, services provided by the parties and joint users to their respective customers may be interrupted, that it may not be possible for all service providers with facilities attached to

SWBT's poles or placed in SWBT's ducts, conduits, or rights-of-way to restore service to all customers at the same time, that disputes may arise between the parties concerning the manner in which emergency repairs shall be made, that it is essential that decisions be made quickly, and that it is highly desirable that all service providers utilizing SWBT's poles, ducts, conduits, and rights-of-way enter into appropriate arrangements relating to emergency repairs and service restoration. In the absence of prearranged agreements, it is expected that disputes will be immediately resolved at the site by the affected parties present based upon the criteria set forth in Section 15.05 of this Agreement. The provisions of this article shall apply in the absence of more comprehensive agreements relating to emergency repairs.

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

- (a) 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.
- (b) Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any person or entity (including but not limited to SWBT, Applicant, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located; provided, however, that a person or entity using the maintenance duct for emergency repair activities shall immediately notify SWBT of such use and must either vacate the maintenance duct within 30 days or, with SWBT's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if 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. The parties agree not to exceed 30 days' use except in unusual emergencies that may require longer than 30 days to rectify.
- (c) If necessary, other unoccupied ducts or inner ducts may be used on a short-term basis when the maintenance duct is unavailable. Any such use shall be subject to the same rules applicable to the maintenance duct and shall be subject to the rights of any party or joint user to whom such duct or inner duct has been assigned.

15.03 Designation of Emergency Repair Coordinators and Other Information. For each SWBT construction district, Applicant shall provide SWBT with the emergency contact number of Applicant's designated point of contact for coordinating the handling

of emergency repairs of Applicant's facilities and shall thereafter notify SWBT of changes to such information.

15.04 Reporting of Conditions Requiring Emergency Repairs. As a courtesy, each party shall endeavor to notify the other party at the earliest practicable opportunity after discovering any condition on or in any of SWBT's poles, ducts, conduits, or rights-of-way requiring emergency repairs to the other party's facilities.

15.05 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, SWBT, Applicant, 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.

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

15.06 Unilateral Corrective Action. When either party reasonably believes that, due to the condition of the other party's facilities placed on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, there is an immediate or imminent threat to the safety or health of employees or any other person, to the physical integrity or functioning of either party, or either party's ability to meet its service obligations, either party may unilaterally perform such limited corrective work as may be necessary to prevent or mitigate against the injury threatened. For example, if facilities of the other

party have become detached or partially detached from a pole, or detached or partially detached from supporting racks or wall supports within a manhole, either party may reattach them as provided in this section but shall not be obligated to do so.

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

15.07 Emergency Pole Replacements. Applicant will cooperate fully with SWBT when emergency pole replacements are required.

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

15.08 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.

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

- (b) Applicant shall reimburse SWBT for the costs incurred by SWBT for work performed by SWBT on Applicant's behalf in accordance with the provisions of this article; provided, however, that when the costs incurred by SWBT are for work performed in part for Applicant and in part for SWBT and third parties, Applicant shall only reimburse SWBT for Applicant's share of the costs.

ARTICLE 16: INSPECTION BY SWBT OF APPLICANT'S FACILITIES

16.01 SWBT's Right to Make Periodic or Spot Inspections. SWBT shall have the right, but not the duty, to make periodic or spot inspections at any time of any or all facilities attached to SWBT's poles or placed within SWBT's poles, ducts, conduits, or rights-of-way. Inspections of Applicant's facilities may be conducted for the purpose of determining whether facilities attached to SWBT's poles or placed in SWBT's conduit system are in compliance with the terms of this Agreement and conform to licenses subject to this Agreement. Charges for inspections shall be allocated among all parties benefiting from the inspection in accordance with the Pole Attachment Act and applicable rules, regulations, and commission orders. When an inspection is conducted for the specific purpose of auditing or investigating Applicant's compliance with this Agreement, SWBT may charge Applicant for inspection expenses only if the inspection reflects that Applicant is in substantial noncompliance with the terms of this Agreement. If the inspection reflects that Applicant's facilities are not in compliance with the terms of this Agreement, Applicant shall bring its facilities into compliance promptly after being notified of such noncompliance and shall notify SWBT in writing when the facilities have been brought into compliance.

16.02 Report of Inspection Results. SWBT will provide Applicant the results of any inspection of Applicant's facilities performed under Section 16.01 of this Agreement.

16.03 Post-installation Inspections. This article does not apply to post-installation inspections performed as part of a pre-license survey in those cases when Applicant has occupied space on or in SWBT's poles, ducts, conduits, or rights-of-way prior to the issuance of a license pursuant to Section 8.03 of this Agreement.

ARTICLE 17: TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

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

17.02 Removal of Untagged Facilities. Subject to the provisions of subsections (a)-(d) of this section, SWBT may, without notice to any person or entity, remove from SWBT's poles or any part of SWBT's conduit system any untagged or unmarked facilities, including any such facilities owned or used by Applicant, if SWBT determines

that such facilities are not the subject of a current license authorizing their continued attachment to SWBT's poles or occupancy of SWBT's conduit system and are not otherwise lawfully present on SWBT's poles or in SWBT's conduit system.

- (a) Before removing any such untagged or unmarked facilities, SWBT shall first attempt to determine whether the facilities are being used by Applicant or any other firm, are authorized by any license subject to this Agreement, or are otherwise lawfully present on SWBT's poles or in SWBT's conduit system.
- (b) SWBT shall not remove untagged or unmarked facilities which are thought to be operational without first making reasonable efforts to (1) determine the identity of the owner or other person or entity thought to be responsible for the facilities and (2) give advance written notice to such person or entity.
- (c) If the facilities appear to be facilities of Applicant described in a current license or application subject to this Agreement, or if the facilities appear to be facilities of Applicant otherwise lawfully present on SWBT's poles or in SWBT's conduit system, SWBT shall give written notice to Applicant requesting Applicant to tag or mark the facilities within 60 days and Applicant shall either tag the facilities within the 60-day period, advise SWBT in writing of its schedule for tagging the facilities, or notify SWBT in writing that it disclaims ownership of or responsibility for the facilities. If Applicant disclaims ownership of or responsibility for the facilities, Applicant shall disclose to SWBT the identity of the owner or other person or entity, if any, thought by Applicant to be responsible for the facilities.
- (d) If the facilities appear to be facilities used by Applicant but not subject to a current license granted under this Agreement, the provisions of Sections 17.05-17.12 shall apply.

17.03 Verification That Presently Attached Facilities Are Subject to Existing Licenses. Applicant warrants and represents that, to the best of its information and belief, all facilities presently owned or used by Applicant and attached to SWBT's poles or occupying space within any part of SWBT's conduit system in this State have been disclosed to SWBT and are subject to current licenses or are otherwise lawfully present on or in SWBT's poles, ducts, and conduits. If Applicant determines that any such facilities are not the subject of current licenses, Applicant shall so advise SWBT and promptly apply for licenses for such facilities or remove the facilities from SWBT's poles or conduits. Nothing contained in this section shall be construed as requiring Applicant to make a field audit of its existing facilities to confirm the licensing status of its facilities as a prerequisite to entering into this Agreement.

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

17.05 Notice to Applicant. If any of Applicant's facilities for which no license is presently in effect are found attached to SWBT's poles or anchors or within any part of SWBT's conduit system, SWBT, without prejudice to other rights or remedies available to SWBT under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Applicant advising Applicant that no license is presently in effect with respect to the facilities and that Applicant must, within 60 days, respond to the notice as provided in Section 17.06 of this Agreement.

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

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

circumvent SWBT's pole attachment or conduit occupancy licensing requirements.

17.07 Denial or Disclaimer of Ownership or Other Interest. Applicant's submission to SWBT of a denial or disclaimer of ownership or other interest in the facilities shall constitute Applicant's waiver of any objection Applicant may have to SWBT's removal of the facilities. Submission of such a denial or disclaimer shall not be construed as an agreement by Applicant to pay any charges associated with removal of the facilities and shall be deemed to be a denial of any such responsibility; provided, however, that nothing contained in this section shall prohibit SWBT from invoking the dispute resolution process or filing suit, in a court of competent jurisdiction, to establish that Applicant is liable to SWBT for the costs of removal notwithstanding its denial or disclaimer.

17.08 Review by SWBT of Licensing Status. Within 15 business days after receiving Applicant's statement that the facilities are the subject of a current license or that no license is required, SWBT shall review Applicant's explanation of the factual and claimed legal basis for Applicant's assertions and shall advise Applicant, in writing, whether it agrees or disagrees with Applicant's assertions. If SWBT agrees with Applicant's assertions, the parties may amend the applicable license and no further action shall be required of Applicant. If SWBT does not accept Applicant's position, Applicant shall, within 15 business days, apply for a new or amended license as provided by Section 17.06(c) of this Agreement.

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

17.10 Fees and Charges. This section applies to fees and charges with respect to Applicant's facilities placed on or in SWBT pole, duct, or conduit space which has not been assigned to Applicant. Applicant shall be liable to SWBT for all fees and charges associated with any such unauthorized pole attachments or conduit occupancy for which it is responsible. Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from SWBT's poles or conduit system and shall include, but not be limited to, all fees and charges which would have been due and payable if Applicant and its predecessors had continuously complied with all applicable SWBT licensing requirements. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. The parties shall engage in good faith discussions to reach a mutually agreed determination as to the amount due and owing. In some cases, it may be impractical, unduly difficult, or uneconomical to determine the actual amount of fees which would have been due and payable if all licensing requirements had been met. Therefore, if the parties, through good faith

discussions fail to reach agreement on the amount due and owing, and if the amount due and owing cannot be determined due to Applicant's inability to provide the information required to determine the correct amount, the amount owing with respect to each unauthorized attachment or occupancy shall be equal to three times the annual attachment and occupancy fees in effect on the date Applicant is notified by SWBT of the unauthorized attachment or occupancy. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Applicant shall rearrange or remove its unauthorized facilities at SWBT's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to SWBT or another joint user, and shall pay SWBT for all costs incurred by SWBT in connection with any facilities rearrangements, modifications, or replacements necessitated as a result of the presence of Applicant's unauthorized facilities.

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

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

ARTICLE 18: REMOVAL OF APPLICANT'S FACILITIES

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

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

the facilities, and the estimated dates when removal of the facilities will begin and end.

- (b) Applicant shall, if requested by SWBT to do so, place a pull mandrel (slug) through all or any specified part of the duct which was occupied by Applicant.
- (c) 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 SWBT's manholes (if SWBT would itself plug the ducts under the same circumstances) in accordance with the standards set by SWBT for its own operations, provided that such standards have been communicated in writing to Applicant at least 60 days in advance of the removal of Applicant's facilities.
- (d) Applicant shall be solely responsible for the removal of its own facilities from SWBT'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 Applicant's facilities from SWBT's poles, ducts, conduits, or rights-of-way and (2) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.
- (e) When Applicant no longer intends to occupy space on a SWBT pole or in a SWBT duct or conduit, Applicant will provide written notification to SWBT that it wishes to terminate the license with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Applicant's facilities, the license shall terminate and the space shall be available for reassignment.

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

on any public or private property (other than property owned or controlled by Applicant) in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

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

18.04 Removal Following Replacement of Facilities. Applicant shall remove facilities no longer in service from SWBT's poles or conduit system within 60 days, or within such other period of time as shall be mutually agreeable to the parties, after the date Applicant replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit; provided, however, that removal of facilities from the maintenance duct shall be governed by Sections 12.04, 13.03, and 15.02 of this Agreement and not by this section.

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

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

18.07 Removal of Facilities by SWBT; Notice of Intent to Remove. If Applicant fails to remove its facilities from SWBT's poles, ducts, or conduits in accordance with the provisions of Sections 18.01-18.06 of this Agreement, SWBT may remove such facilities and store them at Applicant's expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to Applicant for any injury, loss, or damage resulting from such actions. SWBT shall give

Applicant not less than 60 days prior written notice of its intent to remove Applicant's facilities pursuant to this section. The notice shall state:

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

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

18.09 Reattachment or Subsequent Attachment Following Removal. After Applicant's facilities have been properly removed pursuant to the provisions of this article, neither the removed facilities nor replacement facilities shall be attached to SWBT's poles or placed in SWBT's conduit system until Applicant has first submitted new applications for the facilities and complied with the provisions of this Agreement.

ARTICLE 19: RATES, FEES, CHARGES, AND BILLING

19.01 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees set forth in this Agreement, including rates, charges and fees set forth in APPENDIX I (Schedule of Rates, Fees, and Charges), shall be subject to all applicable federal and state laws, rules, regulations, and commission orders, including but not limited to (a) the Pole Attachment Act and rules, regulations, and commission orders issued thereunder and (b) applicable orders of the State Commission in interconnection arbitration proceedings.

19.02 Schedule of Rates, Fees, and Charges. SWBT's current schedule of rates, fees, and charges is attached to this Agreement as APPENDIX I and incorporated herein as an integral part of this Agreement.

19.03 Pole Attachment and Conduit Occupancy Fees. Until such time as the FCC authorizes the charging of different rates to cable television systems and telecommunications carriers, SWBT's annual rates for access to poles, ducts, conduits, and rights-of-way shall be the same for cable television systems and telecommunications carriers. For all attachments to SWBT's poles and occupancy of SWBT's ducts and conduits, Applicant will pay SWBT's semiannual pole attachment and conduit occupancy

fees as specified in APPENDIX I. Pole attachment and conduit occupancy fees shall be assessed and billed with respect to (a) occupied space whether or not subject to a current license and (b) assigned space as well as occupied space. Fees for pole attachments shall be based on the number of Applicant's pole attachments as of the date of billing by SWBT and shall be calculated in accordance with applicable FCC rules, regulations, and orders. Fees for conduit occupancy shall be based on the number of duct feet occupied by or assigned to Applicant as of the date of billing by SWBT and shall be calculated in accordance with applicable FCC rules, regulations, and orders.

