

## APPENDIX INTERCONNECTION TRUNKING REQUIREMENTS (ITR)

### 1.0 INTRODUCTION

- 1.1 The Interconnection of XSPEDIUS and SBC KANSAS networks shall be designed to promote network efficiency.
- 1.2 This Appendix Interconnection Trunking Requirements (ITR) to Attachment 11: Network Interconnection Architecture provides descriptions of the trunking requirements for XSPEDIUS to interconnect any XSPEDIUS provided switching facility with SBC KANSAS facilities. All references to incoming and outgoing trunk groups are from the perspective of XSPEDIUS.
- 1.3 If either Party changes the methods by which it trunks and routes traffic within its network, it will afford the other Party the opportunity to trunk and route its traffic in the same manner for purposes of interconnection. The Parties agree to offer and provide to each other B8ZS Extended Superframe and/or 64 Kbps clear channel where it is currently deployed at the time of the request.
- 1.4 SBC KANSAS will allow XSPEDIUS to use the same physical facilities to provision one-way or two-way trunk groups, XSPEDIUS shall have administrative and order control (e.g., determination of trunk group size) of the trunk groups to the extent that it does not require SBC KANSAS to redesign its network configuration.
  - 1.4.1 Local Interconnection Trunk Groups for the transmission and routing of terminating 251(b)(5)/ IntraLATA Toll Traffic, intraLATA Exchange Access Traffic, including translated intraLATA 8YY traffic. With respect to each route (e.g. where applicable, the Local Interconnection Trunk Groups between a certain XSPEDIUS switch and a certain SBC KANSAS switch), XSPEDIUS may request that Local Interconnection Trunk Groups be established as (1) one-way trunks, (2) two-way that carry only one-way terminating traffic or (3) two-way trunks that carry two-way traffic. The Parties recognize that embedded one-way trunks may exist. The Parties may agree to negotiate a transition plan to migrate embedded one-way trunks to two-way trunks via any Interconnection method as described in appendix NIM. The Parties will coordinate any such migration, trunk group prioritization, and implementation schedule. SBC KANSAS agrees to develop a cutover plan and project manage the cutover with XSPEDIUS participation and agreement.

### 2.0 TRUNK GROUP CONFIGURATIONS:

- 2.1 SBC KANSAS will not impose any restrictions on a XSPEDIUS that are not imposed on its own traffic with respect to trunking and routing options afforded the XSPEDIUS. Trunking to an SBC KANSAS Local Only, Local/IntraLATA, or Local/Access Tandem Switch, for the delivery of Section 251(b)(5)/IntraLATA Toll Traffic, shall afford XSPEDIUS access to the NXXs served by the subtending End Offices of that tandem.

#### 2.1.1 CLEC Originating (CLEC to SBC KANSAS):

For XSPEDIUS Originating traffic (XSPEDIUS to SBC KANSAS), subject to Section 1.0 above, InterLATA toll traffic and IntraLATA Toll Traffic originating from an end user obtaining local dialtone from XSPEDIUS where XSPEDIUS is both the Section 251(b)(5) Traffic and IntraLATA toll provider may be combined with Section 251(b)(5) Traffic and ISP-Bound Traffic on the same trunk group when XSPEDIUS routes traffic to an SBC KANSAS Local/IntraLATA Tandem Switch, Local/Access Tandem Switch or directly to a SBC KANSAS End Office. When mutually agreed upon traffic data exchange methods are implemented as specified in Section 5.0 of this Appendix, direct trunk group(s) to SBC

KANSAS End Offices will be provisioned as two-way and used as two-way. When SBC KANSAS Access Tandem Switches are separate from Local Only Tandem Switches, a separate local trunk group used to carry Section 251(b)(5) Traffic and ISP-Bound Traffic will be provided to each Local Only Tandem Switch and a separate IntraLATA Toll Trunk Group used to carry IntraLATA Toll Traffic originating from an end user obtaining local dialtone from XSPEDIUS where XSPEDIUS is both the Section 251(b)(5) Traffic and intraLATA toll provider will be provided to an Access Tandem Switch. When there are multiple SBC KANSAS Local/IntraLATA Tandem Switches and/or Local/Access Tandem Switches in a Local Exchange Area, separate trunk groups will be established to each Local/IntraLATA Tandem Switch and each Local/Access Tandem Switch. Such trunk groups may carry Section 251(b)(5), ISP-Bound Traffic and intraLATA toll traffic originating from an end user obtaining local dialtone from XSPEDIUS where XSPEDIUS is both the Section 251(b)(5) Traffic and intraLATA toll provider. Trunk groups to the Access or Local Tandem Switches will be provisioned as two-way and used as two way. Trunks will utilize Signaling System 7 (SS7) protocol signaling when such capabilities exist within the SBC KANSAS network. Multifrequency (MF) signaling will be utilized in cases where SBC KANSAS switching platforms do not support SS7.

Trunking to an SBC KANSAS Local Tandem, will provide XSPEDIUS access to the SBC KANSAS End Offices which subtend that tandem and to other service providers that are connected to SBC KANSAS. Trunking to an SBC KANSAS End Office(s) will provide XSPEDIUS access only to the NXXs served by that individual End Office(s).

#### 2.1.2 CLEC Terminating (SBC KANSAS to CLEC):

For XSPEDIUS Terminating traffic (SBC KANSAS to XSPEDIUS), where SBC KANSAS has a Local/IntraLATA or Local/Access Tandem Switch SBC KANSAS will combine the Section 251(b)(5) Traffic, ISP-Bound Traffic and IntraLATA Toll Traffic originating from an end user obtaining local dialtone from SBC KANSAS where SBC KANSAS is both the Section 251(b)(5) Traffic and intraLATA toll provider over a single two-way trunk group ordered by XSPEDIUS via an ASR. When SBC KANSAS has Access Tandem Switches that serve a Local Exchange Area separate from Local Only Tandem Switches in a Local Exchange Area, SBC KANSAS shall deliver Section 251(b)(5) Traffic and ISP-Bound traffic from the Local Only Tandem Switch to XSPEDIUS over the two-way trunk group to the Local Only Tandem Switch. SBC KANSAS shall deliver IntraLATA Toll Traffic originating from an end user obtaining local dialtone from SBC KANSAS where SBC KANSAS is both the Section 251(b)(5) Traffic and intraLATA toll provider from the Access Tandem Switch to XSPEDIUS over the one or two-way trunk groups IntraLATA Toll Trunk Group to the Access Tandem Switch. As noted in Section 2.1.1 above, direct trunk group(s) between XSPEDIUS and SBC KANSAS End Offices will be provisioned as two-way and used as two-way. Trunks will utilize Signaling System 7 (SS7) protocol signaling when such capabilities exist within the SBC KANSAS network. Multifrequency (MF) signaling will be utilized in cases where SBC KANSAS switching platforms do not support SS7.

#### 2.2 Meet Point Traffic:

Meet Point Traffic will be transported between the SBC KANSAS Access Tandem Switch and XSPEDIUS over a "meet point" trunk group separate from Local Interconnection Trunk Groups. This trunk group will be established for the transmission and routing of Exchange Access traffic and IntraLATA Toll Traffic routed via an IXC between XSPEDIUS' end users and interexchange carriers via a SBC KANSAS Access Tandem Switch. When SBC KANSAS has more than one Access Tandem Switch within a Local Exchange Area, XSPEDIUS may utilize a single "meet

point" trunk group to one SBC KANSAS Access Tandem Switch within the Local Exchange Area in which XSPEDIUS homes its NPA/NXXs. This trunk group will be provisioned as two-way and will utilize SS7 protocol signaling. Traffic destined to and from multiple interexchange carriers (IXCs) can be combined on this trunk group.

### 2.3 Direct End Office Trunking:

The Parties shall establish a two-way Direct End Office Trunk Group (DEOT) when actual End Office traffic exceeds 24 DS0s at peak over three consecutive months or when no Local Only, Local/IntraLATA or Local/Access Tandem Switch is present in the Local Exchange Area.

Trunking to an SBC KANSAS End Office shall afford XSPEDIUS access only to the NXXs served by that individual End Office.

### 2.4 E911 Emergency Traffic:

A segregated trunk group will be required to each appropriate E911 tandem within a Local Exchange Area in which XSPEDIUS offers Exchange Service. This trunk group will be set up as a one-way outgoing only and will utilize SS7 protocol signaling unless SS7 protocol signaling is not yet available, then CAMA/ANI MF signaling will be utilized.

### 2.5 Mass Calling (Public Response Choke Network):

A segregated trunk group will be required to the designated Public Response Choke Network tandem in each serving area in which XSPEDIUS provides service pursuant to this Agreement. This trunk group will be one-way outgoing only and will utilize MF signaling. It is anticipated that this group will be sized as follows, subject to adjustments from time to time as circumstances require:

< 15001 access Lines (AC)	2 trunks (min)
15001 to 25000 AC	3 trunks
25001 to 50000 AC	4 trunks
50001 to 75000 AC	5 trunks
> 75000 AC	6 trunks (max)

At the time that XSPEDIUS establishes a Public Response Choke Network NXX and tandem, SBC KANSAS will establish reciprocal mass calling trunks to XSPEDIUS subject to the requirements set forth in this Section.

### 2.6 Operator Services

2.6.1 Inward Assistance Inward Operator Assistance (Call Code 121) - XSPEDIUS may choose from two interconnection options for Inward Operator Assistance.

#### 2.6.2 Option 1 - Interexchange Carrier (IXC)

XSPEDIUS may utilize the Interexchange Carrier Network. XSPEDIUS will route its calls requiring inward operator assistance through its designated IXC POP to SBC KANSAS' TOPS tandem. SBC KANSAS will route its calls requiring inward operator assistance to XSPEDIUS' Designated Operator Switch (TTC) through the designated IXC POP.

XSPEDIUS will use the same OSPS platform to provide local and IXC operator services. Where appropriate, XSPEDIUS will utilize existing trunks to the SBC KANSAS TOPS platform that are currently used for existing IXC inward operator services.

### 2.6.3 Option 2 - CLEC Operator Switch

XSPEDIUS will identify a switch as the Designated Operator Switch (TTC) for its NPA-NXXs. SBC KANSAS will route XSPEDIUS' calls requiring inward operator assistance to this switch. This option requires a segregated one-way (with MF signaling) trunk group from SBC KANSAS' Access Tandem to the XSPEDIUS switch. XSPEDIUS calls requiring inward operator assistance will be routed to SBC KANSAS' operator over an IXC network.

## 3.0 TRUNK DESIGN BLOCKING CRITERIA

Trunk forecasting and servicing for the Local Interconnection Trunk Groups will be based on the industry standard objective of 2% overall time consistent average busy season busy hour loads 1% from the End Office to the Tandem and 1% from tandem to End Office based on Neal Wilkinson B.01M [Medium Day-to-Day Variation] until traffic data is available. Listed below are the trunk group types and their objectives:

Trunk Group Type	Blocking Objective (Neal Wilkinson B.01M)
Local Tandem	1%
Local Direct	2%
IntraLATA Interexchange Direct	1 %
IntraLATA Interexchange Tandem	0.5%
911	1 %
Operator Services (DA/DACC)	1 %
Operator Services (0+, 0-)	0.5%
InterLATA Tandem	0.5%

## 4.0 FORECASTING/SERVICING RESPONSIBILITIES

- 4.1 XSPEDIUS agrees to provide an initial trunk forecast for establishing the initial trunk groups. SBC KANSAS shall review this forecast and if SBC KANSAS has any additional information that will change the forecast, SBC-Kansas shall provide this information to XSPEDIUS. Subsequent forecasts will be provided on a quarterly or semi-annual basis, at XSPEDIUS' election. Two of the quarterly forecasts, or one of the semi-annual forecasts, will be provided concurrent with the publication of the SBC KANSAS General Trunk Forecast. The forecast will include yearly forecasted trunk quantities for all trunk groups described in this Appendix for a minimum of three years and the use of Common Language Location Identifier (CLLI-MSG) which is described in Telcordia Technologies documents BR795-100-100 and BR795-400-100. Trunk servicing will be performed on a monthly basis at a minimum.
- 4.2 The Parties agree to review XSPEDIUS' trunk capacity in accordance with XSPEDIUS' forecasts, including quarterly forecasts, if so elected and submitted by XSPEDIUS.
- 4.3 Such forecasts shall include, subject to adjustments from time to time as circumstances require:
  - 4.3.1 Yearly forecasted trunk quantities will be for all trunk groups referenced in this appendix for a minimum of three (current and plus-1 and plus-2) years; and

- 4.3.2 A description of major network projects anticipated for the following six months. Major network projects include the introduction of a new switch, trunking or network rearrangements, orders greater than 4 DS1s or other activities that are reflected by a significant increase or decrease in trunking demand for the following forecasting period.
- 4.3.3 Parties shall make all reasonable efforts and cooperate in good faith to develop alternative solutions to accommodate orders when facilities are not available.
- 4.4 XSPEDIUS shall be responsible for forecasting two-way trunk groups. SBC KANSAS shall be responsible for forecasting and servicing any one way trunk groups terminating to XSPEDIUS and XSPEDIUS shall be responsible for forecasting and servicing any one way trunk groups terminating to SBC KANSAS, unless otherwise specified in this Appendix. Standard trunk traffic engineering methods will be used as described in TELCORDIA TECHNOLOGIES document SR-TAP-000191, Trunk Traffic Engineering Concepts and Applications or as otherwise mutually agreed to by the Parties.
- 4.5 If forecast quantities are in dispute, the Parties shall meet to reconcile the differences.
- 4.6 Each Party shall provide a specified point of contact for planning, forecasting and trunk servicing purposes.
  - 4.6.1 The Parties agree to provide non-binding trunk forecast information to each other twice a year, for the trunk groups for which they have order control.
  - 4.6.2 If differences in semi-annual forecasts of the Parties vary by more than 96 additional DS0 two-way trunks for each Local Interconnection Trunk Groups, the Parties shall meet to reconcile the forecast to within 96 DS0 trunks.
  - 4.6.3 If a trunk group is under 75 percent (75%) of centum call seconds capacity on a monthly average basis for each month of any, three (3) consecutive months period, either Party, through the TGSR process, may request the issuance of an order to resize the trunk group, which shall be left with not less than 25% excess capacity.

## **5.0 SERVICING OBJECTIVE/DATA EXCHANGE**

- 5.1 Each Party agrees to service trunk groups to the blocking criteria listed in Section 3.0 above. Each party will attempt to service trunk groups in a timely manner when they have sufficient data to determine that the service objectives in Section 3.0 are not being met.
- 5.2 Each Party will make trunk group blockage information available to the other party by mechanized procedures. The existing exchange of data for Access Trunk Groups will be extended to provide data on all joint trunk groups.
- 5.3 Orders between the Parties to establish, add, change or disconnect trunks shall be processed by using an Access Service Request (ASR). XSPEDIUS will have administrative and order control for the purpose of issuing ASR's on two-way trunk groups.
- 5.4 Both Parties will jointly manage the capacity of Local Interconnection Trunk Groups. XSPEDIUS may send an ASR to trigger changes to the Local Interconnection Trunk Groups based on capacity assessment and to meet end user demand. SBC KANSAS shall send a Trunk Group Service Request (TGSR) to XSPEDIUS to trigger changes to the Local Interconnection Trunk Groups which exceed 65% capacity based on capacity assessment. The TGSR is a standard industry support interface developed by the Ordering and Billing Forum of the Carrier liaison Committee of

the Alliance for Telecommunications Solutions (ATIS) organization. TELCORDIA TECHNOLOGIES Special Report STS000316 describes the format and use of the TGSR. The Party receiving a complete and accurate ASR will issue a Firm Order Confirmation (FOC) within five (5) business days and, if requested on the ASR, a Design Layout Record (DLR) to the ordering Party within five (5) business days issuance of the FOC.

5.5 In a Blocking Situation:

5.5.1 In a blocking situation, a TGSR will be issued by SBC KANSAS when additional capacity is required to reduce measured blocking to objective design blocking levels based upon analysis of trunk group data. XSPEDIUS, upon receipt and review of a TGSR, in a blocking situation, will issue an ASR to SBC KANSAS within three (3) business days after receipt of the TGSR. XSPEDIUS will note "Service Affecting" on the ASR. These orders will be expedited.