19.04 Billing for and Payment of Pole Attachment and Conduit Occupancy Fees. Pole Attachment and conduit occupancy fees under this Agreement and licenses subject to this Agreement shall be payable semiannually in advance.

- (a) Bills shall be submitted to Applicant for two semiannual billing periods, the first period including charges for the months of January through June and the second including charges for the months of July through December.
- (b) Charges associated with newly licensed pole attachments and conduit occupancy shall be prorated on a daily basis and billed with the next semiannual bill.
- (c) Charges shall be adjusted and retroactively prorated on a daily basis following the removal of Applicant's facilities (in accordance with Article 18) and shall be retroactively adjusted as a credit on the next semiannual bill.

19.05 Application Fees. SWBT does not currently charge application fees for individual license applications or assignment requests under this Agreement. SWBT does, however, impose charges, on a case-by case basis, for work performed in processing applications for access and preparing SWBT's poles, ducts, conduits, and rights-of-way to accommodate the facilities of parties seeking access.

19.06 Charges for Pre-license Survey Work. Subject to applicable commission orders, Applicant will pay SWBT's charges for pre-license survey work associated with the processing of Applicant's request for access. SWBT's pre-license survey charges are not set on a fixed fee basis and will vary from case-to-case depending on such factors as the number and location of the poles, ducts, conduits, and rights-of-way subject to Applicant's access request, the completeness and quality of information submitted by the Applicant in its application, the nature of the facilities to be placed by Applicant, and the nature and extent of facilities modification, capacity expansion, and make-ready work proposed by Applicant.

19.07 Charges for Facilities Modifications, Capacity Expansions, and Make-ready Work. Subject to applicable commission orders, Applicant will pay SWBT's charges for

facilities modification, capacity expansion, and make-ready work performed by SWBT, or by persons acting on SWBT's behalf, as provided in other provisions of this Agreement and APPENDIX I.

19.08 Contract Administration Fee. Subject to applicable commission orders, SWBT may charge Applicant a one-time contract administration fee as provided in APPENDIX I. This fee, if applicable, shall be assessed for work performed in the initial processing of this Agreement and shall be non-refundable upon acceptance of this Agreement by SWBT.

19.09 Administrative Record-keeping Fees. Subject to applicable commission orders, SWBT may charge Applicant cost-based administrative record-keeping fees (e.g., fees associated with records and billing changes resulting from the sale, consolidation, or other transfer of Applicant's business or facilities, name changes, and the like) as provided in APPENDIX I.

19.10 Charges for Work Performed by SWBT Employees. Except as otherwise specifically required by applicable commission orders, SWBT's charges to Applicant for work performed by SWBT employees pursuant to this Agreement shall be computed by multiplying the fully loaded hourly rates for such employees times the number of hours required to perform the work. Disputes over SWBT's charges for work performed by SWBT employees, including disputes between the parties concerning the number of hours required to perform the work, shall be subject to the dispute resolution procedures of Article 30. Notwithstanding the execution of this Agreement, Applicant shall have the right to challenge the methodology utilized by SWBT to determine hourly rates for SWBT employees at any time in any forum having jurisdiction over the subject matter.

19.11 Due Date for Payment, Interest on Past Due Invoices, Remedies for Non-payment, and Procedures for Disputing Charges. For fees and charges other than charges for facilities modification, capacity expansion, and make-ready work, each bill or invoice submitted by SWBT to Applicant shall state the date that payment is due, which date shall be not less than 60 days after the date of the bill or invoice. Applicant will pay each such bill or invoice on or before the stated due date. For facilities modification, capacity expansion, and make-ready work, the payment due date shall be not less than 30 days after the date of the bill or invoice.

- (a) Interest on past due bills and invoices shall accrue at the rate of 12% per annum, or the maximum rate allowed by law, whichever is less.
- (b) Applicant's failure to pay SWBT's fees and charges shall be grounds for terminating this Agreement and licenses subject to this Agreement.
- (c) If Applicant fails to pay, when due, any fees or charges billed to Applicant under this Agreement, and any portion of such fees or charges remains unpaid more than 15 calendar days after the due date, SWBT

may send Applicant a written notice advising Applicant that this Agreement, or specified licenses subject to this Agreement, may be terminated if such fees or charges are not paid within 15 calendar days after the date of the notice. Applicant must remit to SWBT all such unpaid fees or charges, whether disputed or undisputed, within 15 days after the date of the notice. If Applicant pays disputed fees under protest, and it is later determined that such fees or any portion thereof should be refunded, the portion of fees to be refunded shall be refunded with interest at the rate of 12% per annum or the maximum rate allowed by law, whichever is less.

- (d) Applicant may dispute any fees or charges billed by SWBT to Applicant under this Agreement by invoking the dispute resolution procedures set forth in Article 30 of this Agreement.
- (e) If Applicant does not dispute such fees or charges and any portion of such undisputed fees or charges remains unpaid 30 calendar days after the date of the notice, SWBT may, to the extent permitted by the Pole Attachment Act and applicable rules, regulations, and commission orders, terminate this Agreement and licenses subject to this Agreement, suspend the processing of pending applications for access to SWBT's poles, ducts, conduits, and rights-of-way located in this State, and refuse to accept further applications for access until such undisputed fees or charges, together with accrued interest thereon, have been paid in full.

19.12 Modification of Rates, Fees and Charges. Subject to applicable federal and state laws, rules, regulations, and commission orders, SWBT shall have the right to modify all rates, charges and fees set forth in this Agreement, including but not limited to those listed in APPENDIX I, as provided in this section.

- (a) Upon written notice to Applicant, SWBT may change, on a going-forward basis, the amounts of any rates, fees or charges assessed under this Agreement. Pole attachment and conduit occupancy rates shall not be increased more than once annually.
 - (1) The notice shall state the effective date of the changes, which, in the event of a rate increase, shall be no earlier than the 60th day after the notice is given.
 - (2) The changes shall be effective on the effective date stated in the notice unless stayed or prohibited by a court or agency of competent jurisdiction.
 - (3) The changes shall be reflected on the first semiannual bill issued on or after the effective date specified in the notice.

- (b) If the rates, fees and charges set forth in the notice are not acceptable to Applicant, Applicant may, notwithstanding any other provisions of this Agreement, at Applicant's option (1) seek the renegotiation of this Agreement, (2) terminate this Agreement, or (3) seek relief through the dispute resolution process or before a court or agency of competent jurisdiction.

19.13 Disputes Over Charging Methodologies. The parties acknowledge that the Pole Attachment Act grants the FCC regulatory authority over the rates, terms, and conditions of access to poles, ducts, conduits, and rights-of-way. The parties further acknowledge that, as of the date of this Agreement, this State has not elected to assume reverse preemptive regulatory authority over such rates, terms, and conditions by certifying to the FCC that it has made such election. Accordingly, complaints concerning and challenges to SWBT's charging methodologies shall be brought, in the first instance, before the FCC in accordance with FCC procedural rules unless this State elects to preempt FCC regulation of pole attachment rates, terms, and conditions of access; provided, however, that nothing contained in this section shall be construed as affecting the right of either party to seek relief from any court or agency of competent jurisdiction in connection with the negotiation, arbitration, and approval of interconnection agreements under 47 U.S.C. § 252.

ARTICLE 20: PERFORMANCE AND PAYMENT BONDS

20.01 Bond May Be Required. SWBT may require Applicant, authorized contractors, and other persons acting on Applicant's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of their respective obligations arising out of or in connection with this Agreement only as provided in subsections (a)-(b) of this section and Section 20.02. Bonds shall not be required for entities meeting all self-insurance requirements of Section 23.02 of this Agreement.

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

- (c) If a bond or similar form of assurance is required of Applicant, an authorized contractor, or other person acting on Applicant's behalf, Applicant shall promptly submit to SWBT, upon request, adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing SWBT 60 days written notice.
- (d) SWBT may communicate directly with the issuer of any bond required by SWBT pursuant to this section to verify the terms of the bond, to confirm that the bond remains in force, and to make demand on the issuer for payment or performance of any obligations secured by the bond.

20.02 Payment and Performance Bonds in Favor of Contractors and Subcontractors. Applicant shall be responsible for paying all employees, contractors, subcontractors, mechanics, materialmen and other persons or entities performing work or providing materials in connection with (a) the performance of facilities modification, capacity expansion, or make-ready work by Applicant, authorized contractors, or other persons acting on Applicant's behalf under Sections 6.08(c) and 10.02-10.05 of this Agreement or (b) the construction, attachment, use, inspection, maintenance, repair, rearrangement, modification, and removal of any of Applicant's facilities attached or to be attached to SWBT's poles or placed or to be placed within SWBT's ducts, conduits, or rights-of-way. In the event any claim or demand is made on SWBT by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, SWBT may require, in addition to any security provided under Section 20.01 of this Agreement, that Applicant execute payment or performance bonds, or provide such other security, as SWBT may deem reasonable or necessary to protect SWBT from any such claim or demand.

ARTICLE 21: INDEMNIFICATION

21.01 Risks Associated with Outside Plant Operations. The parties acknowledge that SWBT's outside plant facilities include thousands of miles of pole lines, conduits, and rights-of-way located on public and private property throughout SWBT's service area, that SWBT cannot control or continuously monitor activities that occur at these sites, and that the risks associated with outside plant operations and facilities are not similar to the risks associated with operations occurring inside SWBT's central offices and other secure SWBT buildings and structures. The parties further acknowledge that the presence of multiple firms on or in poles, ducts, conduits, and rights-of-way owned or controlled by SWBT requires that liability risks be fairly allocated between the parties and that it is the parties' intent to allocate such risks in a just, reasonable, and nondiscriminatory manner which addresses known risks associated with the outside plant environment and activities and conditions at outside plant locations.

21.02 Control of Premises. Applicant acknowledges that its employees and other persons acting on Applicant's behalf, and employees of joint users and other persons acting on behalf of joint users, will be present, without supervision or control by SWBT, and in many cases without SWBT's knowledge, on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. During those times when Applicant's employees and personnel are present at such sites, Applicant shall be deemed, for the purpose of allocating liabilities between the parties, to be an independent contractor in control of the premises except as otherwise provided in this section. Although SWBT inspectors may be present at the site of work being performed by Applicant or persons acting on Applicant's behalf, such inspectors shall have no authority to direct Applicant or personnel acting on Applicant's behalf concerning the method or manner by which the work is to be performed, and the presence of a SWBT inspector shall not result in SWBT's being deemed to be in control of the premises. When both parties are present and performing work operations at a site subject to this section, SWBT and Applicant shall be deemed to be jointly in control of the premises. When poles, ducts, conduits, or rights-of-way occupy property owned by third parties, neither party shall be deemed to be in control of the premises, except as otherwise provided by law, at times when such party's work operations are not in progress. Work operations shall be considered to be in progress from the time work commences until such work is completed whether or not employees of a party or persons acting on such party's behalf are actually present at the site.

21.03 INDEMNITY AGAINST AND LIMITATIONS OF LIABILITY WITH RESPECT TO CERTAIN NEGLIGENT ACTS AND OMISSIONS. THIS ARTICLE INCLUDES PROVISIONS INDEMNIFYING EACH PARTY FROM LIABILITIES ARISING OUT OF OR IN CONNECTION WITH CERTAIN NEGLIGENT ACTS AND OMISSIONS OF SUCH PARTY. THIS ARTICLE ALSO INCLUDES PROVISIONS LIMITING THE LIABILITIES OF EACH PARTY ARISING OUT OF OR IN CONNECTION WITH CERTAIN NEGLIGENT ACTS AND OMISSIONS OF SUCH PARTY.

21.04 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 suit, claim, demand, loss, damage, liability, fine, penalty, or expense arising out of:

- (a) 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;
- (b) the violation of any law by any employee of the indemnified party or other person acting on the indemnified party's behalf;

- (c) 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
- (d) 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 suit, claim, demand, loss, damage, liability, fine, penalty, or expense for which indemnity is requested.

21.05 Workplace Injuries. The parties acknowledge that injuries may occur at sites where work is being performed by or for either party and that primary responsibility for preventing workplace injuries shall be placed on the party controlling work operations at the site. Workplace injuries may result from any of variety of causes, including but not limited to electrocution associated with contact with electric power lines on poles or use of defective equipment, falls from poles resulting from the negligence of the injured person or co-workers or due to the existence of unsafe conditions on or in the vicinity of the pole, cave-ins and other accidents at excavation sites, explosion of combustible gases within or in the vicinity of a conduit system, exposure to hazardous substances or noxious gases at the site, acts of God, and acts and omissions of third parties over whom neither party has control. 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 suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses of every kind and character, 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 SWBT's poles, ducts, conduits, and rights-of-way; provided, however, that Applicant's indemnification duties under this section shall arise only if the person injured is present at such site in connection with the performance or anticipated performance of any act required or permitted to be performed by Applicant or by persons acting on Applicant's behalf pursuant to this Agreement. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not limited to indemnities arising out of or in connection with claims arising from or in any way connected with any injury, sickness, disease, or death of any employee of the indemnifying party or any person acting on the indemnifying party's behalf attributable or allegedly attributable to occurrences or conditions on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. EXCEPT AS PROVIDED ABOVE IN SUBSECTIONS 21.04(c)-(d), THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL ARISE EVEN IF THE INJURY, SICKNESS, DISEASE, OR DEATH WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.

21.06 Other Claims Brought Against Either Party by Employees and Other Persons Acting on the Other Party's Behalf. Nothing contained in this Agreement shall create any contractual liability or other liability on the part of either party to any employee, contractor, or subcontractor of the other party or any other person acting on the other party's behalf. Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, or expenses of every kind and character (other than workplace injury claims subject to Section 21.05 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; provided, however, that this section shall apply only to suits, claims, demands, losses, damages, liabilities, or expenses related to the subject matter of this Agreement. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not limited to indemnities arising out of or in connection with claims arising from or in any way connected with the employment relationship or other claimed relationship between the indemnifying party and the employee, contractor, subcontractor, or other person acting on the indemnifying party's behalf; claims arising out of disputes over payments due or allegedly due to any employee, contractor, subcontractor, or other person acting on the indemnifying party's behalf; and claims arising out of other contract disputes between the indemnifying party and the employee, contractor, subcontractor, or other person acting on the indemnifying party's behalf. EXCEPT AS PROVIDED ABOVE IN SUBSECTIONS 21.04(c)-(d), THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL ARISE EVEN IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.

21.07 Claims Brought Against Either Party by Vendors, Suppliers, Customers, and other Persons in Privity of Contract with the Other Party. The parties acknowledge that neither party controls the contractual relationships between the other party and vendors, suppliers, customers, and other persons in privity of contract with the other party and that nothing contained in this Agreement shall create any contractual or other liability of either party to any vendor, supplier, customer, or other person or entity in privity of contract with the other party. Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, or expenses of every kind and character, made, brought, or sought against the indemnified party by any vendor, supplier, or customer of the indemnifying party or by any other person or entity in privity with the indemnifying party; provided, however, that this section shall apply only to suits, claims, demands, losses, damages, liabilities, or expenses related to the subject matter of this Agreement or Applicant's use of SWBT's poles, ducts, conduits, or rights-of-way. The indemnifying party may not, as a defense to any obligations of the indemnifying party under this section, assert that the indemnified party's claims against the indemnifying party are barred by any tariff or contract limitation of liability applicable to the indemnifying party's vendor, supplier, or customer or to such other person in privity of contract with the indemnifying party. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and

include but are not limited to indemnities for claims against either party arising out of or in connection with the failure by the other party to meet its obligations (including but not limited to contract and tariff obligations) to such other party's customers and suppliers. EXCEPT AS PROVIDED ABOVE IN SUBSECTIONS 21.04(c)-(d), THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL ARISE EVEN IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.

21.08 Claims Brought Against Either Party by Such Party's Own Employees, Contractors, Subcontractors, or Other Persons Acting on Such Party's Behalf, and Claims Brought Against Either Party by Such Party's Own Vendors, Suppliers, Customers, or Other Persons in Privity of Contract with Such Party. Neither party shall be entitled to indemnity, contribution, or subrogation from or by the other party with respect to any suits, claims, demands, losses, damages, liabilities, or expenses, of any kind or character, made, brought, or sought against such party by any employee, contractor, or subcontractor of such party, by any other person acting on behalf of such party, by any vendor, supplier, or customer of such party, or by any other person or entity in privity of contract with such party, if such suit, claim, demand, loss, damage, liability, or expense arises directly out of or in connection with the subject matter of this Agreement or the use by Applicant of SWBT's poles, ducts, conduits, or rights-of-way. Indemnities excluded by this section include, but are not limited to, indemnities for claims against either party arising out of or in connection with employment-related disputes between either party and its employees; claims against either party by contractors, subcontractors, and suppliers performing work or supplying materials to SWBT sites at the request of such party; and other failures by either party to meet its obligations (including but not limited to contract and tariff obligations) to such party's own customers and suppliers. THE INDEMNIFICATION EXCLUSIONS OF THIS SECTION SHALL APPLY EVEN IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM WAS ATTRIBUTABLE IN PART TO THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY BUT SHALL NOT APPLY IF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE INDEMNIFICATION CLAIM AROSE FROM WILLFUL OR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE COMMITTED BY ANY EMPLOYEE OF THE INDEMNIFYING PARTY OR ANY OTHER PERSON ACTING ON THE INDEMNIFYING PARTY'S BEHALF OR AROSE FROM ANY NEGLIGENT ACT OR ACTS COMMITTED BY ANY EMPLOYEE OF THE INDEMNIFYING PARTY OR OTHER PERSON ACTING ON THE INDEMNIFYING PARTY'S BEHALF, IF SUCH NEGLIGENT ACT OR ACTS ARE THE SOLE PRODUCING CAUSE OF THE INJURY, LOSS, OR DAMAGE GIVING RISE TO THE SUIT, CLAIM, DEMAND, LOSS, DAMAGE, LIABILITY, FINE, PENALTY, OR EXPENSE FOR WHICH INDEMNITY IS REQUESTED.

21.09 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 suits, claims, demands, losses, damages, liabilities, fines,

penalties, or expenses, of every kind and character, 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 while such employees or other persons are present on, within, or in the vicinity of any SWBT pole, duct, conduit, or right-of-way in connection with the performance or anticipated performance of any act required or authorized to be performed pursuant to this Agreement. Indemnities provided by this section shall be subject to the exclusions set forth in Section 21.04 and include but are not limited to indemnities arising out of or in connection with personal injury, death, and property damage claims by third parties based on willful or intentional misconduct and negligent acts and omissions of the indemnifying party.

21.10 Indemnification for Environmental Claims. The parties acknowledge that hazardous substances may be present on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way; that employees and other persons acting on the parties' behalf working on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way should be familiar with environmental laws and environmental concerns which arise in outside plant contexts; that all such employees and other persons should be prepared to recognize and deal with environmental contingencies existing at specific sites; and that liabilities associated with environmental claims arising out of or in connection with the subject matter of this Agreement shall be allocated between the parties as set forth in this section.

- (a) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any 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 (1) any federal, state, or local environmental statute, rule, regulation, ordinance, or other law or (2) any provision or requirement of this Agreement dealing with hazardous substances or protection of the environment.
- (b) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any 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 SWBT pole, duct, conduit, or right-of-way.

Indemnities provided by this subsection include but are not limited to indemnities arising out of or in connection with the release or discharge of water and other substances from SWBT's manholes or other conduit facilities.

- (c) Each party shall indemnify, on request defend, and hold the other party harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character, on account of or in connection with any 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 SWBT pole, duct, conduit, or right-of-way. For the purposes of this subsection, any person or entity removing or disposing of hazardous substances at the request of the indemnifying party or at the request of any person acting on the indemnifying party's behalf, and any person or entity subsequently receiving, storing, processing, or otherwise handling such hazardous substances shall be considered to be a person acting on the indemnifying party's behalf.
- (d) 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 loss, damage, claim, demand, suit, liability, fine, penalty or expense for which the other party may be liable under any federal, state, or local environmental statute, rule, regulation, ordinance, or other law.

21.11 Miscellaneous Claims. Applicant shall indemnify, on request defend, and hold SWBT harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, and expenses, of every kind and character, made, brought, or sought against SWBT by any person or entity, arising out of or in connection with the subject matter of this Agreement and based on either:

- (a) claims for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on SWBT due to the placement or presence of Applicant's facilities on or within SWBT's poles, ducts, conduits, or rights-of-way; or
- (b) claims based on the violation by Applicant 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.

21.12 Applicant's General Indemnity Obligations to SWBT. This section applies only in those situations not expressly covered by Sections 21.05-21.11 and does not apply to any suit, claim, demand, loss, damage, or expense resulting from Applicant's enforcement of its rights against SWBT 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 21.04, Applicant shall indemnify, on request defend, and hold SWBT harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, and expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with Applicant's access to or use of SWBT's poles, ducts, conduits, or rights-of-way, Applicant's performance of any acts authorized under this Agreement, or the presence or activities of Applicant's employees or other personnel acting on Applicant's behalf on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

21.13 SWBT's General Indemnity Obligations to Applicant. This section applies only in those situations not expressly covered by Sections 21.05-21.10 and does not apply to any suit, claim, demand, loss, damage, or expense resulting from SWBT's enforcement of its rights against Applicant 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, SWBT shall indemnify, on request defend, and hold Applicant harmless from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, and expenses, of every kind and character, on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with SWBT's access to or use of SWBT's poles, ducts, conduits, or rights-of-way, SWBT's performance of any acts authorized under this Agreement, or the presence or activities of SWBT's employees or other personnel acting on SWBT's behalf on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

21.14 No Rights, Claims, Causes of Action, or Remedies for the Benefit of Third Parties. Nothing contained in this article is intended to create any rights, claims, causes of action, or remedies for the benefit of any third party.

21.15 Assertion of Limitation of Liability Defenses. Each party shall diligently assert the limitation of liability provisions of any applicable tariff or contract in any case involving injury, loss, or damage to any customer of such party for which the other party is not exempt from indemnification liabilities to the indemnified party under this Agreement.

21.16 Indemnity Liabilities Not Subject to Article 22 Limitations of Liability. Indemnity liabilities under this article shall not be subject to Article 22 limitations of liability.

21.17 Defense of Suits. Upon request by the indemnified party, the indemnifying party shall defend any suit brought against the indemnified party for any injury, loss, or damage subject to indemnification under this Agreement. The indemnified party shall notify the indemnifying party promptly in writing of any written claims, lawsuits, or demands for which the indemnifying party may be responsible under this Agreement. The indemnified party shall cooperate in every reasonable way to facilitate defense or settlement. The indemnifying party shall have the right to control and conduct the defense and settlement of any action or claim subject to consultation of the indemnified party. The indemnifying party shall not be responsible for any settlement unless the indemnifying party approved such settlement in advance and agrees to be bound by the settlement agreement.

ARTICLE 22: LIABILITIES AND LIMITATIONS OF LIABILITY

22.01 LIMITATIONS OF LIABILITY WITH RESPECT TO NEGLIGENT ACTS AND OMISSIONS. THIS ARTICLE INCLUDES PROVISIONS LIMITING THE LIABILITIES OF EACH PARTY ARISING OUT OF OR IN CONNECTION WITH CERTAIN NEGLIGENT ACTS AND OMISSIONS OF SUCH PARTY.

22.02 LIMITATIONS OF LIABILITY IN GENERAL. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTIONS 21.16 AND 22.05, NEITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DAMAGES ATTRIBUTABLE, IN WHOLE OR IN PART, TO ANY NEGLIGENT ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT, WHETHER ARISING IN CONTRACT OR TORT, SHALL EXCEED IN THE AGGREGATE FOR ANY CALENDAR YEAR THE GREATER OF \$250,000, OR THE TOTAL AMOUNT CHARGED BY SWBT TO APPLICANT UNDER THIS AGREEMENT FOR THE CALENDAR YEARS WHEN THE ACTS OR OMISSIONS GIVING RISE TO LIABILITY OCCURRED. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED AS LIMITING EITHER PARTY'S LIABILITY FOR ACTS OR OMISSIONS CONSTITUTING WILLFUL OR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE BY SUCH PARTY.

22.03 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.

22.04 SWBT Not Liable to Applicant for Acts of Third Parties or Acts of God. By affording Applicant access to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT, SWBT does not warrant, guarantee, or insure the uninterrupted use of such facilities by Applicant. Except as specifically provided in Section 22.05 of this Agreement, Applicant assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to Applicant's facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, or rights-of-way, and SWBT shall not be liable to Applicant for any damages to Applicant's facilities other than as provided in Section 22.05. In no event shall SWBT be liable to Applicant under this Agreement for any injury, loss, or damage resulting from the acts or omissions of (1) any joint user or any person acting on a joint user's behalf, (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 licensee, invitee, trespasser, or other person present at the site or in the vicinity of any SWBT pole, duct, conduit, or right-of-way in any capacity other than as a SWBT employee or person acting on SWBT's behalf. In no event shall SWBT be liable to Applicant 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 SWBT's behalf, cable cuts by persons other than SWBT's employees or persons acting on SWBT's behalf, or other causes beyond SWBT's control which occur at sites subject to this Agreement.

22.05 Damage to Facilities. Except as otherwise specifically provided in this section, neither party shall be liable to the other party for any injury, loss, or damage (or for the direct or indirect consequences of any such injury, loss, or damage) to such other party's facilities attached to SWBT's poles or placed within or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

- (a) Each party (the "responsible party"), and persons acting on behalf of the responsible party, shall exercise due care to avoid damaging the facilities of the other party (the "injured party"). In the event such damage occurs, the responsible party or persons acting on behalf of the responsible party shall immediately report such damages to the injured party, and the injured party shall promptly make such arrangements as may be necessary to restore service to its customers using the facilities affected.
- (b) The responsible party shall reimburse the injured party for the actual costs incurred by the injured party for repair of facilities damaged by the willful misconduct, grossly negligent acts, grossly negligent omissions, and negligent acts (but not negligent omissions other than grossly negligent omissions) of employees of the responsible party.

- (c) The responsible party shall reimburse the injured party for the actual costs incurred by the injured party for repair of facilities damaged by the willful misconduct, grossly negligent acts or omissions, and negligent acts (but not negligent omissions other than grossly negligent omissions) of independent contractors acting on the responsible party's behalf; provided, however, that the injured party shall be limited to recovery of those costs which cannot be recovered from the independent contractor causing the damage. The responsible party shall not be liable to the injured party under this section until the injured party's claims against the independent contractor causing the damage have been adjudicated or settled and the amount of the injured party's claim against the responsible party is determinable.
- (d) NEITHER PARTY SHALL BE REQUIRED BY THIS SECTION TO REIMBURSE THE OTHER PARTY FOR COSTS INCURRED AS A RESULT OF NEGLIGENT OMISSIONS OTHER THAN GROSSLY NEGLIGENT OMISSIONS COVERED BY SUBSECTIONS (c)-(d) OF THIS SECTION.
- (e) THIS SECTION LIMITS, BUT DOES NOT EXCLUDE, THE RESPONSIBLE PARTY'S LIABILITY TO THE INJURED PARTY FOR DAMAGES CAUSED BY NEGLIGENT (INCLUDING GROSSLY NEGLIGENT) ACTS OF THE RESPONSIBLE PARTY AND PERSONS ACTING ON THE RESPONSIBLE PARTY'S BEHALF.

22.06 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 this State.

22.07 Claims Against Third Parties. Nothing contained in this article shall be construed as requiring either party to forego any claims that such party may have against third parties, including but not limited to contractors, subcontractors, or persons (other than the other party's employees) acting on the other party's behalf.