## 6.0 TRUNK UNDERUTILIZATION

6.1 Underutilization of Local Interconnection Trunk Groups or Meet Point Trunk Groups exists when provisioned capacity is greater than the current need. The parties agree that this over provisioning is an inefficient deployment and use of network resources and results in unnecessary costs. Those situations where more capacity exists than actual usage requires will be handled in the following manner: This is talking about trunk underutilization not facilities.

6.1.1 If a trunk group is sixty-five percent (65%) of CCS capacity on a monthly average basis, for each month of any three (3) consecutive months period, either Party may request the issuance of an order to resize the trunk group, which shall be left with not less than thirty-five percent (35%) excess capacity. In all cases grade of service objectives shall be maintained.

6.1.2 SBC KANSAS may send a Trunk Group Service Request (TGSR) to XSPEDIUS to trigger changes to the Local Interconnection Trunk Groups or Meet Point Trunk Groups based on the capacity assessment. Upon receipt of a TGSR, XSPEDIUS will issue an Access Service Request (ASR) to SBC KANSAS within ten (10) business days after receipt of the TGSR subject to the following sections.

6.1.3 Upon review of the TGSR, if XSPEDIUS does not agree with the resizing, the Parties will schedule a joint planning discussion within twenty (20) business days. The Parties will meet to resolve and mutually agree to the disposition of the TGSR.

6.1.4 If SBC KANSAS does not receive an ASR, or if XSPEDIUS does not respond to the TGSR by scheduling a joint discussion within the twenty (20) business day period, SBC KANSAS will attempt to contact the XSPEDIUS to schedule a joint planning discussion. If the XSPEDIUS will not agree to meet within an additional ten (10) business days and present adequate reason for keeping trunks operational, SBC KANSAS will issue an ASR to resize the Local Interconnection Trunk Groups or Meet Point Trunk Groups.

6.2 In all cases except a blocking situation, XSPEDIUS, upon receipt and review of a TGSR will issue a complete and accurate ASR to SBC KANSAS.

6.2.1 Within ten (10) business days after receipt and review of the TGSR; or

6.2.2 At any time as a result of either Party's own capacity management assessment, in order to begin the provisioning process.

- 6.2.3 In a blocking situation or upon reasonable demonstration that blocking is likely if the order is not expedited every effort will be made to accommodate the request.
- 6.3 Projects require the coordination and execution of multiple orders or related activities between and among SBC KANSAS and XSPEDIUS work groups, including but not limited to the initial establishment of Local Interconnection or Meet Point Trunk Groups and service in an area, the introduction of a new switch or central offices, NXX code moves, re-homes, facility grooming, or network rearrangements.
- 6.3.1 Orders that comprise a project, shall be jointly planned and coordinated.
- 6.4 XSPEDIUS will be responsible for engineering its network on its side of the Point of Interconnection (POI). SBC KANSAS will be responsible for engineering its network on its side of the POI.
- 6.5 If one of the Parties is unable to or not ready to perform Acceptance Tests, or is unable to accept the Local Interconnection and Meet Point Trunk Groups by the due date, the Party will provide a requested revised service due date. If XSPEDIUS requests a service due date change which exceeds the 31 calendar days after the original due date, the ASR must be cancelled by the XSPEDIUS. Should the XSPEDIUS fail to cancel such an ASR, SBC KANSAS shall treat the ASR as if it were cancelled.
- 6.6 Trunk servicing responsibilities for OPERATOR SERVICES trunks used for stand-alone Operator Service or Directory Assistance are the sole responsibility of XSPEDIUS.
- 6.7 In the event that a Party requires trunk servicing within shorter time intervals than those provided for in this Appendix due to end user demand, such Party may designate its ASR as an "Expedite" and the other Party shall use best efforts to issue its FOC and DLR and install service within the requested interval.

## **7.0 SERVICING OBJECTIVE/DATA EXCHANGE**

- 7.1 Each Party agrees to service trunk groups in a timely manner to the Trunk Design Blocking Criteria as necessary to meet customer demand.
- 7.2 Exchange of traffic data enables each Party to make accurate and independent assessments of trunk group service levels and requirements. Parties agree to exchange this data and to work cooperatively to implement an exchange of traffic data utilizing FTP computer to computer file transfer process.

## **8.0 INSTALLATION, MAINTENANCE, TESTING AND REPAIR**

- 8.1 Where available and at the request of either Party, each Party shall cooperate to ensure that its trunk groups are configured utilizing the B8ZS ESF protocol for 64 kbps Clear Channel Capability (64CCC) transmission to allow for ISDN interoperability between the Parties' respective networks where it is currently deployed at the time of the request. Trunk groups configured for 64CCC and carrying Circuit Switched Data (CSD) ISDN calls shall carry the appropriate Trunk Type Modifier in the CLCI-Message code. Trunk groups configured for 64CCC and not used to carry CSD ISDN calls shall carry a different code that is appropriate for the Trunk Type Modifier in the CLCI-Message code.
- 8.2 SBC KANSAS will engineer all Local Interconnection Trunk Groups between SBC KANSAS and XSPEDIUS to a 6dB of digital pad configuration. Further, as of the date of the execution of this

Agreement, SBC KANSAS and XSPEDIUS will cooperatively work to identify and convert all existing Local Interconnection Trunk Groups to a 6dB of digital pad configuration.

- 8.3 Each Party will provide to the other test-line numbers (i.e., switch milliwatt numbers) and access to test lines.

8.3.1 Each Party will cooperatively plan and implement coordinated testing and repair procedures, which may include industry standard 105 and 108 tests, for the meet point and Local Interconnection trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner.

## **9.0 NETWORK MANAGEMENT**

### **9.1 Restrictive Controls**

Either Party may use protective network traffic management controls such as 7-digit and 10-digit code gaps set at appropriate levels on traffic toward each other's network, when required, to protect the public switched network from congestion due to facility failures, switch congestion, or failure or focused overload. XSPEDIUS and SBC KANSAS will immediately notify each other of any protective control action planned or executed.

### **9.2 Expansive Controls**

Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes will not be used to circumvent normal trunk servicing. Expansive controls will only be used when mutually agreed to by the Parties.

### **9.3 Mass Calling**

XSPEDIUS and SBC KANSAS shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes.

- 10.0** N11 codes (e.g., 411, 611, 911) shall not be sent between the Parties' networks over the Local Interconnection Trunk Groups. Where applicable (e.g., 911), separate trunk groups will be established to carry traffic associated with such codes.

- 11.0** With respect to Local Interconnection Trunk Groups, the originating Party shall be responsible for all Control Office functions for Local Interconnection Trunk Groups;

- 12.0** Each Party will issue ASRs for the trunk groups for which it has order control.

- 13.0** Both Parties will manage the capacity of Local Interconnection Trunk Groups.

13.1 Either Party may issue a Trunk Group Service Request (TGSR) to the other Party to trigger changes it desires to the other Party's Local Interconnection Trunk Groups, for which the other Party has order control, based on its capacity assessment. Within ten (10) business days after the receipt of the TGSR, the receiving Party will either issue an ASR to the other Party or will schedule a joint planning discussion to resolve and mutually agree to the disposition of the TGSR.

## **APPENDIX NETWORK INTERCONNECTION METHODS (NIM)**

This Appendix NIM to Attachment 11: Network Interconnection Architecture designates Network Interconnection Methods (NIM) to be used by the Parties to obtain interconnection. These include, but are not limited to: Fiber Meet Point Virtual Collocation; SONET Based; Physical Collocation; leasing of facilities from a third party; CLEC self-buildout; or other mutually agreeable methods of obtaining interconnection.

### **1.0 FIBER MEET POINT**

Fiber Meet Point between SBC KANSAS and CLEC can occur at any mutually agreeable, economically and technically feasible point between CLEC's premises and a SBC KANSAS tandem or end office. The Fiber Meet Point will be on a point-to-point linear chain SONET system over single mode fiber optic cable.

If Fiber Meet Point is the selected method for interconnection, Fiber Meet Point shall be used to provide interconnection trunking as defined in Appendix ITR to Attachment 11: Network Interconnection Architecture for trunk groups used to carry Section 251(b)(5)/IntraLATA Toll Traffic originating from an end user obtaining local dialtone from CLEC where CLEC is both the Section 251(b)(5) Traffic and IntraLATA Toll provider or IntraLATA Toll Traffic originating from an end user obtaining local dialtone from SBC KANSAS where SBC KANSAS is both the Section 251(b)(5) Traffic and IntraLATA Toll provider (hereinafter "Local Interconnection Trunk Groups").

Fiber Meet Point may interconnection trunking as defined in Appendix ITR to Attachment 11: Network Interconnection Architecture (NIA.)

#### **1.1 There are two basic mid-span interconnection designs:**

1.1.1 Design One: CLEC's fiber cable and SBC KANSAS' fiber cable are connected at an economically and technically feasible point between the CLEC location and the last entrance manhole at the SBC KANSAS central office.

1.1.1.1 The Parties may agree to a location with access to an existing SBC KANSAS fiber termination panel. In these cases, the network interconnection point (POI) shall be designated outside of the SBC KANSAS building, even though the CLEC fiber may be physically terminated on a fiber termination panel inside of a SBC KANSAS building. In this instance, CLEC will not incur fiber termination charges and SBC KANSAS will be responsible for connecting the cable to the SBC KANSAS facility.

1.1.1.2 The Parties may agree to a location with access to an existing CLEC fiber termination panel. In these cases, the network interconnection point (POI) shall be designated outside of the CLEC building, even though the SBC KANSAS fiber may be physically terminated on a fiber termination panel inside of a CLEC building. In this instance, SBC KANSAS will not incur fiber termination charges and CLEC will be responsible for connecting the cable to the CLEC facility.

1.1.1.3 If a suitable location with an existing fiber termination panel cannot be agreed upon, CLEC and SBC KANSAS shall mutually determine provision of a fiber termination panel housed in an outside, above ground cabinet placed at the physical POI. Ownership and the cost of provisioning the panel will be negotiated between the two parties.

1.1.2 Design Two: CLEC will provide fiber cable to the last entrance manhole at the SBC KANSAS tandem or end office switch with which CLEC wishes to interconnect. CLEC will provide a

sufficient length of fiber optic cable for SBC KANSAS to pull the fiber cable to the SBC KANSAS cable vault for termination. In this case the POI shall be at the manhole location.

1.1.2.1 Each Party is responsible for designing, provisioning, ownership and maintenance of all equipment and facilities on its side of the POI. Each Party is free to select the manufacturer of its Fiber Optic Terminal (FOT). Neither Party will be allowed to access the Data Communication Channel (DCC) of the other Party's FOT.

1.1.2.2 The fiber connection point shall occur at the following location:

1.1.2.2.1A manhole outside of the SBC KANSAS central office. In this situation, CLEC will provide sufficient fiber optic cable for SBC KANSAS to pull the cable into the SBC KANSAS cable vault for termination. The POI will be at the manhole and SBC KANSAS will assume maintenance responsibility for the fiber cabling from the manhole to the FDF.

1.2 Consistent with this Agreement, the Parties will mutually agree upon the precise terms of each Fiber Meet Point facility. These terms will cover the technical details of the Fiber Meet Point as well as other network interconnection, provisioning and maintenance issues.

1.3 The SBC KANSAS tandem or end office switch includes all SBC KANSAS FOT, multiplexing and fiber required to take the optical signal hand-off provided from CLEC for Local Interconnection Trunk Groups as outlined in Appendix ITR. This location is SBC KANSAS' responsibility to provision and maintain.

1.4 In a meet point arrangement, CLEC and SBC KANSAS will mutually agree on the capacity of the FOT(s) to be utilized. The capacity will be based on equivalent DS1s that contain Local Interconnection Trunk Groups. Each Party will also agree upon the optical frequency and wavelength necessary to implement the interconnection. The Parties will develop and agree upon methods for the capacity planning and management for these facilities, terms and conditions for over-provisioning facilities, and the necessary processes to implement facilities as indicated below. These methods will meet quality standards as mutually agreed to by CLEC and SBC KANSAS.

## **2.0 AVOIDANCE OF OVER-PROVISIONING**

Underutilization is the inefficient deployment and use of the network due to forecasting a need for more capacity than actual usage requires and results in unnecessary costs for SONET systems. To avoid over-provisioning, the Parties will agree to joint facility growth planning as detailed below.

## **3.0 JOINT FACILITY GROWTH PLANNING**

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

3.2 Criteria:

3.2.1 Investment is to be minimized;

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

### 3.3 Processes:

- 3.3.1 Discussions to provide relief to existing facilities will be triggered when either Party recognizes that the overall system facility (DS1s) is at 65% capacity.
- 3.3.2 Both Parties will perform a joint validation to ensure current trunks have not been over-provisioned. If any trunk groups are over-provisioned, trunks will be turned down as appropriate. If any trunk resizing lowers the fill level of the system below 65% the growth planning process will be suspended and will not be reinitiated until a 65% fill level is achieved. Trunk design blocking criteria described in Appendix ITR will be used in determining trunk group sizing requirements and forecasts.
- 3.3.3 If based on the forecasted equivalent DS1 growth, the existing fiber optic system is not projected to exhaust within one year, the Parties will suspend further relief planning on this interconnection until a date one year prior to the projected exhaust date. If growth patterns change during the suspension period, either Party may re-initiate the joint planning process;
- 3.3.4 If the placement of a minimum size FOT will not provide adequate augmentation capacity for the joint forecast over a two year period, and the forecast appears reasonable based upon history, the appropriately sized system shall be deployed at the outset. If the forecast indicates volume sufficient to justify a system larger than OC-3, SBC KANSAS shall provide such a system. If the forecast does not justify installing a system larger than OC-3, another minimally size system (such as on OC-3) should be placed. This criteria assumes both Parties have adequate fibers for either scenario. If adequate fibers do not exist, both Parties would negotiate placement of additional fibers.
- 3.3.5 Both Parties will negotiate a project service date and corresponding work schedule to construct relief facilities in an effort to achieve "just in time" deployment.
- 3.3.6 The joint planning process/negotiations should be completed within two months of identification of 70% fill.

## 4.0 VIRTUAL COLLOCATION

The description of Virtual Collocation is contained in SBC KANSAS' Virtual Collocation tariffs (i.e., SBC KANSAS' Tariff F.C.C. No. 73 and SBC KANSAS' Kansas Virtual Collocation Tariff).

## 5.0 SONET-BASED

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

## 6.0 PHYSICAL COLLOCATION

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

## **7.0 LEASING OF FACILITIES FROM A THIRD PARTY OR CLEC SELF-BUILDOUT**

- 7.1 CLEC's leasing of facilities from a Third Party Carrier or self-buildout for purposes of Attachment 11: Network Interconnection Architecture shall be up to the discretion of CLEC.

## **8.0 INTENTIONALLY LEFT BLANK**

## **9.0 INTENTIONALLY LEFT BLANK**

- 9.1 Intentionally Left Blank

- 9.2 Intentionally Left Blank

- 9.3 Third Party Facilities – where SBC KANSAS utilizes the facilities provided by a source other than itself or XSPEDIUS. SBC KANSAS shall comply with industry standards to maintain network integrity and will be solely responsible for any charges or fees assessed by the third party for use of its facilities.

- 9.4 Intra-building Interconnection – subject to the mutual agreement of the Parties, where both Parties have a presence within a central office building (e.g., a condominium arrangement, point of presence or POP hotel) or between two adjacent central office buildings utilizing an intra-building cable.