ARTICLE 23: INSURANCE

23.01 Insurance Required. Applicant shall comply with the insurance requirements specified in this section.

- (a) Unless Applicant has provided proof of self-insurance as permitted in Section 23.02 below, Applicant shall obtain and maintain in full force and effect, for so long as this Agreement remains in effect, insurance policies specified in APPENDIX IV of this Agreement. Each policy

shall name SWBT as an additional insured and shall include provisions requiring the insurer to give SWBT notice of any lapse, cancellation, or termination of the policy or any modification to the policy affecting SWBT's rights under the policy, including but not limited to any decrease in coverage or increase in deductibles.

- (b) Except as provided in this subsection, exclusions from coverage or deductibles, other than those expressly permitted in APPENDIX IV, must be approved in writing by SWBT. For authorized contractors and other contractors performing work on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way on Applicant's behalf, exclusions from coverage or deductibles, other than those expressly permitted in APPENDIX IV, must be approved in writing by Applicant.
- (c) Authorized contractors and other contractors performing work on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way on Applicant's behalf shall be required to meet the same insurance requirements applicable to contractors performing similar work on SWBT's behalf. Applicant shall be responsible for securing compliance by its contractors with this requirement and shall be liable to SWBT for any damages resulting from its failure to do so.
- (d) Self-insurance shall be permitted for persons and entities (including but not limited to Applicant and authorized contractors) meeting the self-insurance requirements set forth in Section 23.02.

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

- (a) Applicant shall submit to SWBT adequate proof (as determined by SWBT) that the companies insuring Applicant are providing all coverages required by this Agreement. Applicant's insurers shall provide SWBT with certifications that required coverages will not be cancelled, changed or materially altered (e.g., by increasing deductibles or altering exclusions from coverage) except after 30 days written notice to SWBT.
- (b) SWBT will accept certified proof of a person or entity's qualification as a self-insurer for Workers' Compensation and Employers Liability, where self-insurance is permitted, upon receipt of a current copy of a Certificate of Authority to Self-insure issued by the Workers' Compensation Commission of this State. SWBT will accept self-insurance by a person or entity in lieu of other Commercial General Liability and Automobile Liability Coverage if such person or entity warrants that its net worth, as shown by its most recent audited financial

statement with no negative notes, is at least 10 times the minimum liability limits set forth in APPENDIX IV and SWBT is satisfied that such entity will be able to meet its liability obligations under this Agreement.

- (c) Applicant shall be responsible for determining whether contractors and other persons present on Applicant's behalf on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way meet the self-insurance requirements of this subsection. Applicant may accept certified proof of any such person's or entity's qualification as a self-insurer for Workers' Compensation and Employers Liability, where self-insurance is permitted, upon receipt of a current copy of a Certificate of Authority to Self-insure issued by the Workers' Compensation Commission of this State. Applicant may accept proof of self-insurance by a person or entity in lieu of other Commercial General Liability and Automobile Liability Coverage if such person or entity warrants that its net worth, as shown by its most recent audited financial statement with no negative notes, is at least 10 times the minimum liability limits set forth in APPENDIX IV and Applicant is satisfied that such entity will be able to meet its liability obligations with respect to activities performed on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way.

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

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

ARTICLE 24: ASSIGNMENT OF RIGHTS

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

- (a) SWBT may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Applicant's consent, to any entity controlling, controlled by, or under common control with SWBT or which acquires or succeeds to ownership of substantially all of SWBT's assets.
- (b) Applicant may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without SWBT's consent, to: any telecommunications carrier or cable system operator which (1) is entitled to access to SWBT's poles, ducts, conduits, and rights-of-way under the Pole Attachment Act and (2) controls, is controlled by, or is under common control with Applicant or acquires and succeeds to ownership of substantially all of Applicant's assets; provided, however, that such assignment shall not be effective until Applicant has given SWBT written notice of the assignment pursuant to Section 24.03 and guaranteed the performance of Applicant's assignee or successor. Applicant's assignee or successor shall assume all outstanding obligations of Applicant under this Agreement, including but not limited to all liabilities and contingent liabilities of Applicant arising out of or in connection with this Agreement.
- (c) Applicant may, ancillary to a bona fide loan transaction between Applicant and any lender, and without SWBT's consent, grant security interests or make collateral assignments in substantially all of Applicant's assets, including Applicant's rights under this Agreement, subject to the express terms of this Agreement. In the event Applicant'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 Applicant's assets through public or private sale or through an Agreement with Applicant, Applicant's lender or the third party acquiring Applicant's rights under this Agreement shall assume all outstanding obligations of Applicant under the agreement and provide proof satisfactory to SWBT 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 Applicant's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Applicant's lender or such third party shall succeed to all rights and remedies of Applicant under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Applicant 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 Applicant under the Agreement, including liability to SWBT 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 Applicant under the Agreement, as applicable.

- (1) In the event Applicant or Applicant's lender requests that SWBT, in connection with a bona fide loan transaction between Applicant and Applicant's lender, sign any additional consents, or make other accommodations to protect such lender's interest, Applicant or Applicant's lender shall reimburse SWBT for all expenses incurred by SWBT in connection with such requests and accommodations, including but not limited to in-house or outside legal expenses incurred by SWBT in processing the request.
- (2) In the event Applicant or Applicant's lender desires that SWBT provide notices to Applicant's lender or permit Applicant's lender, in the event of a breach, to cure any default or termination event if Applicant fails to do so, Applicant shall notify SWBT's authorized agent, as designated in Article 29 of this Agreement, that such notices may be sent to Applicant's lender as well to Applicant. Nothing contained in this subsection shall be construed as imposing any duty on SWBT in favor of Applicant's lender, and this section shall not be construed to provide Applicant's lender or any other third parties with any rights, claims, causes of action of any kind. Applicant waives any and all claims or causes of action, of every kind and character, past, present, or future, arising out of or in connection with the giving of any notice to Applicant's lender pursuant to this section or any failure to give such notice.
- (d) Either party may assign or transfer rights or obligations under this Agreement on such terms and conditions as are mutually acceptable to the other party and with such other party's prior written consent, which consent may be withheld only for due cause and justification.
- (e) No assignment or transfer by Applicant of rights under this Agreement, licenses subject to this Agreement, or authorizations granted under this Agreement shall be effective until Applicant, its successors, and assigns have complied with the provisions of this article, secured SWBT's prior written consent to the assignment or transfer, if necessary, and given SWBT notice of the assignment or transfer pursuant to Section 24.03.
- (f) Except as otherwise expressly provided in this article, neither this Agreement, nor any licenses or authorizations subject to this Agreement,

shall inure to the benefit of Applicant's successors or assigns without SWBT's prior written consent.

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

24.03 Notice of Assignment. Applicant shall provide SWBT with 60 days advance notice in writing of any assignment.

24.04 Assignment Shall Not Relieve Applicant of Prior Obligations. Except as otherwise expressly agreed by SWBT in writing, no assignment permitted by SWBT under this Agreement shall relieve Applicant of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Article 21 of this Agreement or the interconnection agreement, if any.

24.05 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. SWBT 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 Applicant under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Applicant arising out of or in connection with this Agreement.

24.06 Satisfaction of All Other Licensing Requirements. Applicant's assignee or successor must, within 60 days following the assignment, provide proof satisfactory to SWBT that such assignee or successor has complied or will comply with all licensing requirements established under this Agreement, including but not limited to requirements that such assignee or successor verify, to the best of its information and belief, as provided in Section 17.03, that all facilities owned or used by such assignee or successor and presently attached to SWBT's poles or placed within any portion of SWBT's conduit system within this State have been disclosed to SWBT and are subject to existing licenses and that such assignee or successor has complied with the insurance requirements set forth in Article 23 of this Agreement.

24.07 Additional Post-Assignment Requirements. Applicant's assignee or successor shall, within 60 days following the assignment:

- (a) sign this Agreement as an assignee or successor expressly agreeing to be bound by all provisions of this Agreement and licenses subject to this Agreement;
- (b) provide proof, satisfactory to SWBT, of such assignee's assumption of the obligations of this Agreement; and

- (c) pay a one-time contract administration fee, as provided in APPENDIX I of this Agreement, if no Master Agreement for Access to SWBT's Poles, Ducts, Conduits, or Rights-of-Way between SWBT and such assignee is in effect for this State, or an administrative record-keeping fee as provided in APPENDIX I of this Agreement, if there is a Master Agreement in effect for this State.

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

ARTICLE 25: TERMINATION OF AGREEMENT OR LICENSES; REMEDIES FOR BREACHES

25.01 Termination Due to Non-Use of Facilities or Loss of Required Authority. Applicant shall, by written notice to SWBT, terminate this Agreement and all licenses subject to this Agreement if Applicant ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if Applicant is cable television system having access to SWBT's poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in this State (if Applicant 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 SWBT's poles, ducts, conduits, and rights-of-way in this State. Applicant shall, by written notice to SWBT, terminate individual licenses subject to this Agreement if (a) Applicant ceases to utilize the pole attachment or conduit occupancy space subject to such licenses or (b) Applicant's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated for reasons of safety or any other lawful reason by any federal, state, or local governmental authority or third-party property owner having authority to revoke, deny, or terminate such use or access. Responsibility for terminating this Agreement or individual licenses under the circumstances set forth in this section shall be a contractual obligation imposed on Applicant, and the failure by Applicant to terminate this Agreement or individual licenses pursuant to this section shall be a material breach of this Agreement.

25.02 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Applicant's access to SWBT's poles, ducts, conduits, and rights-of-way shall not materially interfere with or impair service over any facilities of SWBT or any joint user, cause material damage to SWBT's plant or the plant of any joint user, impair the privacy of communications carried over the facilities of SWBT or any joint user, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of SWBT's poles, ducts, rights-of-way or to the public. Upon reasonable notice

and opportunity to cure, SWBT may limit, terminate or refuse access if Applicant violates this provision; provided, however, that such limitation, termination or refusal will be limited to Applicant's access to poles, ducts, conduits, and rights-of-way located in the SWBT construction district in which the violation occurs, shall be as narrowly limited in time and geographic scope as may be necessary to enable Applicant to adopt suitable controls to prevent further violations, and shall be subject to review, at Applicant's request, pursuant to the dispute resolution procedures set forth in this Agreement (or, if applicable, the parties' interconnection agreement) or, as permitted by law, before any court, agency, or other tribunal having jurisdiction over the subject matter. In the event Applicant invokes dispute resolution procedures or seeks review before a court, agency, or other tribunal having jurisdiction of the subject matter, the limitation, termination, or refusal of access may be stayed or suspended by agreement of the parties or by order of the tribunal having jurisdiction over the parties' dispute.

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

- (a) The notice shall set forth in reasonable detail:
 - (1) the conduct or circumstances complained of, together with the complaining party's legal basis for asserting that a breach has occurred;
 - (2) the action believed necessary to cure the alleged breach; and
 - (3) any other matter the complaining party desires to include in the notice.
- (b) Except as provided in Section 25.02 and subsection (c) of this section, the complaining party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given and (1) the breaching party fails to cure the breach within 30 days of such notice, if the breach is one which can be cured within 30 days, or (2) the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure; provided, however, that nothing contained in this section shall preclude either party from invoking the dispute resolution procedures set forth in Article 30 of this Agreement, or any complaint or dispute resolution procedures offered by the FCC or State Commission, at any time.
- (c) Nothing contained in this section shall preclude either party from filing a complaint or bringing suit in any court, agency, or other tribunal of competent jurisdiction to restrain or enjoin any conduct of the other

party which threatens the complaining party with irreparable injury, loss or damage without first giving the notice otherwise required by subsection (b).

25.04 Remedies for Breach. Subject to the provisions of this article and the dispute resolution procedures of Article 30, 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. Except as otherwise specifically provided in Section 30.07, 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.

ARTICLE 26: FAILURE TO ENFORCE

26.01 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 license 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. Notwithstanding any such failure, all terms and conditions of this Agreement and all rights of either party hereunder shall be and remain at all times in full force and effect.

ARTICLE 27: EFFECTIVE DATE, TERM, AND ELECTIVE TERMINATION

27.01 Effective Date. This Agreement shall be effective as of the 21 day of April, 2000, 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.

27.02 Initial Term. Unless sooner terminated as herein provided, the initial term of this Agreement shall run from the effective date until the end of the calendar year which includes the effective date.

27.03 Automatic Renewal. Unless sooner terminated as herein provided, this Agreement shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year after the effective date.

27.04 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.

(a) Applicant may terminate this Agreement with or without cause.

- (b) The parties acknowledge that the Pole Attachment Act, 47 U.S.C. §224(e), as added by the Telecommunications Act of 1996, expressly directs the FCC to promulgate new regulations governing charges to telecommunications carriers for access to poles, ducts, conduits, and rights-of-way and that such new regulations are to take effect five years after the date of enactment of the Telecommunications Act of 1996 (that is, February 8, 2001). The parties further acknowledge that due to nondiscrimination requirements, it is desirable that formal attachment agreements establishing rates, terms, and conditions of access be revised simultaneously, to the extent possible. Accordingly, the parties agree that SWBT may terminate this Agreement only for cause during the period beginning with the effective date of this Agreement through February 8, 2001. Thereafter, SWBT may terminate this Agreement with or without cause, subject to the provisions of subsection (d) and Section 27.05 below.
- (c) 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.
- (d) The elective termination of this Agreement by SWBT under this section shall not require immediate removal of Applicant's facilities from poles, ducts, conduits, and rights-of-way owned or controlled by SWBT and shall be subject to the provisions of Section 27.05 below; provided, however, that Applicant shall, within 60 days after the effective date of the termination, either initiate negotiations for continued access to SWBT's poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Article 18 of this Agreement.