## ATTACHMENT 12: INTERCARRIER COMPENSATION

### 1.0 INTRODUCTION

SBC KANSAS agrees to comply with all generic Kansas Commission reciprocal compensation decisions regarding internet service traffic, including but not limited to Docket 00-GIMT-1054-GIT, subject to the final outcome of appeals of those decisions and the reciprocal compensation selected by the CLEC under this Agreement. Both parties, however, reserve all rights to contest any order or decision requiring the payment of reciprocal compensation for internet service traffic, including the right to seek refunds or to implement a new system of reciprocal compensation, pursuant to regulatory or judicial approval in accordance with the intervening law provisions in the General Terms and Conditions. Nothing in this Attachment shall constitute an admission by SBC KANSAS that ISP-Bound Traffic (as defined in Section 1.2) is in fact Section 251(b)(5) Traffic (as defined below) subject to reciprocal compensation under the 1996 Federal Telecommunications Act.

- 1.1 For purposes of compensation under this Agreement, the telecommunications traffic traded between CLEC and SBC KANSAS will be classified as either Section 251(b)(5) Traffic (including Local Traffic), ISP-Bound Traffic, Transit Traffic, IntraLATA Interexchange Traffic, Meet Point Billing, FX Traffic (Virtual, Dedicated and FX-type), or Cellular Traffic.

The Parties agree that, notwithstanding the classification of traffic under this Agreement, either Party is free to define its own "local" calling area(s) for purposes of its provision of telecommunications services to its end users. The provisions of this Attachment apply to calls originated over the originating carrier's facilities or over Unbundled Network Elements, as defined in this Agreement. The provisions of this Attachment do not apply to traffic originated over services provided under local Resale service.

- 1.2 Calls originated by CLEC's end users and terminated to SBC KANSAS' end users (or vice versa) will be classified as Section 251(b)(5) Traffic" under this Agreement and subject to reciprocal compensation if the call: (i) originates and terminates to such end-users in the same SBC KANSAS exchange area; or (ii) originates and terminates to such end-users within different SBC KANSAS Exchanges that share a common mandatory local calling area, as defined in SBC KANSAS' tariff, e.g., mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other like types of mandatory expanded local calling scopes. Calls originated by SBC KANSAS' end users and terminated to an ISP served by a CLEC (or vice versa) will be classified as compensable "ISP-Bound Traffic" in accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) (FCC ISP Compensation Order") .
- 1.3 CLEC may establish its own local calling areas or prices for purpose of retail telephone service offerings.
- 1.3.1 Pursuant to the Kansas Commission Arbitration Award in Docket No. 05-BTKT-365-ARB, to the extent that Section 251(b)(5) Traffic is provisioned via an FX-type arrangement, such traffic is subject to the rates set forth in Section 3.0 if Option 1 is elected; the rates set forth in Section 1.6.1.2 if Option 2 is elected; or will be subject to a bill and keep arrangement if Option 3 is elected.
- 1.3.1.1 To the extent that ISP-Bound Traffic is provisioned via an FX-type arrangement, such traffic is subject to the FCC's Interim ISP Terminating Compensation Plan Rate as contained below in Section 1.5.2.2 if Option 1 is elected, the rated contained in Section 1.6.1.2 if Option 2 is elected; or will be subject to a bill and keep arrangement if Option 3 is elected.

- 1.3.2 Foreign Exchange (FX) services are retail service offerings purchased by FX customers which allow such FX customers to obtain exchange service from a mandatory local calling area other than the mandatory local calling area where the FX customer is physically located. FX service enables particular end-user customers to avoid what might otherwise be toll calls between the FX customer's physical location and customers in the foreign exchange. There are two types of FX service:
- 1.3.2.1 "Dedicated FX Traffic" shall mean those calls routed by means of a physical, dedicated circuit delivering dial tone or otherwise serving an end user's station from a serving Central Office (also known as End Office) located outside of that station's mandatory local calling area. Dedicated FX Service permits the end user physically located in one exchange to be assigned telephone numbers resident in the serving Central (or End) Office in another, "foreign," exchange, thereby creating a local presence in that "foreign" exchange.
- 1.3.2.2 "Virtual Foreign Exchange (FX) Traffic" and "FX-type Traffic" shall refer to those calls delivered to telephone numbers that are rated as local to the other telephone numbers in a given mandatory local calling area, but where the recipient end user's station assigned that telephone number is physically located outside of that mandatory local calling area. Virtual FX Service also permits an end user physically located in one exchange to be assigned telephone numbers resident in the serving Central (or End) Office in another, "foreign," exchange, thereby creating a local presence in the "foreign" exchange. Virtual FX Service differs from Dedicated FX Service, however, in that Virtual FX end users continue to draw dial tone or are otherwise served from a Central (or End) Office which may provide service across more than one Commission-prescribed mandatory local calling area, whereas Dedicated FX Service end users draw dial tone or are otherwise served from a Central (or End) Office located outside their mandatory calling area.
- 1.3.3 "FX Telephone Numbers" (also known as "NPA-NXX" codes) shall be those telephone numbers with different rating and routing points relative to a given mandatory local calling area.
- 1.4 With respect to CLEC's rights and obligations concerning CLEC and SBC KANSAS termination of wireline traffic, CLEC shall select one of the three options set forth below upon execution of this Agreement by making a designation on the signature page of the General Terms and Conditions of the Agreement. If CLEC fails to select one of the billing options identified below upon execution of this Agreement on the signature page in the General Terms and Conditions, Option 2 shall automatically apply as the default billing option, for the duration of the Agreement. CLEC may modify the default billing option made at the time of execution of this Agreement by providing advance written notice to SBC Kansas within thirty (30) days of execution of this Agreement. CLEC will operate pursuant to the provisions of the billing option elected at the time of execution of this Agreement until the 31st day of receipt of such written notice, at which time the rate terms and condition of the new option election will become effective. The parties will work cooperatively to amend the Agreement to reflect the new billing option elected within sixty (60) days of written notification. CLEC may choose a different option if this Agreement is subsequently amended by SBC KANSAS pursuant to the Change In Law provisions of this Agreement. CLEC may amend Agreement to make a one-time election to modify its initial option selection made upon execution of this Agreement. CLEC will operate pursuant to the provisions of the option elected at the time of execution of this Agreement until such amendment is approved by the Commission
- 1.4.1 Option 1: The rates, terms and conditions for compensation (except those pertaining to Option 3) for Section 251(b)(5) Traffic contained below in Section 3.0 and the FCC's interim ISP terminating compensation rate plan for ISP Bound Traffic as contained below in Section 1.5; or
- 1.4.2 Option 2: Exchange all ISP-Bound Traffic and All Section 251(b)(5) Traffic at the FCC's Interim ISP Terminating Compensation Plan Rate as contained below in Section 1.6; or

- 1.4.3 Option 3: A reciprocal compensation arrangement for the transport and termination of wireline Section 251(b)(5) Traffic and ISP-Bound Traffic, based upon a long-term Bill and Keep arrangement. "Bill and Keep" refers to an arrangement in which neither of the two interconnecting parties charges each other for terminating traffic that originates on the other network. Each Party may recover the cost of both originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party from its end users as it deems necessary. With this option, Parties agree to use SS7 interconnection and the terms and conditions as more particularly described in Section 1.7 below.
- 1.5 Contract Rates for Section 251(b)(5) Traffic and FCC's Interim ISP Terminating Compensation Plan rate for ISP-Bound Traffic (Option 1)
- 1.5.1 The CLEC may elect to take the rates, terms, and conditions for Section 251(b)(5) Traffic contain in Section 3.0 of this Attachment, and the rates, terms and conditions for ISP-Bound Traffic in Sections 1.5.2 through 1.5.5 which are based on the FCC ISP Compensation Order.
- 1.5.2 Intercarrier Compensation Rate for ISP-Bound Traffic:
- 1.5.2.1 The rates, terms, conditions in this Section 1.5 apply only to the termination of ISP-Bound Traffic. ISP-Bound Traffic is subject to the rebuttable presumption stated below.
- 1.5.2.2 For traffic exchanged after the effective date of this Agreement, the Parties agree to compensate each other for ISP-Bound Traffic on a minute of use basis at \$.0007 per minute of use.
- 1.5.2.3 Payment of Reciprocal Compensation on ISP-Bound Traffic will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch.
- 1.5.3 INTENTIONALLY OMITTED
- 1.5.4 INTENTIONALLY OMITTED
- 1.5.5 ISP-Bound Traffic Rebuttable Presumption

In accordance with Paragraph 79 of the FCC's ISP Compensation Order, CLEC and SBC KANSAS agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between CLEC and SBC KANSAS exceeding a 3:1 terminating to originating ratio is presumed to be ISP-Bound Traffic subject to the compensation and growth cap terms in this Section 1.5. Either Party has the right to rebut the 3:1 ISP-Bound Traffic presumption by identifying the actual ISP-Bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission approval and, in addition, shall be utilized to determine the appropriate true-up as described below. During the pendency of any such proceedings to rebut the presumption, CLEC and SBC KANSAS will remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in Section 1.5.2.2 for traffic above the ratio) subject to a true-up upon the conclusion of such proceedings. Such true-up shall be retroactive back to the date a Party first sought appropriate relief from the Commission.

- 1.5.6 For combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties which does not exceed a 3:1 terminating to originating ratio as set forth in Section 1.5.5 above, such traffic shall be

defined as "In-Balance" traffic. Each party will invoice the other party on a monthly basis for such "In-Balance" traffic at the reciprocal compensation rates set forth in Section 3.0 for Section 251(b)(5) Traffic.

- 1.5.7 For combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties exceeding a 3:1 terminating to originating ratio as set forth in Section 1.5.5 above, such traffic shall be defined as "Out-of-Balance" traffic. The Carrier whose traffic is "Out-of-Balance" will, on a monthly basis, calculate the amount of traffic that will be invoiced as follows: (1) for Section 251(b)(5) traffic, the rates shall be the reciprocal compensation rates set forth in Section 3.0; (2) for ISP-Bound Traffic, the rates shall be the FCC's interim ISP terminating compensation rates set forth in Section 1.5.2.2, until the Growth Cap and/or New Market Bill and Keep arrangement apply if Option one is elected. At such time that Bill and Keep for ISP-Bound Traffic applies, the Carrier whose traffic is "Out-of-Balance" will be responsible for segregating the Bill and Keep traffic from other compensable traffic as outlined in Section 1.5.3.2 above.

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

The CLEC may elect to take the rates, terms, and conditions contained in this Attachment in Section 1.6. 1 through 1.6.5 for all ISP-Bound Traffic and Section 251(b)(5) Traffic.

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

- 1.6.1.1 The rates, terms, conditions in Sections 1.6.1 through 1.6.4 apply to the termination of all ISP-Bound Traffic and all Section 251(b)(5) Traffic. ISP-Bound Traffic is subject to the rebuttable presumption.

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

- 1.6.1.3 Under Option 2, Payment of Intercarrier Compensation on ISP-Bound Traffic and Section 251(b)(5) Traffic will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch.

- 1.6.2 INTENTIONALLY OMITTED

- 1.6.3 INTENTIONALLY OMITTED

- 1.6.4 ISP-Bound Traffic Rebuttable Presumption

In accordance with Paragraph 79 of the FCC's ISP Compensation Order, CLEC and SBC KANSAS agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between CLEC and SBC KANSAS exceeding a 3:1 terminating to originating ratio is presumed to be ISP-Bound Traffic subject to the compensation and growth cap terms in this Section 1.6. Either party has the right to rebut the 3:1 ISP presumption by identifying the actual ISP-Bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission approval and, in addition, shall be utilized to determine the appropriate true-up as described below. During the pendency of any such proceedings to rebut the presumption, CLEC and SBC KANSAS will remain obligated to pay the presumptive rates.

- 1.6.5 Each party will invoice the other party on a monthly basis for Section 251(b)(5) Traffic and ISP-Bound Traffic at the rates set forth in Section 1.6.1.2 if Option two is elected.

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

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

- 1.7.1 The Parties agree that Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties will be subject to Bill and Keep as the method of intercarrier compensation provided that Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties is in balance within +/-5% of equilibrium (50%).
- 1.7.1.1 The calculation for determining whether traffic is in balance will be based on the difference between the total Section 251(b)(5) Traffic and ISP-Bound Traffic originated by each Party's end users terminated to the other Party's End Users, divided by the sum of both Parties' end users' terminated Section 251(b)(5) Traffic, and ISP-Bound Traffic multiplied by 100.
- 1.7.2 The Parties agree that where Section 251(b)(5) Traffic and ISP-Bound Traffic is determined to be out-of-balance by more than 5% per month for three (3) consecutive months, CLEC shall change its election and designate Option 1 or Option 2 for all Section 251(b)(5) Traffic and ISP-Bound Traffic.
- 1.7.3 INTENTIONALLY OMITTED
- 1.7.4 INTENTIONALLY OMITTED
- 1.7.4.1 In the event that either Party disputes whether its Section 251(b)(5) Traffic and ISP-Bound Traffic is in balance the Parties agree to work cooperatively to reconcile the inconsistencies in their usage data.
- 1.7.4.2 Should the Parties be unable to agree on the amount and balance of Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between their End Users, either Party may invoke the dispute resolution procedures under this Agreement. In the event that dispute resolution procedures results in the calculations being delayed, the reciprocal compensation rates will apply retroactively to the date such reciprocal compensation were applicable under Sections 1.7.4. and 1.7.5.
- 1.7.5 Upon reasonable belief that traffic other than wireline Section 251(b)(5) Traffic defined in Section 1.0 and ISP-Bound Traffic as defined in Section 1.2 of this Attachment is being terminated under this long-term local Bill and Keep arrangement, either Party may request a meeting to confirm the jurisdictional nature of traffic delivered as Bill and Keep. Parties will consult with each other to attempt to resolve issues without the need for an audit. Should no resolution be reached within 60 days, an audit may be requested and will be conducted by an independent auditor under an appropriate non-disclosure agreement. Only one audit may be conducted by each Party within a six-month period.
- 1.7.6 The auditing Party will pay the audit costs unless the audit reveals the delivery of a substantial amount of traffic originating from a party in this Agreement other than wireline Section 251(b)(5) Traffic and ISP-Bound Traffic for termination to the other party under the long term local Bill and Keep arrangement. In the event

the audit reveals a substantial amount of traffic other than Section 251(b)(5) Traffic and ISP-Bound Traffic, the Party delivering such traffic will bear the cost of the audit and will pay appropriate compensation for such traffic with interest at the commercial paper rate as referenced in 9.1 of the General Terms and Conditions of this Agreement.

- 1.7.7 The Parties will consult and negotiate in good faith to resolve any issues of accuracy or integrity of data collected, generated, or reported in connection with audits or otherwise.
- 1.7.8 The audit provisions set out in Sections 1.7.6 through 1.7.8 above do not alter or affect audit provisions set out elsewhere in this Agreement.

## **2.0 RESPONSIBILITIES OF THE PARTIES**

- 2.1 Each Party will include in the information transmitted to the other for each call being terminated on the other's network (where technically available to the transmitting party), the originating Calling Party Number (CPN). For all traffic originated on a Party's network including, without limitation, Interexchange Switched Access Traffic, and wireless traffic, such Party shall provide CPN as defined in 47 C.F.R. § 64.1600(c) ("CPN") in accordance with Section 2.5. In addition, each Party agrees that it shall not strip, alter, modify, add, delete, change, or incorrectly assign any CPN. CPN shall, at a minimum, include information that accurately reflects the physical location of the end user that originated and/or dialed the call, when including such information is technically feasible. If either party identifies improper, incorrect, or fraudulent use of local exchange services (including, but not limited to PRI, ISDN and/or Smart Trunks), or identifies stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned CPN, the Parties agree to cooperate with one another to investigate and take corrective action.
- 2.2 If one Party is passing CPN but the other Party is not properly receiving information, the Parties will work cooperatively to correct the problem.
- 2.3 For traffic which is delivered by one Party to be terminated on the other Party's network, if the percentage of such calls passed with CPN is greater than ninety percent (90%), all calls delivered by one Party to the other for termination without CPN will be billed as either Section 251(b)(5) Traffic or IntraLATA Toll Traffic in direct proportion to the total MOUs of calls delivered by one Party to the other with CPN. If the percentage of calls passed with CPN is less than 90%, all calls delivered by one Party to the other without CPN will be billed as Intrastate IntraLATA Toll Traffic.
- 2.4 CLEC has the sole obligation to enter into a compensation agreement with third party carriers that CLEC originates traffic to and terminates traffic from, including traffic either originated or terminated to a CLEC end-user served by CLEC using an SBC KANSAS non-resale offering whereby SBC KANSAS provides the end office switching on a wholesale basis. In no event will SBC KANSAS have any liability to CLEC or any third party if CLEC fails to enter into such compensation arrangements. In the event that traffic is exchanged with a third party carrier with whom CLEC does not have a traffic compensation agreement, CLEC will indemnify, defend and hold harmless SBC KANSAS against any and all losses including without limitation, charges levied by such third party carrier. The third party carrier and CLEC will bill their respective charges directly to each other. SBC KANSAS will not be required to function as a billing intermediary, e.g., clearinghouse. SBC KANSAS may provide information regarding such traffic to other telecommunications carriers or entities as appropriate to resolve traffic compensation issues.

## **3.0 RECIPROCAL COMPENSATION FOR TERMINATION OF SECTION 251(B)(5) TRAFFIC**

- 3.1 If Option 1 is elected by the CLEC, in accordance with Section 1.5 of this Attachment, the compensation set forth below will apply to all Section 251(b)(5) Traffic as defined in Section 1.0 of this Attachment.
- 3.2 Applicability of Rates:
  - 3.2.1 The rates, terms, conditions in this Section 3.0 apply only to the termination of Section 251(b)(5) Traffic except as explicitly noted.
  - 3.2.2 The Parties agree to compensate each other for the termination of Section 251(b)(5) Traffic on a minute of use (MOU) basis. The following rate elements apply, but the corresponding rates are shown in Appendix Pricing:
- 3.3 Rate Elements:
  - 3.3.1 Tandem Served rate elements are applicable to Tandem Routed Traffic on a terminating MOU basis and includes compensation for the following sub-elements:
    - 3.3.2 Tandem Switching - compensation for the use of tandem switching only, consisting of a duration (per minute) rate element
    - 3.3.3 Tandem Transport - compensation for the transmission facilities between the local tandem and the end offices subtending that tandem consisting of a transport termination (per minute) rate element and transport facility mileage (per minute, per mile) rate element
  - 3.3.4 End Office Switching - compensation for the local end office switching and line termination necessary to complete the transmission in an end office serving arrangement consisting of a duration (per minute) rate element.
- 3.4 Intercarrier Compensation for Wholesale Local Switching Traffic
  - 3.4.1 Where CLEC provides service to an CLEC end user using any combination of Network Elements that utilizes an SBC KANSAS non-resale offering whereby SBC KANSAS provides the end office switching on a wholesale basis, CLEC will deal directly with a third party carrier for purposes of reciprocal compensation. The following reciprocal compensation terms (unless CLEC is operating under Option 3) shall apply in all cases where CLEC purchases an SBC KANSAS non-resale offering whereby SBC KANSAS provides the end office switching on a wholesale basis. These terms and conditions are in addition to the terms and conditions outlined in Attachment 6. SBC KANSAS is required to provide CLEC with timely, complete and correct information to enable CLEC to meet the requirements of this section.
    - 3.4.1.1 For intra-switch Section 251(b)(5) Traffic and ISP-Bound Traffic where CLEC has purchased an SBC KANSAS non-resale offering whereby SBC KANSAS provides the end office switching on a wholesale basis, the Parties agree to impose no call termination charges pertaining to reciprocal compensation on each other.
    - 3.4.1.2 For interswitch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between SBC KANSAS end users and CLEC's end users where CLEC utilizes an SBC KANSAS non-resale offering whereby SBC KANSAS provides the end office switching on a wholesale basis, the Parties agree to compensate each other for the termination of such traffic at: (i) the FCC Plan rate specified in Section 1.7.2.2 for the transport and termination of Section 251(b)(5) Traffic, including ISP-Bound Traffic, if Option 2 is elected by CLEC; or (ii) the End Office Switch rate set forth in Appendix Pricing and as specified in Section 1.4.2.2 for the

transport and termination of Section 251(b)(5) Traffic, excluding ISP-Bound Traffic and the FCC Plan rate set forth in Section 1.7.8.2 for the transport and termination of ISP-Bound Traffic if Option 1 is elected.

#### **4.0 TANDEM INTERCONNECTION RATE APPLICATION**

- 4.1 Transport and termination rates may vary according to whether the traffic is routed through a tandem switch or directly to an end office switch. If Option 1 or 2 is in effect, the transport and termination rates assessed on the originating carrier shall reflect the functions performed by the terminating carrier in transporting and terminating the calls. Where the terminating party utilizes a tandem switch, or a switch that is capable of serving a geographic area comparable to the area served by an SBC KANSAS tandem switch, the compensation rate for Local Traffic terminated to the party's tandem switch shall consist of the summation of the rates for tandem switching, tandem transport and end office switching as listed in Section 3.3 above.
- 4.2 Should disputes arise regarding whether CLEC's switch is capable of serving a geographic area comparable to the area served by an SBC KANSAS tandem switch, the Parties shall utilize the Dispute Resolution procedures in this Agreement to resolve the dispute.

#### **5.0 OTHER TELECOMMUNICATIONS TRAFFIC**

- 5.1 The Parties recognize and agree that could also be traded outside of the applicable local calling scope, or routed in ways that could make the rates and rate structure in Options 1, 2, and/or 3 above not apply to calls that fit the definitions of:

- IntraLATA Interexchange Traffic
- 800, 888, 877, ("8YY") Traffic
- Feature Group A Traffic
- Feature Group D Traffic

- 5.2 The Parties agree that, for the purposes of this Attachment, either Party's end users remain free to place calls on a "Non-Local" basis under any of the above classifications. The applicable rates, terms and conditions for "8YY" Traffic, Feature Group A Traffic, Feature Group D Traffic, IntraLATA and/or InterLATA Traffic, whichever is applicable, shall apply.

#### **6.0 TRANSIT TRAFFIC COMPENSATION**

- 6.1 Transit Traffic is a switching and transport function only, which allows one Party (originating Party) to send Local Traffic, as defined in Section 1.1, to a third party network through the other Party's tandem and/or transport facilities (tandem Party). The Transit Rate set forth below is charged by the tandem Party to the originating Party on a MOU basis. The Transit Rate element is only applicable when calls do not terminate to the tandem Party's End User.
- 6.2 Where the Transit Provider is sent CPN by the originating carrier, the Transit Provider will send the original and true CPN to the terminating Party. Except as provided in Section 9, below, terminating carriers shall be required to directly bill third parties that originate calls and send traffic over Transiting Carrier's network.
- 6.3 In the event one Party originates traffic that transits the other Party's network to reach a third party telecommunications carrier with whom the originating Party does not have a traffic interexchange agreement, then the originating Party will indemnify the transiting Party for any lawful charges that any

terminating third-party carrier imposes or levies on the transiting Party for the delivery or termination of such traffic.

- 6.4 Unless otherwise provided in this Agreement, neither the terminating party nor the tandem provider will be required to function as a billing intermediary, e.g. clearinghouse.
- 6.5 Subject to section 9 below, CLEC shall not bill SBC KANSAS for terminating any Transit traffic, whether identified or unidentified, i.e. whether SBC KANSAS is sent CPN or is not sent CPN by the originating company. However, in the event CLEC indicates to SBC KANSAS that unidentified transit traffic volume has become significant, SBC KANSAS agrees to work with CLEC to explore alternatives and to devise a jointly agreed approach to minimizing the amount of unidentified transit traffic.
- 6.6 The transit rate above shall also apply in the case of Local Traffic originated in third party ILEC exchange areas that traverses the SBC KANSAS Tandem Office Switch and terminates in other third party exchange areas, providing the other LEC exchanges share a common mandatory local calling area with all SBC KANSAS exchanges included in a metropolitan exchange.

Transit Compensation	
Transit Rate (tandem switching + common transport termination + 7 X Common Transport Facility/mile)	
Zone 3 (Urban)	\$0.000953 (1)
Zone 2 (Suburban)	\$0.000981 (1)
Zone 1 (Rural)	\$0.001027 (1)
Tandem Switching	\$0.000789 (1)
Common Transport Termination Facility/mile (multiply this by 7 to develop average transit rate)	
Zone 3 (Urban)	\$0.000007 (1)
Zone 2 (Suburban)	\$0.000021 (1)
Zone 1 (Rural)	\$0.000042 (1)
Common Transport Termination MOU	
Zone 3 (Urban)	\$0.000157 (1)
Zone 2 (Suburban)	\$0.000171 (1)
Zone 1 (Rural)	\$0.000196 (1)

- 6.7 Compensation for Termination of Optional Calling Area Service Traffic
- 6.7.1 Compensation for Optional Calling Area (OCA) Traffic, (also known as Optional Extended Area Service and Optional EAS) is for the termination of intercompany traffic to and from the Commission approved one-way or two-way optional exchanges(s) and the associated metropolitan area except mandatory extended traffic as addressed in Sections 1.2 above.

- 6.7.2 In the context of this Appendix, Optional Calling Areas (OCAs) in the state of Kansas is outlined in the applicable state Local Exchange tariffs. This rate is independent of any retail service arrangement established by either Party. CLEC is not precluded from establishing its own local calling areas or prices for purposes of retail telephone service; however the terminating rates to be used for any such offering will still be administered as described in this Appendix.
- 6.7.3 The Optional EAS Transit Rate and *OCA Transport and Termination rates are outlined in Appendix Pricing.*
- 6.7.4 When a CLEC utilizes an SBC KANSAS non-resale offering whereby SBC KANSAS provides the end office switching on a wholesale basis, to provide services associated with a telephone number with a NXX which has an expanded 2-way area calling scope (EAS) in a SBC KANSAS end office, CLEC will pay the charge contained in Appendix Pricing labeled "EAS Port Additive per MOU". The additives to be paid by CLEC to SBC KANSAS are \$0.024 per MOU for toll-free calls made by a SBC KANSAS customer from a metro exchange to an exchange contiguous to a metro exchange and \$0.0355 per MOU for toll free calls made by a SBC KANSAS customer to CLEC's optional 2-way EAS customer for contiguous exchanges other than those contiguous to a metro exchange within the scope of the 2-way calling area. These additives will apply in addition to cost-based transport and termination rates for Optional EAS service set forth in the Appendix Pricing.

## **7.0 INTENTIONALLY OMITTED**

## **8.0 COMPENSATION FOR TERMINATION OF INTRALATA INTEREXCHANGE TOLL TRAFFIC**

- 8.1 IntraLATA Interexchange Traffic, not considered EAS Traffic and carried on the jointly-provided ILEC network, is considered as IntraLATA Toll Traffic and is subject to tariff access charges. Billing arrangements are outlined in Section 11.
- 8.2 Compensation for the termination of this traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge, as set forth in each Party's intrastate access service tariff.
- 8.3 For interstate IntraLATA service, compensation for terminating of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge, as set forth in each Party's interstate access service tariff.

## **9.0 COMPENSATION FOR ORIGATION AND TERMINATION OF SWITCHED ACCESS SERVICE TRAFFIC TO OR FROM AN INTEREXCHANGE CARRIER (IXC) (MEET-POINT BILLING (MPB) ARRANGEMENTS)**

- 9.1 For interLATA traffic and intraLATA traffic, compensation for termination of intercompany traffic will be at access rates as set forth in each Party's own applicable interstate or intrastate access tariffs.
- 9.2 The Parties will establish MPB arrangements in order to provide Switched Access Services to Interexchange Carriers via a Party's access tandem switch, in accordance with the MPB guidelines adopted by and contained in the Ordering and Billing Forum's MECOD and MECAB documents. Except as modified herein, MPB will be determined during joint network planning.
- 9.3 The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.

- 9.4 As detailed in the MECAB document, the Parties will exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Access Services jointly handled by the parties via the MPB arrangement. The Parties will exchange the information in Exchange Message Interface (EMI) format or via a mutually acceptable electronic file transfer protocol. Where the EMI records cannot be transferred due to a transmission failure, records can be provided via a mutually acceptable medium. The exchange of Access Usage Records ("AURs") to accommodate meet point billing will be on a reciprocal, no charge basis. Each Party agrees to provide the other Party with AURs based upon mutually agreed upon intervals. Each Party will act as the Official Recording Company for switched Access usage when it is jointly provided between the Parties. As described in the MECAB document, the Official Recording Company for tandem routed traffic is: (1) the end office company for originating traffic, (2) the tandem company for terminating traffic and (3) the SSP company for originating 800 traffic
- 9.5 Initially, billing to interexchange carriers for the Switched Access Services jointly provided by the parties via the MPB arrangement will be according to the multiple bill single tariff method. As described in the MECAB document each Party will render a bill in accordance with its tariff for its portion of the service. Each Party will bill its own network access service rates to the IXC. The residual interconnection charge (RIC), if any, will be billed by the Party providing the End Office function.
- 9.6 MPB will also apply to all jointly provided traffic bearing the 900, 800 and 888 NPAs or any other non-geographical NPAs which may likewise be designated for such traffic where the responsible party is an IXC.

#### **10.0 INTENTIONALLY OMITTED**

#### **11.0 BILLING ARRANGEMENTS FOR TERMINATION OF SECTION 251(B)(5) TRAFFIC, ISP-BOUND TRAFFIC AND INTRALATA TOLL TRAFFIC**

- 11.1 In SBC KANSAS each Party, unless otherwise agreed, will calculate terminating interconnection minutes of use based on standard switch recordings made within the terminating carrier's network for Section 251(b)(5) Traffic, ISP-Bound Traffic and IntraLATA Toll Traffic. These terminating recordings are the basis for each Party to generate bills to the originating carrier.
- 11.1.1 Where a terminating CLEC is not technically capable of billing the originating carrier through the use of terminating records, SBC KANSAS will provide terminating CLEC the appropriate call records that will allow the terminating CLEC the ability to directly bill the proper intercarrier compensation charges to the originating carrier.
- 11.1.2 Where CLEC is using terminating recordings to bill intercarrier compensation, SBC KANSAS will provide the terminating Category 11-01-XX records by means of the Daily Usage File (DUF) to identify traffic that originates from an end user being served by a third party telecommunications carrier using an SBC KANSAS non-resale offering whereby SBC KANSAS provides the end office switching on a wholesale basis. Such records will contain the Operating Company Number (OCN) of the responsible LEC that originated the calls which CLEC may use to bill such originating carrier for MOUS terminated on CLEC's network.
- 11.2 ISP-Bound Traffic will be calculated using the 3:1 Presumption as outlined in Sections 1.5.5 and 1.6.4 above.