27.05 Effect of Elective Termination. Elective termination of this Agreement by Applicant, as permitted under Section 27.04 of this Agreement, shall not affect Applicant's liabilities and obligations incurred under this Agreement prior to the effective date of termination and shall not entitle Applicant to the refund of any advance payment made to SWBT under this Agreement. Elective termination of this Agreement by SWBT shall not affect SWBT's obligations to afford access to SWBT's poles, ducts, conduits, and rights-of-way owned or controlled by SWBT as required by the Pole Attachment Act, the Telecommunications Act of 1996, and other applicable laws, regulations, and commission orders.

ARTICLE 28: CONFIDENTIALITY OF INFORMATION

28.01 Information Provided by Applicant to SWBT. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Applicant to SWBT in connection with this Agreement

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

28.02 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Applicant to SWBT in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons (including but not limited to personnel involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities) other than those who have a need to know such information for the limited purposes set forth in Sections 28.03-28.06.

28.03 Permitted Uses of Applicant's Confidential Information. Notwithstanding the provisions of Sections 28.01 and 28.02 above, SWBT and persons acting on SWBT's behalf may utilize Applicant's confidential or proprietary information for the following purposes: (a) posting information, as necessary, to SWBT's outside plant records; (b) placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SWBT's poles, ducts, conduits, and rights-of-way and any SWBT facilities located on, within, or in the vicinity of such poles, ducts, conduits, and rights-of-way; (c) performing SWBT's obligations under this Agreement and similar agreements with third parties; (d) performing SWBT's general obligations to afford nondiscriminatory access to telecommunications carriers and cable television systems under the Pole Attachment Act; (e) determining which of SWBT's poles, ducts, conduits, and rights-of-way are (or may in the future be) available for SWBT's own use, and making planning, engineering, construction, and budgeting decisions relating to SWBT's poles, ducts, conduits, and rights-of-way; (f) preparing cost studies; (g) responding to regulatory requests for information; (h) maintaining SWBT's financial accounting records; and (i) complying with other legal requirements relating to poles, ducts, conduits, and rights-of-way.

28.04 Access by Third Parties. Information reflecting the assignment of pole attachment and conduit occupancy space to Applicant may be made available to personnel of third parties seeking access to SWBT's records under provisions, and subject to protections, equivalent to those contained and required by Section 7.03 of this Agreement.

28.05 Defense of Claims. In the event of a dispute between SWBT and any person or entity, including Applicant, concerning SWBT'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, SWBT may utilize confidential or proprietary information submitted by Applicant 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 SWBT shall not disclose Applicant's proprietary or confidential information without first, at SWBT's option: (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Applicant's information; (b) seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing Applicant notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

28.06 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding SWBT from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that SWBT shall not disclose Applicant's proprietary or confidential information without first, at SWBT's option: (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Applicant's information; (b) seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing Applicant notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

28.07 Other Uses of Confidential Information. No other uses of confidential information received from Applicant pursuant to this Agreement are authorized or permitted without Applicant's express written consent.

ARTICLE 29: NOTICES

29.01 Notices to Applicant. Except as otherwise provided in APPENDIX VI ("Notices to Applicant"), all written notices required to be given to Applicant shall be delivered or mailed to Applicant's duly authorized agent or attorney, as designated in this section.

- (a) Such notice may be delivered to Applicant's duly authorized agent or attorney in person or by agent or courier receipted delivery.

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

Name: David M. Heyrend

Title: Vice President of Engineering

Firm: Western Integrated Networks, LLC

Address: 2000 S. Colorado Blvd., Suite 2-800

City/State/Zip: Denver, Colorado 80222

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

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

- (d) On the effective date of this Agreement, and until further notice to Applicant, SWBT's duly authorized agent shall be the Utility Liaison Supervisor ("ULS") designated in APPENDIX VIII.

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

ARTICLE 30: DISPUTE RESOLUTION

30.01 Purpose. The provisions of this article are intended to minimize litigation between the parties with respect to disputes arising in connection with this Agreement and shall be construed accordingly. Any dispute between the parties arising under this Agreement may be submitted by either party for resolution under this article.

30.02 Exclusive Remedy for Monetary Claims under \$25,000. Except for actions seeking injunctive relief related to the purposes of this Agreement or suits to compel compliance with the dispute resolution processes set forth in this article, the parties agree to use the dispute resolution processes set forth in this Agreement as their sole remedy with respect to any monetary claim of \$25,000 or less which arises out of or in connection with this Agreement.

30.03 Prerequisite to Litigation. The provisions of this article shall also apply to all disputes, without regard to the amount in controversy, in which Applicant contests charges billed by SWBT to Applicant under the terms of this Agreement. No suit, except for actions seeking injunctive relief related to the purposes of this Agreement or suits to compel compliance with the dispute resolution processes set forth in this article, shall be filed by either party against the other with respect to such contested charges until the parties have engaged in good faith negotiations as provided in Section 30.04, and, if the parties agree, in mediation under Section 30.05.

30.04 Good Faith Negotiation. Good faith negotiation as provided in this section shall be the first step in the dispute resolution process.

- (a) With respect to any dispute subject to the provisions of this article, either party may initiate negotiation proceedings by writing a certified or registered letter to the other party setting forth the particulars of the dispute, the terms of the Agreement that are involved, and a suggested resolution of the problem.
- (b) The recipient of the letter shall respond within 21 days to the proposed solution. The recipient shall either agree to the proposed solution or explain its disagreement.

- (c) If the correspondence does not resolve the dispute, each party, at the request of either party, will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve the dispute. 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.
- (d) Discussions and correspondence among the representatives as provided by this section are for purposes of settlement, are exempt from discovery and production, and shall not be admissible in arbitration, judicial, regulatory, or other proceedings in any forum.

30.05 Mediation. If the parties agree to mediation, the mediation may be conducted as provided in this section or in such other manner as may be mutually agreeable to the parties.

- (a) If agreed to by the parties, the dispute shall be referred to the nearest office of the American Arbitration Association, or such other mediator as may be selected by agreement of the parties, for mediation, that is, an informal, non-binding conference or conferences between the parties in which a mediator will seek to guide the parties to a resolution of the dispute.
- (b) If the dispute is referred to the American Arbitration Association, the parties are free to select any mutually acceptable panel member from the list of mediators at the American Arbitration Association. If the parties cannot agree or have no particular choice of a mediator and simply request that the American Arbitration Association assign a mediator to the dispute, then a list and resumes of available mediators, numbering one more than there are parties, will be sent to the parties, each of whom may strike one name leaving the remaining name as the mediator. If more than one name remains, the designated mediator shall be selected by the Administrator of the American Arbitration Association from the remaining names.
- (c) Mediation sessions shall be private.
- (d) All records, reports or other documents considered by the mediator shall be confidential.
- (e) The parties agree that the mediator shall not be compelled to divulge confidential materials or to testify about the mediation in arbitration, regulatory, judicial, or other proceedings in any forum.

- (f) The parties agree to maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial, or other proceeding:
 - (1) views expressed or suggestions made by the other party with respect to a possible settlement of the dispute;
 - (2) admissions made by the other party during the mediation proceedings;
 - (3) proposals made or views expressed by the mediator; or
 - (4) the fact that the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.
- (g) Subsections (e) and (f) of this section shall apply to anything said, done or occurring in the course of the mediation, including any private caucus or discussions between the mediator and any party or counsel before or after the joint mediation session. There shall be no stenographic record of the mediation process, except to memorialize a settlement record.
- (h) The mediation process shall be considered settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views, and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views, and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of its having been used in connection with this settlement process.

30.06 Arbitration. If negotiations and mediations do not resolve the dispute within 90 days after the initiation of dispute resolution proceedings as provided in subsection (a) of Section 30.04 of this Agreement, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association if the dispute involves any monetary claim of \$25,000 or less which arises out of or in connection with this Agreement. The parties may voluntarily elect to arbitrate disputes in which the amount in controversy exceeds \$25,000, but they shall not be required by this Agreement to do so.

- (a) Either party may demand such arbitration in accordance with the procedures set out in the Commercial Arbitration Rules.
- (b) Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this subsection.
 - (1) Each party may submit in writing to any other party, and such other party shall so respond, to a maximum of any combination of 35 of the following: interrogatories, document production requests, and requests for admissions. The interrogatories, document production requests, and requests for admissions shall not have subparts.
 - (2) Additional discovery may be permitted upon mutual agreement of the parties or upon order of the arbitrator on a showing of good cause.
- (c) The arbitrator shall control the scheduling so as to process the matter expeditiously. The times set forth in this subsection shall apply unless extended upon mutual agreement of the parties or by the arbitrator on a showing of good cause.
 - (1) The arbitration hearing shall commence within 60 days of the demand for arbitration and shall be held, in the absence of agreement by the parties to a different venue, in Dallas, Texas.
 - (2) The parties shall submit written briefs five days before the hearing.
 - (3) The arbitrator shall rule on the dispute by issuing a written opinion within 30 days after the close of hearings.
 - (4) The arbitrator shall have no authority to order punitive or consequential damages.
 - (5) Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

30.07 Costs. Except as specifically provided in this section, each party shall bear its own costs of all dispute resolution procedures under this article.

- (a) A party seeking discovery shall reimburse the responding party for the costs incurred by the responding party in producing documents.
- (b) The parties shall equally split the fees of the arbitration and the arbitrator.

30.08 No Abridgment of Rights under the Communications Act of 1934 or the Pole Attachment Act. Nothing contained in this article shall abridge the rights of either party to seek relief from the FCC with respect to any dispute subject to the jurisdiction of the FCC under the Communications Act of 1934 or the Pole Attachment Act, or from the State Commission with respect to any dispute subject to its jurisdiction, except that the parties may not seek relief from the FCC or the State Commission with respect to any dispute that has already been resolved by mediation under Section 30.05 or by binding arbitration under Section 30.06.

ARTICLE 31: ACCESS TO APPLICANT'S POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

31.01 No Reciprocal Access to Applicant's Facilities. This Agreement does not include provisions for reciprocal access by SWBT to Applicant's poles, ducts, conduits, and rights-of-way.

ARTICLE 32: GENERAL PROVISIONS

32.01 Entire Agreement. This Agreement, together with the interconnection agreement, if any, to which this Agreement is an appendix, attachment, or exhibit, sets forth the entire understanding and agreement of the parties.

32.02 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Applicant and SWBT relating to the placement and maintenance of Applicant's facilities on and within SWBT's poles, ducts, and conduits within this State.

32.03 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.

32.04 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.

32.05 Multiple Counterparts. This Agreement may be executed in multiple counterparts.

32.06 Effect on Licenses Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy licenses granted to Applicant shall, on the

effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.

32.07 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.

32.08 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.

32.09 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 this State, applied without regard to the provisions of this State's laws relating to conflicts-of-laws.

32.10 Changes in the Law. Because the primary purpose of this Agreement is to provide access to poles, ducts, conduits, and rights-of-way in accordance with the Pole Attachment Act, as amended by the Telecommunications Act of 1996 and subsequent amendments, the parties contemplate that changes in this Agreement may from time to time be necessary or desirable to conform to changes in the Pole Attachment Act as that Act is amended, interpreted, and applied. This Agreement is based in large part on regulatory decisions by the FCC, which has jurisdiction over the rates, terms, and conditions of access to poles, ducts, conduits, and rights-of-way (except to the extent that such jurisdiction has been pre-empted by individual states) and decisions by the State Commission. More specifically, this Agreement is based in large part on the FCC's First Interconnection Order in CC Docket No. 96-98, on FCC rules announced with the First Interconnection Order, and on Arbitration Orders by the State Commission.

Applicant desires to have access to SWBT's poles, ducts, conduits, and rights-of-way on terms that are not less favorable than those obtained by firms participating in interconnection arbitration

proceedings before the State Commission. Applicant also desires to have access to SWBT's poles, ducts, conduits, and rights-of-way to the full extent permitted under the FCC's First Interconnection Order in CC Docket No. 96-98. SWBT is entering into this Agreement for the purpose of providing nondiscriminatory access in compliance with the Pole Attachment Act and regulatory decisions thereunder, including decisions by the State Commission in interconnection arbitration proceedings in which Applicant is not a party. Each party is entering into this Agreement based on current interpretations of the law by the FCC and State Commission. In the event of any changes in the Pole Attachment Act, changes in applicable FCC or State Commission rulings, or judicial determinations that such rulings are erroneous or invalid, each party shall, at the request of the other, engage in good faith negotiations to supplement, amend or replace any provisions of this Agreement affected by such changes or determinations and to conform this Agreement to changes in the underlying laws on which the Agreement is based.

- [] This Agreement has been entered into as a result of private negotiation between the parties and arbitration by the State Commission, acting pursuant to the Telecommunications Act of 1996. If the actions of any legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws, rules, regulations, or commission orders that were the basis for a provision of this Agreement (including but not limited to any provision of this Agreement required by any arbitration award approved by the State Commission), the affected provision shall be invalidated, modified, or stayed as required by action of the legislative body, court, or regulatory agency. In the event of such a change in the law, each party shall expend diligent efforts to arrive at an agreement respecting the modifications to the Agreement required by the law or requested in good faith by the other party. If negotiations fail, disputes between the parties concerning interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in the interconnection agreement or this Agreement; provided, however, that this section shall not be construed as precluding either party from seeking appropriate relief from the FCC in connection with the parties' rights and obligations under the Pole Attachment Act. In the event of any material change in the law, each party agrees to enter into good faith negotiations to conform this Agreement to the changes in the law.