- 11.3 The measurement of minutes of use over Local Interconnection Trunk Groups shall be in actual conversation seconds. The total conversation seconds over each individual Local Interconnection Trunk Group will be totaled for the entire monthly bill and then rounded to the next whole minute.
- 11.4 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) consecutive months of prior usage data.
- 12.0 INTENTIONALLY OMITTED**
- 13.0 INTENTIONALLY OMITTED**

## APPENDIX COLLOCATION

- 1.0** SBC KANSAS will provide caged, shared caged, common caged, cageless, and other physical collocation arrangements within its Eligible Structures, and where space is Legitimately Exhausted inside an Eligible Structure, SBC KANSAS will provide adjacent space for on-site collocation, and interconnection facilities to access unbundled network elements through adjacent off-site collocation, for physical collocation as set forth in Section 2 of the Kansas Local Access Tariff entitled "Physical Collocation."
- 2.0** In addition, SBC KANSAS will provide virtual collocation wherein SBC KANSAS maintains and repairs the collocation equipment consistent with the terms of Section 3 of the Kansas Local Access Tariff entitled "Virtual Collocation." In CEVs, huts and cabinets where physical collocation space is not available, the Collocator may opt for virtual collocation where the Collocator maintains and repairs the virtually collocated equipment consistent with the terms of the Kansas Local Access Tariff. SBC KANSAS may, at its option, elect to offer this maintenance alternative in one or more of its central offices, and in one or more of its CEVs, huts and cabinets where physical collocation space is available consistent with the terms of the Kansas Local Access Tariff.
- 3.0** CLEC shall be permitted, at its option, to place its own NEBS-compliant mini-BDFB in its physical collocation space, for purposes of managing power distribution.
- 4.0 TRACKING AND BILLING CLEC'S POWER USAGE**
- 4.1** CLEC represents and warrants that it at no time will draw more than 50% of the combined total capacity of the DC power leads (in amperes or "AMPs") provided by SBC KANSAS for a collocation arrangement (the combined total capacity being the aggregate capacity of both leads for that collocation arrangement, including all "A" AMPs and all "B" AMPs). Based upon CLEC's representation and warranty, SBC shall bill CLEC for DC collocation power consumption and HVAC as follows:
- (a) For DC collocation power consumption, a monthly recurring rate of \$10.61 per AMP applied to fifty percent (50%) of the total capacity ordered and provisioned per the collocation application, and
  - (b) For HVAC, a monthly recurring rate of \$14.62 per 10 AMPs, applied to fifty percent (50%) of the total provided capacity.
- By way of example, where SBC KANSAS has provisioned two (2) twenty (20) AMP DC power leads [for a combined total capacity of forty (40) AMPs], SBC shall bill the CLEC the monthly recurring DC Power Consumption charge of \$10.61 per AMP for a total of twenty (20) AMPs (i.e., \$212.20 per month), and SBC KANSAS shall bill CLEC the monthly recurring HVAC charge of \$14.621 per-each-ten (10) AMPs applied against twenty (20) AMPs (i.e., \$29.24 per month).
- 4.1.1** SBC KANSAS has the right to periodically inspect and/or, using non-intrusive methods, to test the amount of DC power CLEC actually draws. In the event CLEC is found to have breached the representation and warranty set forth in paragraph 4.1, the Parties shall resolve the issue using the dispute resolution procedures applicable to this Agreement.
- 4.2** Notwithstanding Section 4.1, at CLEC's option, power measuring units (PMUs) or meters will be installed on the BDFBs in CLEC's collocation space. These PMUs will be used to measure CLEC's actual power usage for the collocation space, for purposes of SBC KANSAS billing.
- 4.2.1** Measurements of CLEC's actual power usage shall be taken once each quarter at each of CLEC's collocation arrangements. Based upon these measurements, SBC KANSAS shall bill CLEC for collocation power for the following quarter relying on CLEC's actual metered usage and the applicable usage sensitive per ampere rate for power consumed.
- 4.2.2** CLEC agrees to notify SBC KANSAS in writing when it removes existing equipment or installs new equipment in CLEC's collocation space. Upon receipt of that notice, a new measurement will be taken of CLEC's actual power usage to be used for billing for the following quarter. After the actual power usage

measurement has been completed, that measurement will be used to calculate the metered power charge for the following three (3) months, or until the next measurement has been taken. CLEC's bill will reflect the new power measurement in the next billing cycle following the completion of the measurement.

- 4.2.3 Either Party shall have the right, at any time, at its own expense, to verify the accuracy of CLEC's BDFB meter by performing its own meter reading via an alternate method, such as, but not limited to, a clamp-on meter. If the meter readings vary significantly, the Parties agree to perform a joint investigation. If CLEC's BDFB meter is found to be in error, then CLEC agrees to recalibrate, repair, or replace its meter as required. The Parties recognize that the meter readings discussed in this Section 3.4 are instantaneous readings that can experience minor fluctuations due to usage traffic, voltage fluctuations, and calibration of the meters themselves. The readings must vary by more than 10%, or 5 Amps, whichever is greater, before any recalibration, repair, or replacement will be required. If CLEC's BDFB meter is found to be in error, then the Parties will cooperate to calculate the amount of any additional billing due from CLEC for power used, or the amount of any credit due to CLEC for SBC KANSAS over billing for power usage.
- 4.2.4 If taking a metered power measurement, as described in 4.2.1 and 4.2.2 above, requires access to CLEC's collocation space, at CLEC's option, the meter reading will be performed by an authorized contractor hired by CLEC and approved by SBC KANSAS who is subject to the same security screening requirements imposed on contractors with access to SBC KANSAS' areas within the Central Office. CLEC may, solely at its option, agree to allow unescorted access to an authorized SBC KANSAS employee or to an SBC KANSAS contractor for the purpose of meter reading.
- 4.2.5 Non-recurring charges for the establishment of a metered power usage system and recurring charges for meter reading will be paid by CLEC. No additional charges for power meters and meter reading will be imposed by SBC KANSAS.

## **5.0 COMPLETE SPACE DISCONTINUANCE, SPACE REASSIGNMENT, POWER REDUCTION AND INTERCONNECTION TERMINATION REDUCTION**

### **5.1 Complete Space Discontinuance**

The Collocator may discontinue an existing Physical Collocation Arrangement which may include equipment, equipment bays, interconnection facilities (e.g., power, timing, grounding and interconnection cabling) and Collocator infrastructure installed within its Physical Collocation space. The Collocator is required to provide a complete and accurate Physical Collocation Application requesting to discontinue its existing Physical Collocation Arrangement. The Collocator must complete the following activities within thirty (30) calendar days from the day the Physical Collocation application was submitted.

- (a) Remove Collocator's equipment bays (relay racks) from the Physical Collocation space, using a Company approved Tier 1 or Tier 2 vendor.
- (b) Remove Collocator's equipment from the Physical Collocation space, using a Company approved Tier 1 or Tier 2 vendor;
- (c) Remove terminations at both ends of cable (e.g. power, timing, grounding, and interconnection) and cut cables up to the Company rack level. Collocator must use a Company approved Tier 1 vendor for this procedure and that vendor must follow TP76300 guidelines for cutting and capping the cable at the rack level.
- (d) Remove Collocator's entrance cable between the Physical Collocation Arrangement and the first manhole in accordance with the provisions of this agreement, using a Company approved Tier 1 vendor; (e) Remove Collocator's miscellaneous items from within the Physical Collocation space, using an SBC approved Tier 1 or Tier 2 vendor.

- 5.1.1 For complete space discontinuance, Collocator will not be responsible for repairing floor tile damaged during removal of relay racks and equipment, nor will Collocator be responsible for cable mining (removal). Instead the company will perform those tasks. Collocator will pay for those tasks, through rate elements listed in 5.5.1.

- 5.1.2 If the Collocator fails to complete the items identified in 5.1 within thirty (30) calendar days after discontinuance or termination of the physical collocation arrangement, the Company may complete those items and charge the Collocator for any and all claims, expenses, fees or other costs associated with any such completion by SBC, including any materials used and the time spent at the hourly rate for custom work. This work will be performed at the Collocator's risk and expense, and the Collocator will hold the Company harmless from the failure to return any equipment, property or other items.
- 5.1.3 When discontinuance of the Physical Collocation Arrangement involves the removal of fiber entrance cable, the Collocator's Company approved Tier 1 vendor is only responsible for physically removing entrance cables housed in conduits or inner-ducts and may do so only after the Company confirms that such removal can be accomplished without damaging or endangering other cables contained in a common duct or other equipment residing in the Central Office.
- 5.2 Space Reassignment
- In lieu of submitting an application to discontinue a Physical Collocation Arrangement per section 5.1, the Collocator ("Exiting CLEC") may reassign the Physical Collocation Arrangement to another CLEC ("CLEC Assignee") subject to certain terms and conditions outlined below. Any such reassignment of the Physical Collocation Arrangement may not occur without the written consent of the Company. In order to request consent to assign a Physical Collocation Arrangement, either the CLEC Assignee or Exiting CLEC may submit a Collocation Application on behalf of both the Exiting CLEC and CLEC Assignee, Space Reassignment shall be subject to the following terms and conditions:
- 5.2.1 CLEC Assignee must, as of the date of submission of the Physical Collocation Application, have an approved ICA.
- 5.2.2 Exiting CLEC will be liable to pay all nonrecurring and monthly recurring collocation charges on the Physical Collocation Arrangement to be reassigned until the date the Company turns over the Physical Collocation Arrangement to the CLEC Assignee. Any disputed charges shall be subject to the dispute resolution provisions herein. The Company's obligation to turn over the Physical Collocation Arrangement shall not arise until all undisputed charges are paid. CLEC Assignee's obligation to pay monthly recurring charges for a Physical Collocation Arrangement will begin on the date the Company makes available the Physical Collocation Arrangement to the CLEC Assignee.
- 5.2.3 An Exiting CLEC may not reassign Physical Collocation space in a central office where a waiting list exists for Physical Collocation space, unless all CLECs on the waiting list above the CLEC Assignee decline their position. This prohibition does not apply in the case of an acquisition, merger or complete purchase of the Exiting CLEC's assets.
- 5.2.4 CLEC Assignee will defend and indemnify the Company from any losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees) if any other person, entity or regulatory authority challenges the reassignment of any Physical Collocation Arrangement(s) or otherwise claims a right to the space subject to the reassignment; /
- 5.2.5 CLEC Assignee or the Exiting CLEC shall submit one (1) complete and accurate application for each Physical Collocation Arrangement. By submitting an application for a Physical Collocation Arrangement, CLEC Assignee represents warrants and agrees that it has obtained an executed sale or lease agreement for and holds proper title to all non-Company equipment and other items in or otherwise associated with each Physical Collocation Arrangement. CLEC Assignee further agrees to indemnify and hold the Company harmless from any third-party claims involving allegations that CLEC Assignee does not hold proper title to such non-Company equipment and other items.
- 5.2.6 The Company will respond to the Physical Collocation Application within ten (10) calendar days of submission of the completed application, including provision of a price quote. CLEC Assignee must pay 100% of all non-recurring charges in the price quote before the Company begins to convert the Physical Collocation Arrangement being reassigned. Once CLEC Assignee has paid 100% of all such non-recurring charges, the Company shall finish the work to convert the space within thirty (30) calendar days. The

Company and CLEC Assignee will coordinate all conversion work to insure that the end user customers of CLEC Assignee do not suffer disruptions of service.

- 5.2.7 CLEC Assignee may submit a security application for access to a Physical Collocation Arrangement simultaneously with the Physical Collocation Application. If a completed security application is provided at the time the Collocation Application is filed, the security cards will be made available at the time that the collocation space is turned over. If the security application is not provided at the time that the Collocation Application is filed, then CLEC Assignee may submit a security application for access at any time and the terms and conditions as provided in this Agreement will apply. In no event will the security cards be provided to the CLEC Assignee before the assigned space is turned over.
- 5.2.8 CLEC Assignee assumes each Physical Collocation Arrangement "as is" which means that the Company will make no changes to the Physical Collocation Arrangement, including no changes to power, interconnection and entrance facilities. Any modifications to such Physical Collocation Arrangement by CLEC Assignee must be submitted via a separate augment application (or as otherwise provided by the applicable ICA).
- 5.2.9 This section 5.2 does not affect any obligations arising outside of this Agreement.
- 5.3 Power Reduction
- 5.3.1 The Collocator may request to decrease the amount of existing power available to a Physical Collocation Arrangement. This can be done either by disconnecting and removing a power cable feed or by fusing down the amperage on a power cable feed. If the Collocator desires to disconnect a power arrangement (A&B feed), the Collocator will be responsible for paying the costs to remove the A&B power cable feeds that make up the power arrangement. If the Collocator desires to reduce the amperage on a power cable feed, the Collocator will be responsible for paying the costs necessary to change the fuse that serves the A&B feeds at the Company power source. In either case, the Collocator must maintain a minimum amount of power on at least one power arrangement (A&B feed) to service their Physical Collocation Arrangement when submitting their power reduction request. The Collocator shall submit an augment application in order to process this request.
- 5.3.2 If the Collocator desires to only reduce the fuse capacity on an existing power arrangement (A&B feed) rather than disconnect and remove cable to an existing power arrangement, they may only reduce the fuse size to the lowest power amp increment offered in this Agreement. Different minimum amp increments apply for power arrangements fed from either a Company BDFB or a Company Power Plant. When the Collocator is requesting to reduce the fuse capacity only, the fees referenced in section 5.5.3 will apply. When the Collocator has only one power arrangement (A&B feed) serving their Physical Collocation Arrangement, a fuse reduction is the only power reduction option available to the Collocator.
- 5.3.3 When a power reduction request involves a fuse change only on a power arrangement serviced from the Company BDFB (i.e. power arrangements consisting of a 50 amp A feed and a 50 amp B feed and below) the Collocator must hire a Company approved power vendor to coordinate fuse changes at the Company BDFB. Applicable fees referenced in section 5.5.4 will still apply. When a power reduction request involves a fuse change on a power arrangement serviced from the Company Power Plant (i.e. power arrangements consisting of a 100 amp A feed and a 100 amp B feed and above), the Company shall coordinate the fuse changes at the Company Power Plant.
- 5.3.4 When a power reduction request requires disconnecting and removing a power cable feed from either the Company's BDFB or Power Plant, the Company will perform the power cable removal work above the rack level (cable mining). Applicable fees referenced in section 5.5.3 will apply. Within 30 days after submitting its power reduction request to disconnect and remove a power arrangement, the Collocator must perform the following activity.
- (a) Remove terminations at both ends of the power cable feed and cut cables up to the Company rack level. Collocator must use a Company approved Tier 1 vendor for this procedure and that vendor must follow TP76300 guidelines for cutting and capping the cable at the rack level.

- 5.3.5 When the Collocator has multiple power arrangement serving a Physical Collocation Arrangement (i.e., one power arrangement consisting of 50 amps on the A feed and 50 amps on the B feed and a second power arrangement consisting of 20 amps on the A feed and 20 amps on the B feed), the Collocator has the option of either fusing down the 50 amp power arrangement (A&B feed) or disconnecting and removing the power cable feed from the 50 amp power arrangement (A&B feed). If the Collocator chooses to disconnect and remove the power cable feed from a power arrangement (A&B feed), then the charges referenced in section 5.5.3 will apply. If the Collocator has multiple power arrangements (A&B feed) where they can request both a fuse reduction and a power cable removal for one Physical Collocation Arrangement [i.e. reduce one power arrangement from 50 amps (A&B feed) to 20 amps (A&B feed) and remove the power cable from a second power arrangement from 50 amps (A&B feed) to 0 amps (A&B feed)], then the project management fee for power cable removal referenced in section 5.5.3 will apply in addition to the individual charges referenced in either section 5.5.3, or 5.5.4 associated with the overall power reduction request.
- 5.3.6 For any power reduction request (one which involves either a disconnect and removal, refusing only, or a combination of the two), the Collocator must submit an augment application for this request along with the appropriate application and project management fees referenced in section 5.5. The same augment intervals that are outlined in this Agreement for adding power will apply to power reduction requests.
- 5.4 Interconnection Termination Reduction
- 5.4.1 The Collocator may request a reduction of the existing amount of interconnection terminations that service a Physical Collocation Arrangement. The Collocator shall submit an augment application in order to process this request. The Collocator must maintain at least one minimum interconnection arrangement increment. The same augment intervals that are outlined in this Agreement for adding interconnection terminations will apply to interconnection termination reductions.
- 5.4.2 Interconnection termination reduction requests will always require the disconnection and removal of interconnection cable. The Company will perform the interconnection cable removal work above the rack level (cable mining). Applicable fees referenced in section 5.5.5 will apply. Within thirty (30) days after submitting its interconnection termination reduction request to disconnect and remove an interconnection arrangement from its Physical Collocation Arrangement, the Collocator must perform the following activity.
- (a) Remove terminations at both ends of the interconnection cable and cut cables up to the Company rack level. Collocator must use a Company approved Tier 1 vendor for this procedure and that vendor must follow TP76300 guidelines for cutting and capping the cable at the rack level.
- 5.5 Rate Element Descriptions
- 5.5.1 Rate Element Descriptions for Complete Space Discontinuance
- A. Application Fee – The charge assessed by the Company to process the Collocator's application for Physical Collocation Arrangements.
- B. Project Management Fee – Complete Space Discontinuance – Reflects the Company's labor costs to project manage the complete discontinuance of the Collocator's space. The labor costs include the Company engineering and real estate costs for planning design of floor tile restoration, interconnection, power and entrance cable removal, stenciling, floor plans, and DC power records.
- C. Remove Fiber Jumpers – Remove four fiber jumpers from the Fiber Troughing Duct.
- D. Remove Fiber Cables – Remove fiber cable sheaths (1-216 fibers) on dedicated fiber racking. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, waxed cable cord/twine, gray paint for removing plotter paper for Central Office drawings and transportation and taxes as appropriate.
- E. Remove VF/DSO Cable – Remove cable sheaths totaling 100 pairs and each 100 pair connecting block from the MDF or IDF. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, gray paint for removing stenciling on frame, fire stop material, 8.5"x11" paper for engineering order, plotter paper for Central Office drawings and transportation and taxes as appropriate.

- F. Remove DS1 Cable – Remove two sheaths, on transmit and one receive, comprising of a total of 28 DS1 circuits to an existing DSX1 panel. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, blank labels for DSX shelf, 8.5"x11" paper for engineering job order, yellow job wallet, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- G. Remove DS3 Cable (Coax) – Remove two coax cables per DS3 circuit to an existing DSX3 panel. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, fire stop material, blank labels for DSX shelf, 8.5"x11" paper for engineering order, yellow job wallet, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- H. Remove Timing Cable – Remove a single timing lead (P7 wire). Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, CO timing book sheet, 8.5"x11" paper for engineering order, yellow job wallet, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- I. Remove Power Cable – Distribution from the Company BDFB (60 amp A feed and 60 amp B feed & below power arrangements) – Remove 4 power cables, including fuses and fuse panel. Removal activity also requires all costs associated with the power cable removal, packing and shipping, removing stenciling from BDFB, and updating documents as required.
- J. Remove Power Cable – Distribution from the Company Power Board (100 amp A feed and 100 amp B feed & above) – Remove 750 MCM cable (4 runs @ 180 feet), and remove and junk fuses and power panel. Removal activity also requires cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, gray paint for removing stenciling on Power Board, fire stop material, blank labels for BDFB, yellow job wallet, 8.5"x11" paper for engineering order, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- K. Remove Cage Grounding Material – Remove collocation cage grounding lead and ground bar. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, yellow job wallet, 8.5"x11" paper for engineering order, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- L. Remove Fiber Entrance Cable – Remove fiber entrance cable from 1st manhole closest to the Central Office through cable vault to its endpoint termination in the collocation space (average 300' of cable). Removal activity also requires infrastructure maps and records, engineering work order, pump/ventilate manhole, safety inspection and removal of safety hazards, fire stops, and mechanized cable pulling tools.
- M. Restore Floor Tile - Standard Bay - Remove floor tile & Drive Anchors Flush with Floor Slab, install 547 Floor Patch, apply floor adhesive, and install Vinyl Composite Floor Tile (VCT). Clean & Wax Floor Tile, abatement of asbestos containing Floor Tile, and Air Monitoring for Abatement.
- N. Restore Floor Tile – Non-Standard Bay - Remove floor tile & Drive Anchors Flush with Floor Slab, install 547 Floor Patch, apply floor adhesive, and install Vinyl Composite Floor Tile (VCT). Clean & Wax Floor Tile, abatement of asbestos containing Floor Tile, and Air Monitoring for Abatement.

#### 5.5.2 Rate Element Descriptions for Space Reassignment

- A. Application Fee – The charge assessed by the Company to process the Collocator's application for Physical Collocation Arrangements.
- B. Project Management Fee – Space Reassignment/Restenciling - This fee applies to Space Reassignment request when a "CLEC Assignee" chooses to assign the rights to a Physical Collocation Arrangement from an "Exiting CLEC." The charge reflects the Company's labor costs to project manage the changes/removals and update Central Office inventory/provisioning records, stenciling, floor plans, and DC power records associated with serving the Physical Collocation Arrangement.
- C. Restencil DS0/DSL Block – The charge to remove/change stenciling on MDF or IDF per 100 pair blocks.

- D. Restencil DS1 Block– The charge to remove/change stenciling on DSX1 panel per 28 DS1s.
- E. Restencil DS3 Block – The charge to remove/change stenciling on DSX3 panel per DS3.
- F. Restencil Fiber Cable Block - The charge to remove/change stenciling on FDF per 12 pair cable.
- G. Restencil Fiber Jumper Block - The charge to remove/change stenciling on FDF per 4 fiber jumpers.
- H. Restencil Power – The charge to remove/change stenciling on power source and tag power cables per 1-4 fuses.
- I. Restencil Timing – The charge to remove/change stenciling on timing source and tag timing cables per two cable feeds.
- J. Timing Record Book Update – The charge to update timing records when changes/removals occur.
- K. Interconnection Records Update – The charge to update interconnection records when changes/removals occur.
- L. Power Records Update – The charge to update power records when changes/removals occur.
- M. Vendor Engineering – The labor costs for the Company Vendor to write the specifications to perform the restenciling job including travel time and site visit.

#### 5.5.3 Rate Element Descriptions for Power Reduction (cable removal)

- A. Application Fee – The charge assessed by the Company to process the Collocator's application for Physical Collocation Arrangements.
- B. Project Management Fee – Power Reduction (cable removal) - Reflects the Company's labor costs to manage the removal of the individual Collocator's power cable facilities used for or associated with serving the Physical Collocation Arrangement.
- C. Remove Power Cable – Distribution from the Company BDFB (50 amp A feed and 50 amp B feed and below power arrangements) – Remove 4 power cables, including fuses and fuse panel. Removal activity also requires all costs associated with the power cable removal, packing and shipping, removing stenciling from BDFB, and updating documents as required.
- D. Remove Power Cable – Distribution from the Company Power Board (100 amp A feed and 100 amp B feed and above) – Remove 4 power cables, including fuses and fuse panel. Removal activity also requires all costs associated with the power cable removal, packing and shipping, removing stenciling from Power Board, and updating documents as required.

#### 5.5.4 Rate Element Descriptions for Power Reduction (refusing only)

- A. Application Fee – The charge assessed by the Company to process the Collocator's application for Physical Collocation Arrangements.
- B. Project Management Fee – Power Re-Fusing Only at the Company BDFB (50 amp A feed and 50 amp B feed & below power arrangements) - Reflects the Company's labor costs to project manage the change of the power re-fusing change on the Collocator's power services associated with serving the Physical Collocation Arrangement when power fuses are being reduced at the Company BDFB. This fee is applicable when the Collocator is coordinating the fuse reduction at the Company BDFB.
- C. Project Management Fee – Power Re-Fusing Only at the Company Power Board (100 amp A feed and 100 amp B feed & above power arrangements) - Reflects the Company's labor costs to project manage the change of the individual Collocator's power services associated with serving the Physical Collocation Arrangement when power fuses are being reduced at the Company Power Board. This fee is applicable when the Company is coordinating the fuse reduction at the Company Power Board.
- D. Power Fuse Reductions on the Company BDFB (50 amp A feed and 50 amp B feed & below power arrangements) – The charge for the Company to tag cables and update Central Office power records associated with the fuse change on the Company BDFB per 1-4 fuses. This fee applies when the Collocator performs the fuse change at the BDFB.
- E. Power Fuse Reductions on the Company Power Board (100 amp A feed and 100 amp B feed & above power arrangements) - The charge for the Company to change the fuse at the Company power board,

tag cables and update Central Office power records associated with fuse change on the Company Power Board per 1-4 fuses.

#### 5.5.5 Rate Element Descriptions for Interconnection Termination Reduction

- A. Application Fee – The charge assessed by the Company to process the Collocator's application for Physical Collocation Arrangements.
- B. Project Management Fee – Interconnection Termination Reduction – The charge reflects the Company's labor costs to project manage the removal of the interconnection cabling and update the interconnection block stenciling, Central Office and inventory/provisioning records associated with serving the Physical Collocation Arrangement.
- C. Remove VF/DS0 Cable – Remove cable sheaths totaling 100 pairs and each 100 pair connecting block from the Company Main Distribution Frame to the Physical Collocation Arrangement.
- D. Remove DS1 Cable – Remove two sheaths, on transmit and one receive, comprising of a total of 28 DS1 circuits to an existing DSX1 panel. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, blank labels for DSX shelf, 8.5"x11" paper for engineering job order, yellow job wallet, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- E. Remove DS3 Cable (Coax) – Remove two coax cables per DS3 circuit to an existing DSX3 panel. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, fire stop material, blank labels for DSX shelf, 8.5"x11" paper for engineering order, yellow job wallet, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- F. Remove Fiber Cables – Remove fiber cable sheaths (1-216 fibers) on dedicated fiber racking. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, waxed cable cord/twine, gray paint for removing plotter paper for Central Office drawings and transportation and taxes as appropriate.
- G. Remove Fiber Jumpers - Remove four fiber jumpers from the Fiber Troughing Duct.

Note 1 for Material: Cable scrap boxes are designed for cable cut into 3 foot lengths. This box is capable of handling 1000 pounds of weight, supporting forklift forks or floor jack lifts, moisture resistant, puncture resistant, and designed to be loaded into railroad cars for shipping.

### 6.0 COMPLETE SPACE DISCONTINUANCE, SPACE REASSIGNMENT, POWER REDUCTION AND INTERCONNECTION TERMINATION REDUCTION

This section provides rates, terms and conditions for Complete Space Discontinuance, Space Reassignment, Power Reduction and Interconnection Termination Reduction for Virtual Collocation.

#### 6.1 Complete Space Discontinuance

The Collocator may discontinue an existing Virtual Collocation which may include bay space and interconnection facilities (e.g. power, timing, grounding, and interconnection) terminating in the Virtual Collocation Arrangement. The Collocator is required to provide a complete and accurate Virtual Collocation Application requesting to discontinue the Virtual Collocation Arrangement. The Collocator must complete the following activities within thirty (30) calendar days from the day the Virtual Collocation application was submitted:

- (A) Remove Collocator's equipment from the Virtual Collocation Arrangement using a Company approved Tier 1 or Tier 2 vendor.
- (B) Remove terminations at both ends of cable (e.g., power, timing, grounding, and interconnection) and cut cables up to the Company rack level. Collocator must use a Company approved Tier 1 vendor for this procedure and that vendor must follow TP76300 guidelines for cutting and capping the cable at the rack level.

- (C) Remove Collocator's entrance cable between the Virtual Collocation Arrangement and the first manhole in accordance with the provisions of this Agreement.
  - (D) Remove Collocator's miscellaneous items from the Virtual Collocation Arrangement, using a Company approved Tier 1 or Tier 2 vendor.
- 6.1.1 For complete space discontinuance of a Virtual Collocation Arrangement, the Collocator will not be responsible for cable mining (removal). Instead the Company will perform those tasks. Collocator will pay for those tasks through rate elements listed in 6.5.1.
- 6.1.2 If the Collocator fails to complete the items identified in 6.1 within thirty (30) calendar days after discontinuance of termination of the Virtual Collocation Arrangement, the Company may complete those items and charge the Collocator for any and all claims, expenses, fees or other costs associated with any such completion by the Company, including any materials used and the time spent at the hourly rate for custom work. This work will be performed at the Collocator's risk and expense, and the Collocator will hold the Company harmless from the failure to return any equipment, property or other items.
- 6.1.3 When discontinuance of the Virtual Collocation Arrangement involves the removal of fiber entrance cable, the Collocator's Company approved Tier 1 vendor is responsible for physically removing entrance cables housed in conduits or inner-ducts and may do so only after the Company confirms that such removal can be accomplished without damaging or endangering other cables contained in a common duct or other equipment residing in the Central Office.
- 6.2 Space Reassignment
- In lieu of submitting an application request to discontinue a Virtual Collocation Arrangement section 6.1, the Collocator ("Exiting CLEC") may reassign the Virtual Collocation Arrangement to another CLEC ("CLEC Assignee") subject to certain terms and conditions outlined below. Any such reassignment of the Virtual Collocation Arrangement may not occur without the written consent of the Company. In order to request consent to reassign a Virtual Collocation Arrangement, either the CLEC Assignee or Exiting CLEC may submit a Virtual Collocation Application on behalf of both the Exiting CLEC and CLEC Assignee. Space Reassignment shall be subject to the following terms and conditions:
- 6.2.1 CLEC Assignee must, as of the date of submission of the Virtual Collocation Application have an approved ICA or an effective interim ICA.
- 6.2.2 Exiting CLEC will be liable to pay all nonrecurring and monthly recurring collocation charges on each Virtual Collocation Arrangement to be reassigned until the date the Company turns over the Virtual Collocation Arrangement to the CLEC Assignee. The Company's obligation to turn over the Virtual Collocation Arrangement shall not arise until all such charges are paid.
- 6.2.3 An Exiting CLEC may not reassign Virtual Collocation space in a central office where a collocation waiting list exists for Virtual Collocation, unless all CLECs on the waiting list above the CLEC Assignee decline their position. This prohibition does not apply in the case of an acquisition, merger, or complete purchase of the Exiting CLEC's assets.
- 6.2.4 CLEC Assignee will defend and indemnify the Company from any losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees) if any other person, entity or regulatory authority challenges the assignment of any Virtual Collocation Arrangement(s) or otherwise claims a right to the space subject to the assignment.
- 6.2.5 CLEC Assignee or the Exiting CLEC shall submit one (1) complete and accurate application for each Virtual Collocation Arrangement. By submitting an application for a Virtual Collocation Arrangement, CLEC Assignee represents, warrants and agrees that it has obtained an executed sale or lease agreement for, and holds proper title to all non-Company equipment and other items in or otherwise associated with each Virtual Collocation Arrangement. CLEC Assignee further agrees to indemnify and hold the Company harmless from any third-part claims involving allegations that CLEC Assignee does not hold proper title to such non-Company equipment and other items.

- 6.2.6 The company will respond to the Virtual Collocation Application within ten (10) calendar days of submission of the completed application, including provision of a price quote. Collocator Assignee must pay 100% of all non-recurring charges in the price quote before the Company begins to convert the Virtual Collocation Arrangement being reassigned. Once CLEC Assignee has paid 100% of all such non-recurring charges, the Company shall finish the work to convert the space within thirty (30) calendar days. The Company and CLEC Assignee will coordinate all conversion work to insure that the end-user customers of CLEC Assignee do not suffer disruptions of service. Such non-recurring charges will include some or all of the following: an application fee, project management fee, and all applicable restenciling fees reference in sections 6.5.2
- 6.2.7 CLEC Assignee assumes each Virtual Collocation Arrangement "as is" which means that the Company will make no changes to the Virtual Collocation Arrangement, including no changes to power, interconnection and entrance facilities. Any modifications to such Virtual Collocation Arrangement must be submitted via a separate augment application (or as otherwise provided by the applicable ICA).
- 6.2.8 This section 6.2 does not affect any obligations arising outside of this Collocation Agreement.
- 6.3 Power Reduction
- 6.3.1 The Collocator may request to decrease the amount of existing power available to a Virtual Collocation Arrangement.
- 6.3.2 This can be done either by disconnecting and removing a power cable feed or by fusing down the amperage on a power cable feed. If the Collocator desires to disconnect a power arrangement (A and B feed), the Collocator will be responsible for paying the costs to remove the A and B power cable feeds that make up the power arrangement. If the Collocator desires to reduce the amperage on a power cable feed, the Collocator will be responsible for paying the costs necessary to change the fuses that serve the A and B feeds at the Company Battery Distribution Fuse Bay (BDFB). In either case, the Collocator must maintain a minimum amount of power on at least one power arrangement (A and B feed) to service their Virtual Collocation Arrangement when submitting their power reduction request. The Collocator shall submit an augment application in order to process this request.
- 6.3.3 If the Collocator desires to only reduce the fuse capacity on an existing power arrangement (A and B feed) rather than disconnect and remove cable to an existing power arrangement, Collocator may only reduce the fuse size to the lowest power amp increment offered in this Agreement. When the Collocator is requesting to reduce the fuse capacity only, the fees referenced in section 6.5.4 will apply. When the Collocator has only one power arrangement (A and B feed) serving their Virtual Collocation Arrangement, a fuse reduction is the only power reduction option available to the Collocator.
- 6.3.4 When a power reduction request involves a fuse change only on a power arrangement serviced from the Company BDFB (i.e. power arrangement consisting of a 50 amp A feed and a 50 amp B feed and below), the Collocator must hire a Company approved power vendor to coordinate fuse changes at the Company BDFB. Applicable fees referenced in section 6.5.4 will still apply.
- 6.3.5 When a power reduction request requires disconnecting and removing a power cable feed from the Company's BDFB, the Company will perform the power cable removal work above the rack level (cable mining). Applicable fees referenced in Section 6.5.3 will apply. Within thirty (30) days after submitting its power reduction request to disconnect and remove a power arrangement, the Collocator must perform the following activity:
- (A) Remove terminations at both ends of the power cable feed and cut cables up to the Company rack level. Collocator must use a Company approved Tier 1 vendor for this procedure and that vendor must follow TP76300 guidelines for cutting and capping the cable at the rack level.
- 6.3.6 When the Collocator has multiple power arrangements serving a Virtual Collocation Arrangement (i.e., one power arrangement consisting of 50 amps on the A feed and 50 amps on the B feed and a second power arrangement consisting of 20 amps on the A feed and 20 amps on the B feed), the Collocator has the option of either fusing down the 50 amp power arrangement (A and B feed) or disconnecting and removing the

power cable feed from the 50 amp power arrangement (A and B feed). If the Collocator chooses to disconnect and remove the power cable feed from a power arrangement (A and B feed), then the charges referenced in section 6.5.3 will apply. If the Collocator has multiple power arrangements (A and B feed) where they can request both a fuse reduction and a power cable removal for one Virtual Collocation Arrangement [i.e. reduce one power arrangement from 50 amps (A and B feed) to 20 amps (A and B feed) and remove the power cable from a second power arrangement from 50 amps (A and B feed) to 0 amps (A and B feed)], then the project management fee for power cable removal referenced in section 6.5.3 will apply in addition to the individual charges referenced in either section 6.5.3 or 6.5.4 associated with the overall power reduction request.