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

SOUTHWESTERN BELL TELEPHONE COMPANY

By: Shannon Waring
Signature of SWBT's Authorized Officer/Employee

Shannon Waring
Name of SWBT's Authorized Officer/Employee (Printed or Typed)

Director -Construction and Engineering
Position/Title of SWBT's Authorized Officer/Employee

04-21-2000
Date

Houston, Texas
City and State of Execution by SWBT

Western Integrated Networks of Texas Operating, L.P.
Applicant's Name (Printed or Typed) Western Integrated Networks, LLC
Its General Partner

By: Frank L. Casazza
Signature of Applicant's Authorized Officer/Employee

Frank L. Casazza
Name of Authorized Officer/Employee (Printed or Typed)

President and Chief Operating Officer
Position/Title of Authorized Officer/Employee

April 13, 2000
Date

Denver, Colorado
City and State of Execution by Applicant

APPENDIX I
SCHEDULE OF RATES, FEES AND CHARGES (TEXAS) -- PAGE 1 OF 5

This Appendix is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached and sets forth the rates, fees and charges to be paid by Applicant to SWBT pursuant to the Master Agreement and licenses subject to the Master Agreement. The rates, fees, and charges set forth in this Appendix shall be subject to all applicable laws, rules, regulations, and commission orders as provided in Section 19.01 of the Master Agreement and shall be subject to revision as provided in Section 19.12 of the Master Agreement.

A) Pole Attachment Fees

1) General

- a) For billing purposes, pole attachments shall be considered i) to have commenced on the first to occur of the following dates: the date of assignment (or provisional assignment) of pole attachment space, the date a license for such pole attachment is issued, or the date of actual attachment and ii) to have ended on the last to occur of the following dates: the date Applicant's assignment lapses or is relinquished, the date notice is given (under Section 18.06 of the Master Agreement) that Applicant has removed the attached facilities from SWBT's pole, or the date of termination of Applicant's license.
- b) Fees shall be payable semiannually in advance on the first days of January and July and shall be prorated on a daily basis as provided in Section 19.04. Fees for pole attachments shall be based on the number of pole attachments as of the date of billing. If Applicant occupies more than one usable space on a pole, separate attachment fees shall apply to each space occupied. For billing purposes, a single pole attachment includes the point of attachment and all facilities located in the usable space on the pole in the space assigned to Applicant (typically six inches above and six inches below the point of attachment), together with routine ancillary apparatus such as anchors, anchor/guy strands, drive rings, J-hooks, dead-end clamps, and other apparatus which does not interfere with the ability of SWBT to occupy or assign usable space on the pole other than the usable space licensed to Applicant. Fees for pole space assignments and unauthorized pole attachments shall be billed in the same manner as if a license had been issued.

2) Fees (2000 Rates)

<u>Semiannual Pole Attachment Fees</u>	<u>Annual</u>	<u>Semiannual</u>
Per pole attachment (cable service only)	<u>\$ 2.85</u>	<u>\$ 1.425</u>
Per pole attachment (telecommunications carriers)	<u>\$ 2.85</u>	<u>\$ 1.425</u>
Per pole attachment (other)	<u>\$ N/A</u>	<u>\$ N/A</u>

**APPENDIX I
SCHEDULE OF FEES AND CHARGES (TEXAS) -- PAGE 2 OF 5**

B) Conduit Occupancy Fees

1) General

- a) For billing purposes, conduit occupancy shall be considered to have i) begun on the first to occur of the following dates: the date of assignment (or provisional assignment) of conduit occupancy space, the date a license for such conduit occupancy is issued, or the date of actual occupancy; and ii) ended on the last to occur of the following dates: the date Applicant's assignment lapses or is relinquished, the date notice is given (under Section 18.06 of the Master Agreement) that Applicant has removed the attached facilities from SWBT's conduit, or the date of termination of Applicant's license. Occupancy ends only when facilities have been removed from SWBT's conduit system and required post-removal procedures (e.g., plugging ducts) have been completed. Fees for conduit space assignments and unauthorized conduit occupancy shall be billed in the same manner as if a license had been issued.
- b) Fees shall be payable semiannually in advance on the first days of January and July.

(2) Fees (2000 Rates)

<u>Semiannual Per Foot Conduit Occupancy Fees</u>	<u>Annual</u>	<u>Semiannual</u>
Full duct/duct foot (cable service only)	<u>\$ 0.90/ft</u>	<u>\$ 0.45/ft</u>
Full duct/duct foot (telecommunications carriers)	<u>\$ 0.90/ft</u>	<u>\$ 0.45/ft</u>
Full duct/duct foot (other)	<u>\$ N/A</u>	<u>\$ N/A</u>
Half duct/duct foot (cable service only)*	<u>\$ 0.45/ft</u>	<u>\$ 0.225/ft</u>
Half duct/duct foot (telecommunications carriers)*	<u>\$ 0.45/ft</u>	<u>\$ 0.225/ft</u>
Half duct/duct foot (other)*	<u>\$ N/A</u>	<u>\$ N/A</u>

*Each inner duct is billed at the half duct rate.

- a) Facility footage shall be measured i) from the center of one manhole to the center of an adjacent manhole if the facility runs between two manholes, ii) from the center of a manhole to the end of a duct not terminated in a manhole, or iii) from the center of a manhole to the property line if the duct is connected at the property line to a duct owned and controlled by a third-party property owner.
- b) Semiannual full duct conduit occupancy fees will apply to the first facility placed in a previously unoccupied duct except as provided in c)-d) below.

APPENDIX I
SCHEDULE OF FEES AND CHARGES (TEXAS) -- PAGE 3 OF 5

- c) If two or more facilities occupy a duct that has not been subdivided by inner duct, a semiannual half duct conduit occupancy fee will be charged for each facility placed in the duct.
 - d) A semiannual half duct occupancy fee will apply to the first facility placed by Applicant in a previously unoccupied duct that has not been subdivided by inner duct if and only if the presence of Applicant's facility does not render the other half of the duct unusable by others.
 - e) When Applicant's facilities are installed within inner duct, a single semiannual one-half duct conduit occupancy fee will apply to each inner duct occupied.
- C) Application Fees. No application fees shall be charged for the submission of access applications or provisional space assignments. Charges for processing applications are set forth below.
- D) Pre-license Survey Work. Charges for pre-license survey work are not set on a fixed fee basis and will be determined on a case-by-case basis. If pre-license survey work is performed by SWBT's contractors, Applicant shall reimburse SWBT for the actual out-of-pocket costs incurred by SWBT for such work (plus the applicable additive, if any, to compensate SWBT for administrative costs). If pre-license survey work is performed by SWBT employees, pre-license survey charges shall be computed by multiplying the applicable hourly rates times the number of hours reasonably spent by SWBT's employees on pre-license survey work.
- E) Facilities Modification, Capacity Expansion, and Make-ready Work. Charges for facilities modification, capacity expansion, and make-ready work are not set on a fixed fee basis and will be determined on a case-by-case basis. If such work is performed by SWBT's contractors, Applicant shall reimburse SWBT for the actual out-of-pocket costs incurred by SWBT for such work (plus the applicable additive, if any, to compensate SWBT for administrative costs). If such work is performed by SWBT employees, charges for such work shall be computed by multiplying the applicable hourly rates times the number of hours reasonably spent by SWBT's employees on the work. In all cases, except as otherwise specifically provided to the contrary in the Master Agreement, such charges shall include the costs of materials required to perform the work. No later than 45 days after receipt by SWBT of Applicant's completed application, or within such other period as may be mutually agreed upon in writing by the parties, SWBT will furnish Applicant an estimate of the charges for facilities modification, capacity expansion, and make-ready work. Except as otherwise specifically provided in other parts of the Master Agreement, Applicant will pay (1) half of SWBT's charges for the project at 50 percent job completion and the remainder at 100 percent completion and (2) if outside contractors are involved, half of the total compensation to be paid to outside contractors at 50 % job completion and the remainder at 100 percent completion. SWBT may, at its election, require Applicant to

APPENDIX I
SCHEDULE OF FEES AND CHARGES (TEXAS) -- PAGE 4 OF 5

pay SWBT's out-of-pocket costs for materials as those costs are incurred and may require Applicant to pay outside contractor costs on the same schedule SWBT pays such outside contractors; provided, however, that this provision shall be subject to applicable rulings, if any, of the State Commission. Bills and invoices submitted by SWBT to Applicant for make-ready charges shall be due and payable 30 days after the date of the bill or invoice.

- F) Construction Inspectors. When installation, maintenance, or similar routine work is performed within or in the vicinity of SWBT's conduit system by Applicant's personnel, certified, based on industry standards, the parties shall share the costs of a single SWBT employee reviewing the work, whether in an emergency or non-emergency situation. Applicant shall be responsible for providing SWBT with documentation sufficient to show that its personnel have been certified based on industry standards and shall identify the certifying agency and applicable industry standards. When the work is being performed by a contractor agreed upon by Applicant and SWBT, SWBT shall be responsible for the costs of construction inspectors sent to inspect the contractor's work. Subject to all applicable commission orders, where work is being performed on Applicant's behalf in SWBT's manholes or other portions of SWBT's conduit system by persons other than contractors approved by SWBT or certified personnel acting on Applicant's behalf, or where the work is work other than installation, maintenance, or similar routine work, Applicant shall pay SWBT's full costs attributable to having a construction inspector present. SWBT shall not charge Applicant for more than one such construction inspector per site at any given time. If the construction inspector is a SWBT contractor, Applicant shall reimburse SWBT for the applicable percentage of actual out-of-pocket costs (without additives for administrative costs) incurred by SWBT in connection with the presence of such inspector. If the construction inspector is a SWBT employee, charges for the construction inspector shall be computed by multiplying the applicable hourly rate times the number of hours reasonably spent by the employee as a construction inspector in connection with the project and applying the applicable cost-sharing percentage.
- G) Other Work Performed Pursuant to the Master Agreement. For all other work performed by SWBT's contractors pursuant to the Master Agreement, including but not limited to work performed in opening manholes and participating in work operations at Applicant's request, Applicant shall reimburse SWBT for the actual out-of-pocket costs incurred by SWBT in connection with the performance of such work (plus the applicable additive, if any, to compensate SWBT for administrative costs). For all other work performed by SWBT's employees pursuant to the Master Agreement, including but not limited to work performed in opening manholes, providing access to and copies of records, and participating in work operations at Applicant's request, SWBT's charges shall be computed by multiplying the applicable hourly rates times the number of hours reasonably spent by SWBT's employees on such work.

APPENDIX I
SCHEDULE OF FEES AND CHARGES (TEXAS) -- PAGE 5 OF 5

- H) Contract Administration Fee and Administrative Record-keeping Fees. Subject to applicable commission orders, and pending the establishment of permanent cost-based rates, a one-time contract administration fee of \$125.00 shall be due and payable at the time of the execution of the Master Agreement. Subject to applicable commission orders, SWBT may charge administrative record-keeping fees not exceeding \$125.00 in connection with records and billing changes resulting from the sale, consolidation, or other transfer of Applicant's business or facilities, name changes, and the like. SWBT shall provide Applicant, on Applicant's request, a statement of the basis for the fees.
- I) Other Administrative and Ancillary Fees. No other administrative or ancillary fees are charged by SWBT on a fixed fee basis.
- J) Hourly Rates. Except as otherwise provided by any applicable law, rule, regulation, or commission order, hourly rates charged for SWBT employees shall be such employees' fully loaded hourly rates.
- K) Payment Date. For fees and charges other than charges for facilities modification, capacity expansion, and make-ready work, each bill or invoice submitted by SWBT to Applicant shall state the date that payment is due, which date shall be not less than 60 days after the date of the bill or invoice. For facilities modification, capacity expansion, and make-ready work, the payment due date shall be not less than 30 days after the date of the bill or invoice. Interest on past due charges shall accrue as provided in Section 19.11(a) of the Master Agreement.

**APPENDIX II
IDENTIFICATION OF APPLICANT (TEXAS)**

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

Applicant's legal name is: Western Integrated Networks of Texas Operating, L.P.

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

Applicant does business under the following assumed names: _____

Western Integrated Networks of Texas Operating, L.P.

Applicant is:

a corporation organized under the laws of the State of _____,
charter no. _____;

a partnership organized under the laws of the State of Deleware; or

another entity, as follows: _____

Applicant represents that Applicant is:

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

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

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

**APPENDIX III
ADMINISTRATIVE FORMS AND NOTICES (TEXAS)**

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

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

Southern Bell Telephone

Retention Period: Active, Plus 5 Years

Pole Attachments

FIRM'S NAME: _____

Provisional, Records Based Assignment

AGREEMENT No.: _____

Pre-Occupancy Survey

TYPE: _____

APPLICATION No.: _____

Wire Center _____

(CATV, Telecom, Other)

Item #	Record #	Pole #	Ownership SWBT or Power	Street Address	Proposed Attachment Height	Guy Rq'd Y or N	Make Ready Work Y or N	Make Ready Description	Pole Mntd Apparatus Height
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
TOTAL									

Number of Cables _____

Other Notes: _____

Weight/per ft. and Size/O.D. _____

Number and Types of Strands _____

Date: _____

Time: _____

SIGNED: _____

SIGNED: _____

SWBT Representative

Official File Copy, If Checked in Red

Applicant's Representative
SW-9433
(Rev. 3-97)

**SW9433
POLE ATTACHMENTS
FORM INSTRUCTIONS**

Form SW9433 may be used for the following two purposes, Provisional, Records Based Assignment or as the Pre-Occupancy Survey. The applicant may complete the SW9433 and submit this to SWBT while reviewing the records and make a Provisional, Records Based Assignment. The applicant will also use this form when making the Pre-Occupancy Survey as a reference sheet of information required for acquiring pole attachment space.

REQUIRED INFORMATION FOR PROVISIONAL, RECORDS BASED ASSIGNMENT

FIRM'S NAME: Name of firm requesting pole attachment space.

AGREEMENT No.: Number obtained from the Master Agreement Number

APPLICATION No.: Will be provided by applicant in sequential ascending order.

[] **Provisional, Records Based Assignment:** Applicable when an applicant elects to make a Provisional, Records Based Assignment. The form will be signed and dated at the bottom by both the applicant and the SWBT representative. A copy will be provided to the applicant and the original will be maintained by SWBT.

Type: The applicant states that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

Record #: The SWBT paper record or the SWBT mechanized record number.

Pole #: Applicant will supply the pole number either from the SWBT Records or from a field visit.

Ownership: Applicant will determine and post the ownership of the pole by marking S for SWBT or P for Power Company based on SWBT's records.

Street Address: Applicant will provide street address or geographical reference point of the pole.

Proposed Attachment Height: Applicant will provide the proposed attachment height in feet and inches on the pole.

Guy Rq'd: Not required for Provisional, Records Based assignment.

Make Ready Work: Not required for Provisional, Records Based assignment

Make Ready Description: Not required for Provisional, Records Based assignment.

Pole Mntd Apparatus Height: Not required for Provisional, Records Based assignment

Weight/per ft. and Size/O.D.: Applicant will provide.

Number and Types of Strands: Applicant will provide the number and types of strands.

Other Notes: Any other notes relevant to the request including any infrequent construction techniques.

Date: The date the Provisional, Records Based Assignment was made.

Time: The time the Provisional, Records Based Assignment was made.

Signed (Applicant's Representative): Applicant's Representative signs that Provisional, Records Based Assignment was made.

Signed (SWBT Representative): SWBT's Representative signs that Provisional, Records Based Assignment was made.

REQUIRED INFORMATION FOR PRE-OCCUPANCY SURVEY

FIRM'S NAME: Name of firm requesting pole attachment space.

AGREEMENT No.: Number obtained from the Master Agreement Number

APPLICATION No.: Will be provided by applicant in sequential ascending order.

Pre-Occupancy Survey: This would be checked when this form is being used as a Pre-Occupancy Survey. The form would be completed in its entirety and signed by the applicant and submitted to SWBT for review in obtaining pole attachment space.

Type: The applicant states that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

Record #: The SWBT paper record or mechanized record number.

Pole #: Applicant will supply the pole number either from the SWBT Records or from a field visit.

Ownership: Applicant will determine and post the ownership of the pole by marking S for SWBT or P for Power Company.

Street Address: Applicant will provide street address or geographical reference point of the pole.

Proposed Attachment Height: Applicant will provide the proposed attachment height in feet and inches on the pole.

Guy Rq'd: Applicant will state if a guy is required. (Yes or No)

Make Ready Work: Applicant will state if make ready work is required. (Yes or No)

Make Ready Description: Applicant will give description of make ready work required.

Pole Mntd Apparatus Height: Applicant will state any proposed apparatus that would be placed on the pole. (Terminal, etc.)

Number of Cables: Applicant will state the number of cables that will be placed on the pole.

Weight/per ft. and Size/O.D.: Applicant will provide.

Number and Types of Strands: Applicant will provide the number and types of strands.

Other Notes: Any other notes relevant to the request including any infrequent construction techniques.

Date: The date the Pre-Occupancy Survey was submitted to SWBT.

Time: The time the Pre-Occupancy Survey was submitted to SWBT.

Signed (Applicant's Representative): Applicant's Representative signs when Pre-Occupancy Survey was submitted to SWBT.

Signed (SWBT Representative): SWBT's Representative signs when Pre-Occupancy Survey was submitted to SWBT.

Retention Period: Active, plus 5 years

Name of Applicant _____

Agreement No. _____

Application No. _____

Provisional Assignment

As specified in the attached documents, and in accordance with the terms and conditions of the Master Agreement between SWBT and Applicant; application is hereby made for a provisional assignment of space in anticipation of a nonexclusive license of communication facilities to access the quantity of SWBT facilities indicated below:

_____ SWBT poles _____ Feet SWBT Whole Duct _____ Feet SWBT Innerduct

Applicant desires immediate assignment of space and acknowledges that the effective date is _____. Applicant agrees to provide an application for assignment/access/occupancy of the assigned space within 30 days from the date of the assignment, or forfeit the assignment.

Provisional Assignment Expiration Date: _____

Assignment/Access/Occupancy

As specified in the attached documents, and in accordance with the terms and conditions of the Master Agreement between SWBT and Applicant; application is hereby made for occupancy of space through a nonexclusive license of communication facilities to access the quantity of SWBT facilities indicated below:

_____ SWBT poles _____ Feet SWBT Whole Duct _____ Feet SWBT Innerduct

Applicant authorizes SWBT to perform the required pre-licensing survey including any field inspections required to evaluate capacity, safety, reliability, and engineering standards; and to determine the cost, if any, of required modifications or make-ready work.

Effective Date _____ Assignment Expiration Date: _____

Applicant's Estimated Construction Start Date: _____

Applicant's Estimated Construction Completion Date: _____

Authorized by Applicant: _____

Signature

Title

Date: _____

Make-ready Work

Estimated Costs	Hours		Rate	TOTAL
<i>Constr. Labor</i>	_____	X	\$ _____	\$ _____
<i>Material</i>	<i>xxx</i>	X	\$ <i>xxx</i>	\$ _____
<i>Engr. Design</i>	_____	X	\$ _____	\$ _____
TOTAL				\$ _____

Estimated SWBT Completion Date _____

- No Make-Ready Work Required. No Make-Ready Work Required under 8.03(a).
- Make-Ready Work will be completed by applicant's authorized contractor.
- I authorize SWBT to complete the required make-ready work. Costs will be based upon actual costs incurred by SWBT.

Applicant's Signature _____ Title _____ Date _____

LICENSE NO. _____

Authorized by SWBT: _____

Signature

Title

DATE: _____

SW-9434
ACCESS APPLICATION and MAKE-READY AUTHORIZATION
FORM INSTRUCTIONS
5/8/97

Form SW-9434 is used to request access to poles, ducts, and conduit; to transmit notice of Provisional Assignments; and to provide other information required in the access process.

REQUIRED INFORMATION

NAME OF APPLICANT. Name of firm requesting space on poles or in conduit.

AGREEMENT NO. Number obtained from the Master Agreement Number.

APPLICATION NO. Will be provided by applicant in sequential ascending order.

Provisional Assignment Box Data

“attached documents” Copies of the *Assignment Of Space Logs* showing the applicant's entries for the requested space or completed Forms SW-9433 or SW-9435 if appropriate. Assignment is not official until the required data is entered in the *Assignment Of Space Log*.

_____ **SWBT poles** The number of poles for which space is requested.

_____ **Feet SWBT Whole Duct** The accumulated Center-to-Center measurements for the Whole Duct to be occupied. To be used **only for cables too large in diameter** (Typically copper conductor cables.) to fit in SWBT standard innerduct

_____ **Feet SWBT Innerduct** The accumulated Center-to-Center measurements for the innerduct to be occupied.

Effective date is date entered in Assignment Of Space Log

Provisional Assignment Expiration Date: 30 calendar days from the date entered in the Assignment of Space Log(i.e., Date Application must be submitted to hold the assignment of space.)

Assignment/Access/Occupancy Box Data

“attached documents” Completed Forms SW-9433 and/or SW-9435.

_____ **SWBT poles** The number of poles to be accessed.

_____ **Feet SWBT Whole Duct** The accumulated Center-to-Center measurements for the Whole Duct to be occupied. To be used **only for cables too large in diameter** (Typically copper conductor cables.) to fit in SWBT standard innerduct

_____ **Feet SWBT Innerduct** The accumulated Center-to-Center measurements for the innerduct to be occupied.

Effective date is date entered in Assignment Of Space Log

Assignment Expiration Date: 12 Months from the date entered in Assignment Of Space Log(Date facilities must be placed to avoid forfeiture of assigned space.)

SW-9434
ACCESS APPLICATION and MAKE-READY AUTHORIZATION
FORM INSTRUCTIONS
5/8/97

Applicant's Estimated Construction Start Date: Current "best estimate" of the date project construction will begin. "ASAP" is not an acceptable date.

Applicant's Estimated Construction Completion Date: Current "best estimate" of the date placements and splicing will be completed. "ASAP" is not an acceptable date.

Authorized by Applicant: Signature and Title of the Applicant's representative authorizing the request for access and payment (if any) of related SWBT engineering charges in connection with such access.

Date: Date of authorization by Applicant's representative.

MAKE-READY WORK Box Data

Estimated costs: SWBT will calculate data for Construction Labor, Material, and Engineering Design hours and summarize the **TOTAL** estimated SWBT Make-Ready Costs .

Estimated SWBT Completion Date SWBT Engineering will provide the estimated completion date of SWBT Make-Ready Work based upon current scheduling loads.

No Make-Ready Work Required. Applicant should check this box if it has determined that fully code/specifications-compliant access can be granted without any work or modifications by SWBT or other parties. If inner duct must be placed, box should not be checked.

No Make-Ready work Required under 8.03(a). Applicant should check this box only if this Application is being submitted under the provisions described in 8.03(a) Immediate Occupancy.

Make-Ready Work will be completed by Applicant's authorized contractor. If Applicant plans to utilize a mutually approved *authorized contractor* to perform all the Make-Ready work, this box only should be checked.

I authorize SWBT to complete the required make-ready work.... If Applicant wants SWBT to perform all the Make-Ready Work, this box only should be checked.

If some Make-Ready work must be done by SWBT and some will be done by the Applicant's *authorized contractor*, the last two boxes should be checked. A detailed description of the work to be done by SWBT must be included.

Applicant's Signature, Title and Date:

If the *No Make-Ready Work Required* box is checked by Applicant, Applicant's Signature confirms the accuracy of the current Applicant construction schedule.

If the *No Make-Ready Work Required under 8.03(a)* box is checked, Applicant confirms *Immediate Occupancy* procedures have been followed.

If *Make-Ready Work will be completed by Applicant's Authorized contractor* is checked, Applicant's signature concurs with any changes in proposed Make-Ready work identified by SWBT and confirms the accuracy of the current schedule.

If SWBT will perform any Make-Ready Work, Applicant's signature authorizes payment to SWBT of actual cost to perform the required make-ready work.

LICENSE NO. _____ **Authorized by SWBT:** The SWBT State ULS will authorize, date, and issue the License No. on the SW-9434 which becomes the Applicant's License For Access.

Conduit Occupancy

FIRM'S NAME: _____

Provisional, Records Based Assignment

AGREEMENT No.: _____

Pre-Occupancy Survey

TYPE: _____

APPLICATION No.: _____

Wire Center _____

(CATV, Telecom, Other)

Item #	Oper. #	Record #	Manhole #	Street Address	Distance To Next Manhole (Ctr to Ctr)	Proposed Duct or Innerduct	Make Ready Work Y or N	Make Ready Description
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
TOTAL								

Number of Cables _____

Size of Cable(O.D. Inches) _____

Splice Information Manhole # _____, Details _____

Splice Information Manhole # _____, Details _____

Slack Loop Info. Manhole # _____, Details _____

Slack Loop Info. Manhole # _____, Details _____

Date: _____

Time: _____

SIGNED: _____
Applicant's Representative

SIGNED: _____
SWBT Representative

Official File Copy, If Checked in Red

**SW9435
CONDUIT OCCUPANCY
FORM INSTRUCTIONS**

Form SW9435 may be used for the following two purposes, Provisional, Records Based Assignment or as the Pre-Occupancy Survey. The applicant may complete the SW9435 and submit this to SWBT while reviewing the records and make a Provisional, Records Based Assignment. The applicant will also use this form when making the Pre-Occupancy Survey as a reference sheet of information required for acquiring duct and/or inner duct space.

REQUIRED INFORMATION FOR PROVISIONAL, RECORDS BASED ASSIGNMENT

FIRM'S NAME: Name of firm requesting conduit space.

AGREEMENT No.: Number obtained from the Master Agreement Number

APPLICATION No.: Will be provided by applicant in sequential ascending order.

Provisional, Records Based Assignment: Applicable when an applicant would make a Provisional, Records Based Assignment. The form will be signed and dated at the bottom by both the applicant and the SWBT representative. A copy will be provided to the applicant and the original will be maintained by SWBT.

Type: Applicant indicates that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

Record #: This would refer to either the SWBT paper record or the SWBT mechanized record number.

Manhole #: Applicant will supply each manhole number.

Street Address: Applicant will provide street address of the manhole, if applicable.

Distance to Manhole: Applicant will state the distance from manhole to manhole in feet.

Proposed Duct or Inner duct: Applicant will state the number of ducts and/or inner ducts.

Make Ready Work: Not required for Provisional, Records Based assignment.

Make Ready Description: Not required for Provisional, Records Based assignment.

Number of Cables: Applicant will enter the number of cables.

Size of Cable (O.D. Inches): Applicant will enter size of cable.

Splice Information Manhole #: Not required for Provisional, Records Based assignment.
Details: Not required for Provisional, Records Based assignment.

Slack Loop Info. Manhole #: Not required for Provisional, Records Based assignment.

Details: Not required for Provisional, Records Based assignment.

Date: The date the Provisional, Records Based Assignment was made.

Time: The time the Provisional, Records Based Assignment was made.

Signed (Applicant's Representative): Applicant's Representative signs that the Provisional, Records Based Assignment was made.

Signed (SWBT Representative): SWBT's Representative signs that the Provisional, Records Based Assignment was made.

REQUIRED INFORMATION FOR PRE-OCCUPANCY SURVEY (CONDUIT SPACE)

FIRM'S NAME: Name of firm requesting conduit space.

AGREEMENT No.: Number obtained from the Master Agreement Number

APPLICATION No.: Will be provided by applicant in sequential ascending order.

Pre-Occupancy Survey: Applicable when this form is being used as a Pre-Occupancy Survey. The form would be completed in its entirety by the applicant and submitted to SWBT for review in obtaining conduit space.

Type: Applicant indicates that they are a CATV, a Telecommunications Carrier or a firm other than the aforementioned two.

Oper. #: Applicant will provide the operation number when required. The same operation number may very well be referenced on an attached map.

Record #: This would refer to either the SWBT paper record or the SWBT mechanized record number.

Manhole #: Applicant will supply each manhole number.

Street Address: Applicant will provide street address of the manhole, if applicable.

Distance to Manhole: Applicant will state the distance from manhole to manhole in feet.

Proposed Duct or Inner duct: Applicant will state the number of ducts and/or inner ducts.