- 6.3.7 For any power reduction request (one which involves either a disconnect and removal, refusing only, or a combination of the two, the Collocator must submit an augment application for this request along with the appropriate application and project management fees referenced in section 6.5. The same augment intervals that are outlined in this Agreement for adding power will apply to power reduction requests.

6.4 Interconnection Termination Reduction

- 6.4.1 The Collocator may request a reduction of the existing amount of interconnection terminations that service a Virtual Collocation Arrangement. The Collocator shall submit an augment application in order to process this request. The same augment intervals that are outlined in this Agreement for adding interconnection terminations will apply to interconnection termination reductions.

- 6.4.2 Interconnection termination reduction requests will also require the disconnection and removal of interconnection cable. The Company will perform the interconnection cable removal work above the rack level (cable mining). Applicable fees referenced in section 6.5.5 will apply. Within thirty (30) days after submitting its interconnection termination reduction request to disconnect and remove an interconnection arrangement from its Virtual Collocation Arrangement, the Collocator must perform the following activity:

(A) Remove terminations at both ends of the interconnection cable and cut cables up to the Company rack level. Collocator must use a Company approved Tier 1 vendor for this procedure and that vendor must follow TP76300 guidelines for cutting and capping the cable at the rack level.

6.5 Rate Element Descriptions

6.5.1 Complete Space Discontinuance

- (A) Application Fee – The charge assessed by the Company to process the Collocator's application for Virtual Collocation Arrangements.
- (B) Project Management Fee – Complete Space Discontinuance – Reflects the Company's labor costs to project manage the complete discontinuance of the CLEC's Virtual Collocation Arrangement. The labor costs include the Company engineering for planning design of space restoration, equipment removal, interconnection, power and entrance cable removal, stenciling, floor plans, and DC power records.
- (C) Remove Fiber Jumpers – Remove four fiber jumpers from the Fiber Troughing Duct.
- (D) Remove Fiber Cables – Remove fiber cable sheaths (1-216 fibers) on dedicated fiber racking. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, waxed cable cord/twine, gray paint for removing plotter paper for Central Office drawings and transportation and taxes as appropriate.
- (E) Remove VF/DS0 Cable – Remove cable sheaths totaling 100 pairs and each 100 pair connecting block from the MDF or IDF. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, gray paint for removing stenciling on frame, fire stop material, 8.5"x11" paper for engineering order, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- (F) Remove DS1 Cable – Remove two sheaths, on transmit and one receive, comprising of a total of 28 DS1 circuits to an existing DSX1 panel. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, blank labels

for DSX shelf, 8.5"x11" paper for engineering job order, yellow job wallet, plotter paper for Central Office drawings and transportation and taxes as appropriate.

- (G) Remove DS3 Cable (Coax) – Remove two coax cables per DS3 circuit to an existing DSX3 panel. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, fire stop material, blank labels for DSX shelf, 8.5"x11" paper for engineering order, yellow job wallet, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- (H) Remove Timing Cable – Remove a single timing lead (P7 wire). Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, CO timing book sheet, 8.5"x11" paper for engineering order, yellow job wallet, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- (I) Remove Power Cable – Distribution from the Company BDFB (60 amp A feed and 60 amp B feed and below power arrangements) – Remove 4 power cables, including fuses and fuse panel. Removal activity also requires all costs associated with the power cable removal, packing and shipping, removing stenciling from BDFB, and updating documents as required.
- (J) Remove Fiber Entrance Cable – Remove fiber entrance cable from 1st manhole closest to the Central Office through cable vault to its endpoint termination in the collocation space (average 300' of cable). Removal activity also requires infrastructure maps and records, engineering work order, pump/ventilate manhole, safety inspection and removal of safety hazards, fire stops, and mechanized cable pulling tools.

#### 6.5.2 Space Reassignment

- (A) Application Fee – The charge assessed by the Company to process the Collocator's application for Virtual Collocation Arrangements.
- (B) Project Management Fee – Space Assignment - This fee applies to Space Assignment request when a "Collocator Assignee" chooses to assign the rights to a Virtual Collocation Arrangement from an "Exiting Collocator." The charge reflects the Company's labor costs to project manage the changes/removals and update Central Office inventory/provisioning records, stenciling, floor plans, and DC power records associated with serving the Virtual Collocation Arrangement.
- (C) Restencil DS0/DSL Block – The charge to remove/change stenciling on MDF or IDF per 100 pair blocks.
- (D) Restencil DS1 Block– The charge to remove/change stenciling on DSX1 panel per 28 DS1s.
- (E) Restencil DS3 Block – The charge to remove/change stenciling on DSX3 panel per DS3.
- (F) Restencil Fiber Cable Block - The charge to remove/change stenciling on FDF per 12 pair cable.
- (G) Restencil Fiber Jumper Block - The charge to remove/change stenciling on FDF per 4 fiber jumpers.
- (H) Restencil Power – The charge to remove/change stenciling on power source and tag power cables per 1-4 fuses.
- (I) Restencil Timing – The charge to remove/change stenciling on timing source and tag timing cables per two cable feeds.
- (J) Timing Record Book Update – The charge to update timing records when changes/removals occur.
- (K) Interconnection Records Update – The charge to update interconnection records when changes/removals occur.
- (L) Power Records Update – The charge to update power records when changes/removals occur.
- (M) Vendor Engineering – The labor costs for the Company vendor to write the specifications to perform the restenciling job including travel time and site visit.

#### 6.5.3 Power Reduction (cable removal)

- (A) Application Fee – The charge assessed by the Company to process the Collocator's application for Physical Collocation Arrangements.

- (B) Project Management Fee – Power Reduction (cable removal) - Reflects the Company's labor costs to manage the removal of the individual Collocator's power cable facilities used for or associated with serving the Virtual Collocation Arrangement.
- (C) Remove Power Cable – Distribution from the Company BDFB (50 amp A feed and 50 amp B feed and below power arrangements) – Remove 4 power cables, including fuses and fuse panel. Removal activity also requires all costs associated with the power cable removal, packing and shipping, removing stenciling from BDFB, and updating documents as required.

#### 6.5.4 Power Reduction (refusing only)

- (A) Application Fee – The charge assessed by the Company to process the Collocator's application for Physical Collocation Arrangements.
- (B) Project Management Fee – Power Re-Fusing Only at the Company BDFB (50 amp A feed and 50 amp B feed and below power arrangements) - Reflects the Company's labor costs to project manage the change of the power re-fusing change on the Collocator's power services associated with serving the Physical Collocation Arrangement when power fuses are being reduced at the Company BDFB. This fee is applicable when the Collocator is coordinating the fuse reduction at the Company BDFB.
- (C) Power Fuse Reductions on the Company BDFB (50 amp A feed and 50 amp B feed and below power arrangements) – The charge for the Company to tag cables and update Central Office power records associated with the fuse change on the Company BDFB per 1-4 fuses. This fee applies when the Collocator performs the fuse change at the BDFB.

#### 6.5.5 Interconnection Termination Reduction

- (A) Application Fee – The charge assessed by the Company to process the Collocator's application for Virtual Collocation Arrangements.
- (B) Project Management Fee – Interconnection Termination Reduction – The charge reflects the Company's labor costs to project manage the changes/removals and update the interconnection block stenciling, Central Office and inventory/provisioning records associated with serving the Virtual Collocation Arrangement.
- (C) Remove VF/DS0 Cable – Remove cable sheaths totaling 100 pairs and each 100 pair connecting block from the Company Main Distribution Frame to the Virtual Collocation Arrangement.
- (D) Remove DS1 Cable – Remove two sheaths, on transmit and one receive, comprising of a total of 28 DS1 circuits to an existing DSX1 panel. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, blank labels for DSX shelf, 8.5"x11" paper for engineering job order, yellow job wallet, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- (E) Remove DS3 Cable (Coax) – Remove two coax cables per DS3 circuit to an existing DSX3 panel. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, heat shrink wrap, waxed cable cord/twine, fire stop material, blank labels for DSX shelf, 8.5"x11" paper for engineering order, yellow job wallet, plotter paper for Central Office drawings and transportation and taxes as appropriate.
- (F) Remove Fiber Cables – Remove fiber cable sheaths (1-216 fibers) on dedicated fiber racking. Typical material includes cable scrap boxes (see note 1 below), adjacent equipment protection material, waxed cable cord/twine, gray paint for removing plotter paper for Central Office drawings and transportation and taxes as appropriate.
- (G) Remove Fiber Jumpers - Remove four fiber jumpers from the Fiber Troughing Duct.

Note 1 for Material: Cable scrap boxes are designed for cable cut into 3 foot lengths. This box is capable of handling 1000 pounds of weight, supporting forklift forks or floor jack lifts, moisture resistant, puncture resistant, and designed to be loaded into railroad cars for shipping.

## **7.0 COLLOCATION PRICE QUOTES**

- 7.1 Each SBC KANSAS price quote for a collocation service must include, for every individual price component, the applicable USOC, non-recurring charge(s) and monthly recurring charge(s).

## **APPENDIX POLES, CONDUITS, AND RIGHTS-OF-WAY**

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

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

#### **ARTICLE 1: PARTIES**

- 1.01 Southwestern Bell Telephone, L.P. d/b/a SBC Kansas ("SBC KANSAS") is a Texas Limited Partnership. SBC KANSAS' principal office is located at 530 McCullough, San Antonio, Texas 78215.
- 1.02 CLEC Coalition. ("CLEC") is a corporation chartered in the State of State. CLEC maintains an office at Address, State, zip code. CLEC is more fully described in EXHIBIT II ("Identification of CLEC").

#### **ARTICLE 2: PURPOSE OF APPENDIX**

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

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

#### **ARTICLE 3: DEFINITIONS**

- 3.01 Definitions In General. As used in this Appendix, the terms defined in this article shall have the meanings set forth below in Sections 3.02 to 3.48 except as the context otherwise requires.
- 3.02 Anchor. The term "anchor" refers to a device, structure, or assembly which stabilizes a pole and holds it in place. An anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or guy wire which, in turn, is attached to the pole. The term "anchor" does not include the guy stand which connects the anchor to the pole.
- 3.03 Appendix. When capitalized, the term "Appendix" refers to this Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way. The term "Appendix" includes all appendices, attachments, and addenda to this Appendix.
- 3.04 Assigned. When used with respect to pole, duct, conduit, or right-of-way space, the term "assigned" refers to space that is occupied by, or has been designated for occupancy by, either party or by another

telecommunications carrier, cable television system, provider of telecommunications services, governmental entity, or other person or entity having occupancy rights. Except as otherwise specifically provided in this Appendix, no person or entity shall have the right to occupy space assigned to another person or entity (other than on a temporary basis in the event of emergency) until the assignment has been released or lapsed. Assignment is further described in Article 8 of this Appendix.

- 3.05 Authorized contractor. "Authorized contractors" are contractors selected by CLEC who may, subject to CLEC's direction and control, perform facilities modification or make-ready work which would ordinarily be performed by SBC KANSAS or persons acting on SBC KANSAS' behalf. As used in this Appendix, the term "authorized contractor" does not refer to contractors performing routine installation, maintenance, or repair work on CLEC's behalf or other contractors who may be selected by CLEC to perform work on CLEC's behalf without SBC KANSAS' approval. More specifically, the term "authorized contractor" refers only to those contractors included on a list of contractors mutually approved by CLEC and SBC KANSAS to perform one or more of the following tasks within a specified SBC KANSAS construction district: (a) installation of those sections of CLEC's ducts or facilities which connect to SBC KANSAS' conduit system as provided in Section 6.08(c); (b) installation of inner duct as provided in Section 10.02(b); (c) excavation work in connection with the removal of retired or inactive (dead) cables as provided in Section 10.02(c); or (d) make-ready work as provided in Sections 10.04 and 10.05. A person or entity approved as an authorized contractor is only an authorized contractor with respect to those tasks for which such person or entity has been approved by both parties and is an authorized contractor only in those SBC KANSAS construction districts agreed to by both parties. Designation of an authorized contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an authorized contractor for other purposes, nor shall approval of an authorized contractor by one SBC KANSAS construction district constitute approval of such authorized contractor for the area served by a different SBC KANSAS construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an authorized contractor shall, for the purposes of that job, be deemed to have been approved by all SBC KANSAS construction districts in which the work is to be performed.
- 3.06 Available. When used with respect to pole, duct, conduit, and right-of-way space, the term "available" refers to space that is not occupied or assigned. In conduit systems owned or controlled by SBC KANSAS, maintenance ducts shall not be considered "available" for assignment. All other unassigned ducts, inner ducts, sub-ducts, and partitioned conduits in a conduit system owned or controlled by SBC KANSAS shall be deemed available for assignment.
- 3.07 Cables. The term "cable" includes but is not limited to twisted-pair copper, coaxial, and fiber optic cables. Cables are transmissions media which may be attached to or placed in poles, ducts, conduits, and rights-of-way but are not themselves poles, ducts, conduits, or rights-of-way. Nothing contained in this Appendix shall be construed as a grant of access to cables attached to SBC KANSAS' poles or placed in SBC KANSAS' ducts, conduits, or rights-of-way.
- 3.08 Conduit. The term "conduit" refers to all SBC KANSAS conduits subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, conduits are tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. Except as the context otherwise requires, the term "conduit" refers only to conduit owned or controlled by SBC KANSAS, including the re-enterable manholes and handholes used to connect ducts and provide access to the cables, wires, and facilities within the ducts. As used in this Appendix, the term "conduit" refers only to conduit structures (including ducts, manholes, and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other SBC KANSAS structures (such as huts and cabinets) which branch off from SBC KANSAS conduit.
- 3.09 Conduit occupancy. The term "conduit occupancy" refers to the presence of wire, cable, optical conductors, or other within any part of SBC KANSAS' conduit system.