Make Ready Work: Applicant will state if make ready work is required. (Yes or No)

Make Ready Description: Applicant will give description of make ready work required.

Number of Cables: Applicant will indicate the number of cables.

Size of Cable (O.D. Inches): Applicant will indicate size of cable.

Splice Information Manhole #: Applicant will enter any relevant splice information.

Details: Applicant will provide any relevant details regarding splice information.

Slack Loop Info. Manhole #: Applicant will provide.

Details: Applicant will provide any relevant Slack Loop Information.

Date: The date the Pre-Occupancy Survey was submitted to SWBT.

Time: The time the Pre-Occupancy Survey was submitted to SWBT.

Signed (Applicant's Representative): Applicant's Representative signs when Pre-Occupancy Survey was submitted to SWBT.

Signed (SWBT Representative): SWBT's Representative signs when Pre-Occupancy Survey was submitted to SWBT.



NOTIFICATION OF SURRENDER OR MODIFICATION OF POLE ATTACHMENT LICENSE BY LICENSEE

Page ___ of ___

Agreement Number _____

(Licensee) _____

(Address) _____

Southwestern Bell Telephone Company;

In accordance with the terms and conditions of the License Agreement between us, dated _____, 19___, notice is hereby given that the licenses covering attachments to the following poles and/or anchors and/or utilization of anchor/guy strand is surrendered (or modified as indicated in Licensee's prior notification to Licensor, dated _____, 19___) effective _____.

Table with 5 columns: POLE NO., ANCHOR A/GS (ASSOC. POLE NO.), LIC. NO. & DATE, SURRENDER OR MODIFICATION, DATE FAC. RMVD. OR MODIFIED. Rows 1-15.

Date Notification Received _____
Date Modification Accepted _____
By _____
Discontinued:
Poles _____
Anchors _____
Anchor/Guy Strands _____

Name of Licensee

By _____

Title _____



Southwestern Bell Telephone

NOTIFICATION OF SURRENDER OR MODIFICATION OF CONDUIT OCCUPANCY LICENSE BY APPLICANT

Page ____ of ____

License Agreement # _____

(Applicant)

(Address)

Southwestern Bell Telephone Company:

In accordance with the terms and conditions of the Licensing Agreement between us, dated _____, 19____, notice is hereby given that the licenses covering occupancy of the following conduit are surrendered (or modified as indicated in Applicant's prior notification to SWBT, dated _____, 19____,) effective _____.

	CONDUIT LOCATION	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD. OR MODIFIED
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				

SWBT	Date Notification Received _____
	Date Modification Accepted _____
	By _____
	Discontinued: _____
Total duct footage _____	

(Applicant)

By _____
(Name of Authorized Agent)

Title _____
(Title of Authorized Agent)



Southwestern Bell Telephone

NOTIFICATION OF UNAUTHORIZED ATTACHMENTS BY APPLICANT

Applicant Name _____

In accordance with the terms and conditions of the License Agreement between us, dated _____, 19____, notice is hereby given that the license covering attachments to the following is unauthorized (as indicated in Applicant's prior lease agreement to SWBT, dated _____, 19____,) effective _____.

Southwestern Bell Telephone

By: _____

Title: _____

	POLE NO. OR CONDUIT #	LOCATION (ASSOC. POLE NO.) MANHOLES Involved	LIC. NO. & DATE	UNAUTHORIZED ATTACHMENT	DATE FAC. RMVD. OR MODIFIED
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					

SKETCH OF UNAUTHORIZED ATTACHMENTS ATTACHED

Date Notification Sent _____

Name of Applicant

By _____

Title _____

**APPENDIX IV
INSURANCE REQUIREMENTS (TEXAS) – PAGE 1 OF 4**

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

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

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

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

4) General Liability Insurance. To protect SWBT and any joint user from any liability for bodily injury or property damage, Applicant shall maintain, at all times during the term of the Master Agreement, General Liability insurance satisfactory to SWBT. SWBT shall be added as an additional insured in the standard policy or an endorsement thereto. Applicant shall also require any contractor, subcontractor, or other person or entity acting on Applicant’s behalf to provide General Liability coverage with the same limits and with SWBT added as an additional insured unless such contractor, subcontractor, or other person or entity is covered by the General Liability protection afforded by Applicant.

- a) The following coverages must be included in (and may not be excluded from) the policy or policies obtained to satisfy the General Liability insurance requirements of Applicant and any contractor, subcontractor, or other person or entity acting on Applicant’s behalf. The coverages may be provided by the standard policy or

APPENDIX IV
INSURANCE REQUIREMENTS (TEXAS) – PAGE 2 OF 4

endorsements thereto. Exclusion endorsements deleting these coverages will not be accepted.

- 1) Personal Injury and Advertising Injury coverage.
 - 2) Premises/Operations coverage, including also coverage for any newly acquired ownership or controlled premises or operations.
 - 3) Independent Contractors coverage to provide protection for Applicant's contractors, subcontractors, and other persons or entities acting on Applicant's behalf.
 - 4) Explosion, Collapse, and Underground Hazard (XCU) coverage.
 - 5) Completed Operations coverage providing for bodily injury and property damage liabilities which may occur once the operations have been completed or abandoned.
 - 6) Contractual Liability coverage to provide financial responsibility for the Applicant to meet its indemnification obligations.
 - 7) Broad Form Property Damage (BFPD) coverage for damage to property in the care or custody of Applicant and damage to work performed by or on behalf of the Applicant.
- b) Minimum policy limits shall be as follows:

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

Sublimit for all bodily injury, property damages, or medical expenses incurred in any one occurrence: \$1,000,000.

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

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

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

**APPENDIX IV
INSURANCE REQUIREMENTS (TEXAS) – PAGE 3 OF 4**

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

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

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

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

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

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

- a) Certificates of Insurance using the insurance industry standard ACORD form are preferred.
- b) Certificates provided with respect to General Liability policies and certificates provided with respect to Automobile Liability policies shall indicate SWBT as an Additional Insured.

**APPENDIX IV
INSURANCE REQUIREMENTS (TEXAS) -- PAGE 4 OF 4**

- c) Deductibles, if permitted, shall be listed on the Certificate of Insurance.
- d) The cancellation clause on the certificate of insurance shall be amended to read as follows:

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

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

- e) The certificate holder shall be:

Southwestern Bell Telephone Company
6500 West Loop South, Zone 5.3
Bellaire, Texas 77401
ATTENTION: Utility Liaison Supervisor

- f) Failure to object to any coverage described in a certificate shall not constitute written permission from SWBT to any variance from or alteration of any requirement set forth in this Appendix and shall not be construed as a waiver by SWBT of any rights under the Master Agreement.

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

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

Agreement No. TX-00-004**APPENDIX V
NONDISCLOSURE AGREEMENT (TEXAS) PAGE 1 OF 4****Nondisclosure Agreement (SWBT Pole, Duct, Conduit, and Right-of-Way)**

This Nondisclosure Agreement, effective as of the 21 day of April, 2000, has been entered into by and between Southwestern Bell Telephone Company ("SWBT"), a Missouri corporation, and the undersigned person or firm ("Recipient") as a condition of access to certain records and information maintained by SWBT. The parties stipulate and agree as follows:

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

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

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

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

**APPENDIX V
NONDISCLOSURE AGREEMENT (TEXAS) -- PAGE 2 OF 4**

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

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

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

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

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

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

**APPENDIX V
NONDISCLOSURE AGREEMENT (TEXAS) -- PAGE 3 OF 4**

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

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

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

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

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

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

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

16) This Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and none of the terms of this Agreement may be amended or modified except by written instrument signed by both parties.

**APPENDIX V
NONDISCLOSURE AGREEMENT (TEXAS) -- PAGE 4 OF 4**

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

Western Integrated Networks of Texas
Recipient (Print or Type Name)

Southwestern Bell Telephone Company
Operating

Frank L. Casazza
By Western Integrated Networks, LLC
Signature of Recipient or Representative

Shannon Waring
By
Signature

Frank L. Casazza
Name (Printed or Typed)

Shannon Waring
Name (Printed or Typed)

2000 S. Colorado Blvd. 2-800
Address

11930 Airline Drive, Rm. 215
Address

Denver, CO 80222
City, State, and Zip Code

Houston, TX 77037
City, State, and Zip Code

(303) 407-1601
Phone

281-405-3120
Phone

April 17, 2000
Date

04-21-2000
Date

**APPENDIX VI
NOTICES TO APPLICANT (TEXAS)**

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

Notices in general. Except as otherwise stated in this Appendix, all notices to Applicant shall be given to Applicant's duly authorized agent or attorney as specified in Section 29.01 of the Master Agreement.

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

Special notice provisions. The following special notice provisions, if any, shall apply:

**APPENDIX VII
NOTICES TO SWBT (TEXAS) -- PAGE 1 OF 3**

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

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

- 7.01 Notification of Designation of Primary Point of Contact
- 7.03(a) Notification of intent to review records
- 8.XX All Notifications in Article 8
- 9.XX All Notifications in Article 9
- 10.04(e) Notification Regarding Make-Ready Work
- 12.03(d) Notification of placing J-hook on non-licensed pole
- 12.04 Notification of occupation of maintenance duct for short-term use
- 12.06 Notification of Applicant's maintenance contact
- 13.01 Notification of planned modifications
- 14.02(c) Notification of Applicant's desire to add to or modify its existing attachment
- 15.02(b) Notification of occupation of maintenance duct for short-term emergency use
- 15.03 Notification of emergency repair coordinators
- 16.01 Notification that facilities have been brought into compliance
- 17.02(c) Disclaimer of ownership or responsibility for untagged facilities
- 17.06 Notification of Applicant's response to ownership of facilities in question

**APPENDIX VII
NOTICES TO SWBT (TEXAS) -- PAGE 2 OF 3**

- 18.01(a) Notice of intent to remove facilities
- 18.01(e) Notice of intent to terminate license
- 18.06 Notification of completion of removal of facilities
- 20.01(c) Notification of change of bond
- 21.17 Notification of claims
- 23.XX All notifications of insurance coverage in Article 23
- 24.03 Notification of assignment
- 25.01 Notification of termination
- 25.03 Notification of cure of breach
- 27.04 Notice of elective termination
- 29.03 Notification of change in notice requirements

Other notices. The following notices may be given orally or in writing (including fax) and shall be given to SWBT's Local Operations Center (LOC) at 1-800-220-4818 instead of the ULS.

- 6.05(a) Notifications relating to electrical interference
- 6.09(d) Notifications of unsafe conditions
- 6.11(a) Notification of manhole entry
- 6.13(c) Notification of environmental contaminants
- 10.02(b) Notification of materials required for self-provisioning of inner duct
- 15.04 Notification of conditions requiring emergency repair
- 15.06(a) Notification of performing corrective work on emergency repair.
(advanced notice)

APPENDIX VII
NOTICES TO SWBT (TEXAS) – PAGE 3 OF 3

- 15.06(b) Notification of performing corrective work on emergency repair.
(no advanced notice)

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

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

**APPENDIX VIII
IDENTIFICATION OF UTILITY LIAISON SUPERVISOR (TEXAS)**

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

The Utility Liaison Supervisor for Texas is named below. Notices to the Utility Liaison Supervisor should be addressed as follow:

Name: W. L. Ford

Title: Manager-Operations

Firm: Southwestern Bell Telephone Company

Address: 6500 West Loop South, Zone 5.3

City/State/Zip: Bellaire, Texas 77401

MEETING OF THE CITY COUNCIL

Third & Final Reading

ALAMODOME
ASSET MANAGEMENT
AVIATION
BUDGET & PERFORMANCE ASSESSMENT
BUILDING INSPECTIONS
BUILDING INSPECTIONS - HOUSE NUMBERING
CITY ATTORNEY
MUNICIPAL COURT PROSECUTORS
RISK MANAGEMENT
CITY MANAGER
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS & RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER (PUBLISH)
COMMUNITY INITIATIVES
COMMUNITY RELATIONS
PUBLIC INFORMATION OFFICE
CONVENTION & VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
COUNCIL OFFICES
CULTURAL AFFAIRS
ECONOMIC DEVELOPMENT
FINANCE DIRECTOR
FINANCE (ASSESSOR)
FINANCE (CONTROLLER)
FINANCE (GRANTS)
FINANCE (TREASURY)
FIRE DEPARTMENT
HOUSING & COMMUNITY DEVELOPMENT
HUMAN RESOURCES
INFORMATION SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION (PUBLISH)
MUNICIPAL COURTS
NEIGHBORHOOD ACTION
PARKS & RECREATION
PLANNING DEPARTMENT
DISABILITY ACCESS OFFICE
LAND DEVELOPMENT SERVICES
POLICE DEPARTMENT
GROUND TRANSPORTATION OFFICE
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING (W/ATTACHMENTS)
ENGINEERING
ENVIRONMENTAL SERVICES
PARKING
REAL ESTATE
SOLID WASTE
TRAFFIC ENGINEERING
PURCHASING & GENERAL SERVICES
SAN ANTONIO WATER SYSTEM

AGENDA ITEM NUMBER: 46

DATE: APR 27 2000

MOTION: Bannwolf Carpenter

ORDINANCE NUMBER: 91488

RESOLUTION NUMBER: _____

ZONING CASE NUMBER: _____

TRAVEL AUTHORIZATION: _____

NAME	ROLL	AYE	NAY
BOBBY PEREZ District 1		✓	
MARIO SALAS District 2		✓	
DEBRA GUERRERO District 3		<i>absent</i>	
RAUL PRADO District 4		✓	
DAVID A. GARCIA District 5		✓	
ENRIQUE BARRERA District 6		✓	
ED GARZA District 7		<i>absent</i>	
BONNIE CONNER District 8		✓	
TIM BANNWOLF District 9		✓	
DAVID CARPENTER District 10		✓	
HOWARD W. PEAK Mayor		<i>absent</i>	

00-17

FILE "WESTERN INTEGRATED NETWORKS"
"WIN"