- 3.10 Conduit system. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Appendix, the term "conduit system" refers only to conduit systems owned, or controlled by SBC KANSAS and does not include (a) cables and other telecommunications equipment located within conduit structures, (b) central office vaults, controlled environment vaults, or other SBC KANSAS structures (such as huts and cabinets) which branch off from SBC KANSAS conduit or (c) isolated pipe and ducts not connected to the conduit system.
- 3.11 Construction District. The term "construction district" refers to the SBC KANSAS organization responsible for outside plant construction in a specified geographic area. The term "construction district" connotes responsibility for handling a function and not to the official name of the organization responsible for outside plant construction matters.
- 3.12 Cost/Cost-based. The terms "cost" and "costs" refer to costs determined in a manner consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders. The term "cost-based" refers to rates, fees, and other charges which are based on costs and determined in a manner consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders.
- 3.13 Duct. The term "duct" refers to all SBC KANSAS ducts subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, a duct is a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities. As used in this Appendix, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels. Except as the context otherwise requires, the term "duct" refers only to ducts owned or controlled by SBC KANSAS and space within those ducts and does not include cables and other telecommunications equipment located within such ducts.
- 3.14 Exhibit. The capitalized term "EXHIBIT" refers to one of the following exhibits to this Appendix.
- EXHIBIT I: Pole and Conduit Attachment Rates
  - EXHIBIT II: Identification of CLEC
  - EXHIBIT III: Administrative Forms and Notices
  - SW-9433: Pole Attachments
  - SW-9434: Access Application and Make-Ready Authorization Work
  - SW-9435: Conduit Occupancy
  - SW-9436A: Notification of Surrender or Modification of Pole Attachment License by Licensee
  - SW-9436B: Notification of Surrender or Modification of Conduit Occupancy License by CLEC
  - SW-9436C: Notification of Unauthorized Attachments by CLEC
  - EXHIBIT IV: Insurance Requirements
  - EXHIBIT V: Nondisclosure Agreement
  - EXHIBIT VII: Notices to SBC KANSAS
  - EXHIBIT VIII: Identification of Utility Liaison Supervisor (ULS)
- 3.15 Facilities. The terms "facility" and "facilities" refer to any property, equipment, or items owned or controlled by any person or entity.
- 3.16 FCC. The acronym "FCC" refers to the Federal Communications Commission.
- 3.17 First Interconnection Order. The term "First Interconnection Order" refers to the First Report and Order adopted by the FCC on September 1, 1996, and released on September 8, 1996, in CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and CC Docket No. 95-185, In the Matter of Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers. Access to poles, ducts, conduits, and rights-of-way is addressed in the First Interconnection Order in Paragraphs 1119-1240.

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

ensure clear passage), the rearrangement, transfer, replacement, and removal of existing facilities on a pole or in a conduit system where such work is required to accommodate CLEC's facilities (as contrasted from work performed on SBC KANSAS' behalf in furtherance of SBC KANSAS' own business needs, or convenience). "Make-ready work" may require "dig-ups" of existing facilities and may include the repair, enlargement or modification of SBC KANSAS' facilities (including, but not limited to, conduits, ducts, 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 CLEC's facilities. All splicing and associated wire work related to any make ready request will be completed by the owner of the facilities involved. The cost for performing this work will be paid for by the party requiring the make ready.

- 3.27 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 a conduit. The term "handhole" refers to a structure similar in function to a manhole, but which is usually too small for personnel to enter. As used in this Appendix, the term "manhole" refers only to manhole structures owned or controlled by SBC KANSAS and does not include cables and other telecommunications equipment located within manhole structures.
- 3.28 Occupancy. The term "occupancy" refers to the physical presence of facilities on a pole, in a conduit or duct, or within a right-of-way.
- 3.29 Overlashing. The term "overlashing" refers to the practice of placing an additional cable or inner duct by lashing spinning wire over both existing cables and existing strands supporting those cables or inner ducts.
- 3.30 Person acting on CLEC's behalf. The terms "person acting on CLEC's behalf," "personnel performing work on CLEC's behalf," and similar terms include both natural persons and firms and ventures of every type, including, but not limited to, corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on CLEC's behalf," "personnel performing work on CLEC's behalf," and similar terms specifically include, but are not limited to, CLEC, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by CLEC and its respective officers, directors, employees, agents, and representatives. An authorized contractor selected by CLEC to perform make-ready work shall be deemed to be a person acting on CLEC's behalf while performing such work at CLEC's request.
- 3.31 Person acting on SBC KANSAS behalf. The terms "person acting on SBC KANSAS behalf," "personnel performing work on SBC KANSAS' behalf," and similar terms include both natural persons and firms and ventures of every type, including but not limited to corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on SBC KANSAS' behalf," "personnel performing work on SBC KANSAS' behalf," and similar terms specifically include, but are not limited to, SBC KANSAS, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request or on behalf of SBC KANSAS and its respective officers, directors, employees, agents, and representatives. An authorized contractor selected by SBC KANSAS to perform make-ready work shall be deemed to be a person acting on SBC KANSAS' behalf while performing such work at SBC KANSAS' request.
- 3.32 Pole. The term "pole" refers to all SBC KANSAS poles subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). Except as the context otherwise requires, the term "pole" refers only to utility poles and anchors which are either owned or controlled by SBC KANSAS 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 Appendix, except as the context otherwise requires, the term "pole attachment" refers to any attachment by a cable television system or

provider of telecommunications service to a pole (and associated anchors) owned or controlled by SBC KANSAS. The term "pole attachment" includes all such facilities attached to or supported by a SBC KANSAS pole, including but not limited to cables, risers and U-guards, equipment boxes, drop wires, anchors, bolts, clamps, drive rings, guys, hooks, strands, and other hardware affixed to the pole. Groupings of associated pole attachments for billing purposes shall be consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders. Except as otherwise authorized by applicable FCC rules, regulations, or orders, CLEC's pole attachments occupying the same usable space (or otherwise associated with facilities occupying the same usable space on a pole) shall be treated as a single attachment for billing purposes.

- 3.34 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 SBC KANSAS or by persons acting on SBC KANSAS' behalf for the primary purpose of:
- (a) confirming or determining the existing availability and capacity of a pole duct, conduit, or right-of-way and identifying capacity, safety, reliability, or engineering concerns, if any, relating to CLEC's application;
  - (b) confirming or determining the extent, if any, to which modifications to SBC KANSAS' poles, ducts, conduits, or rights-of-way are required to accommodate CLEC's facilities;
  - (c) confirming or determining what make-ready work, if any, will be required to prepare SBC KANSAS' poles, ducts, conduits, or rights-of-way to accommodate CLEC's facilities; and
  - (d) estimating the costs, if any, that CLEC will be required to pay for any such make-ready work or facilities modifications.
- 3.36 Pre-occupancy survey. The term "pre-occupancy survey" refers to work and activities performed or to be performed by CLEC or persons acting on behalf of CLEC for the primary purpose of enabling CLEC to determine:
- (a) whether SBC KANSAS' poles, ducts, conduits, or rights-of-way, in their existing condition, are suitable for CLEC's intended use;
  - (b) the extent, if any, to which modifications of SBC KANSAS' poles, ducts, conduits, or rights-of-way will be proposed by CLEC to expand the capacity of SBC KANSAS' poles, ducts, conduits, or rights-of-way to accommodate CLEC's facilities; and
  - (c) what make-ready work, if any, is required to prepare the poles, conduits, or conduit system to accommodate CLEC's facilities.
- 3.37 Primary point of contact. The term "primary point of contact" refers to the persons designated by CLEC and SBC KANSAS, respectively, to coordinate arrangements for CLEC's access to SBC KANSAS' poles, ducts, conduits, and rights-of-way and records relating to such poles, ducts, conduits, and rights-of-way. SBC KANSAS' designated primary point of contact shall be the Utility Liaison Supervisor unless the parties have arranged for that function to be performed by a designated account representative who will serve as an intermediary between CLEC and the Utility Liaison Supervisor.
- 3.38 Rights-of-way. As used in this Appendix, the term "rights-of-way" refers generally to legal rights to pass over or use the land of another for limited purposes as defined in a statute, ordinance, easement, grant or other conveyance. Rights-of-way include, but are not limited to public rights-of-way authorizing SBC KANSAS to locate facilities on, under, or over public lands and roadways servitudes created by private easements or obtained through the exercise of eminent domain authority enabling SBC KANSAS to pass over, place facilities on, and have rights of ingress and egress to the and of another. Rights-of-way also include easements which, at the time of land development or subdivision, were dedicated for use by public or private utilities and are being occupied, in whole or in part, by SBC KANSAS' 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 KANSAS.
- 3.42 State Commission. The term "State Commission" refers to the Kansas Corporation 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 Appendix (that is, persons and entities other than CLEC and SBC KANSAS).
- 3.46 Utility Liaison Supervisor ("ULS"). The terms "Utility Liaison Supervisor" and "ULS" refer to the person or persons designated by SBC KANSAS to be responsible for handling and processing requests for access to SBC KANSAS' poles, ducts, conduits, and rights-of-way in this State. The term "ULS" connotes responsibility for handling a function and is not a job title. Except as otherwise specifically provided in this Appendix or in the parties' interconnection agreement, if any, the ULS shall serve as CLEC's single point of contact for arranging access to SBC KANSAS' poles, ducts, conduits, and rights-of-way and access to SBC KANSAS' records relating to SBC KANSAS' poles, ducts, conduits, and rights-of-way. The Utility Liaison Supervisor for this State is identified in EXHIBIT 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, SBC KANSAS' conduit system. Access, if any, to vaults (and to ducts, conduits, and risers which serve no purpose other than to provide a means of entry to and exit from such vaults) shall be governed by the tariffs, agreements, or commission orders, if any, establishing arrangements for interconnection, collocation, and access to unbundled network elements, and not by this Appendix.
- 3.48 "Vicinity of... ." When used in terms such as "vicinity of SBC KANSAS' conduit system," "vicinity of SBC KANSAS' poles," "vicinity of SBC KANSAS' rights-of-way," or "vicinity of SBC KANSAS' poles, ducts, conduits, or rights-of-way," the term "vicinity of ..." includes sites on, within, near to, surrounding, or adjoining SBC KANSAS' poles, ducts, conduits, and rights-of-way. These sites include, but are not limited to, all sites within a distance of 10 feet of any SBC KANSAS pole, duct, conduit, or right-of-way.

#### **ARTICLE 4: NATURE AND SCOPE OF AGREEMENT**

- 4.01 Scope of Agreement. This Appendix establishes procedures for grants of non-discriminatory access to SBC KANSAS poles, ducts, conduits, and rights-of-way located within this State, without regard to whether the site is located on public or private property.
- 4.02 No Transfer of Property Rights. Nothing contained in this Appendix or any license issued hereunder shall create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other. The payment of fees and charges as provided by this Appendix and licenses issued hereunder shall not create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other. No use, however extended, of SBC KANSAS' poles, ducts, conduits, or rights-of-way shall create or vest (or be construed as creating or vesting) in CLEC any right, title, or interest in or to any real or personal property

owned by SBC KANSAS, and the placement of CLEC's facilities on or in SBC KANSAS' poles, ducts, conduits and rights-of-way shall not create or vest in SBC KANSAS any right, title, or interest in such facilities.

- 4.03 No Effect on SBC KANSAS' Right to Abandon, Convey or Transfer Poles, Ducts, Conduits, or Rights-of-Way. Except as provided in subsections (a)-(b) of this section, nothing contained in this Appendix or any license subject to this Appendix shall in any way affect SBC KANSAS' right to abandon, convey, or transfer to any other person or entity SBC KANSAS' interest in any of SBC KANSAS' poles, ducts, conduits, or rights-of-way.
- (a) SBC KANSAS shall give CLEC no less than 60 days written notice prior to abandoning, conveying, or transferring any pole, duct, conduit, or right-of-way (1) to or in which CLEC has attached or placed facilities pursuant to this Appendix or (2) with respect to which CLEC has been assigned pole attachment or conduit occupancy space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or right-of-way is to be conveyed or transferred.
  - (b) Transfers or conveyances of poles, ducts, conduits, or rights-of-way to any entity controlling, controlled by, or under common control with SBC KANSAS or to any entity which acquires or succeeds to ownership of substantially all of SBC KANSAS' assets shall be subject to CLEC's rights under this Appendix and licenses subject to this Appendix.
- 4.04 No Effect on SBC KANSAS' Rights to Manage its Facilities. Except to the extent expressly provided by the provisions of this Appendix and subject to the provisions of the Telecommunications Act of 1996 and other applicable laws, rules, and regulations, nothing contained in this Appendix shall be construed as limiting or interfering with SBC KANSAS' rights to:
- (a) locate, relocate, move, replace, modify, maintain, and operate its own facilities (including but not limited to SBC KANSAS' poles, ducts, conduits and rights-of-way, and any of SBC KANSAS' facilities attached thereto or located therein) at any time and in any manner which SBC KANSAS deems appropriate to serve its own customers, avail itself of new business opportunities, or otherwise meet its own business needs; or
  - (b) enter into new agreements or arrangements with other persons or entities permitting them to attach or place their facilities on or in SBC KANSAS' poles, ducts, conduits, or rights-of-way,
- provided, however, that such relocations, moves, replacements, modifications, maintenance, and operations or new agreements or arrangements shall not interfere with CLEC's pole attachment, right-of-way, or conduit occupancy use rights provided pursuant to this Appendix.
- 4.05 No Effect on CLEC's Rights to Manage its Own Facilities. This Appendix shall not be construed as limiting or interfering with CLEC's right to conduct its normal business operations in serving its customers or to avail itself of new business opportunities except to the extent expressly provided by the provisions of this Appendix or by the Telecommunications Act of 1996 or other applicable laws, rules or regulations.
- 4.06 No Right to Interfere with Facilities of Others. Except to the extent expressly provided by the provisions of this Appendix or by the Telecommunications Act of 1996 or other applicable laws, rules, or regulations, the provisions of this Appendix shall not be construed as authorizing either party to this Appendix, or persons acting on their behalf, to rearrange or interfere in any way with the facilities of the other party or joint users or with the use of or access to such facilities by the other party or joint users.

#### **ARTICLE 5: ACCESS TO RIGHTS-OF-WAY**

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

- 5.02 Private Rights-of-Way Not Owned or Controlled by SBC KANSAS. SBC KANSAS and CLEC agree that neither party has the right to restrict or interfere with the other party's access to private rights-of-way not owned or controlled by SBC KANSAS. Each party shall make its own, independent legal assessment of its right to enter upon or use the land or property of third-party property owners and shall bear all expenses, including legal expenses, involved in making such determinations, subject to the procedures set forth in Section 5.03 below.
- 5.03 Access to Associated Rights-of-Way. Each pole attachment and conduit occupancy license made under this Appendix shall include access to and use of all associated rights-of-way, including, but not limited to, rights-of-way required by CLEC for ingress, egress, or other access to any sites where SBC KANSAS' solely or partly owned or controlled poles, manholes, conduit, ducts, or other parts of SBC KANSAS' solely or partly owned or controlled conduit system are located, but only to the extent, if any, that SBC KANSAS has the legal authority to grant such access and use. SBC KANSAS also agrees to provide nondiscriminatory access to rights-of-way containing Controlled Environment Vaults (CEVs), huts, cabinets, and other similar structures to the extent that collocation to such facilities is agreed or required by order of any court or governmental agency having jurisdiction over the subject matter. SBC KANSAS agrees that it shall place no restrictions on CLEC's ability to construct, maintain, and monitor its facilities at these sites that are more restrictive than those SBC KANSAS places on itself.
- (a) Although SBC KANSAS shall afford access to rights-of-way owned or controlled by it and permit CLEC to utilize SBC KANSAS' rights-of-way to the extent that SBC KANSAS has legal authority to do so, CLEC acknowledges that SBC KANSAS may not own or control certain rights-of-way to the extent necessary to permit CLEC full access to such rights-of-way. The following general principles shall be applied with respect to access to rights-of-way on third-party real estate:
- (1) CLEC shall first attempt to obtain right-of-way directly from the property owner.
  - (2) If SBC KANSAS has legal authority to permit access by CLEC to a right-of-way on third-party property, SBC KANSAS will not restrict CLEC's use of the right-of-way.
  - (3) If CLEC has the right of eminent domain under state law, CLEC shall independently attempt to obtain the right-of-way it seeks through the exercise of that right.
- (b) SBC KANSAS and CLEC agree that dark fiber and unused four-wire copper cable are not considered "poles, conduits, and rights-of-way".
- 5.04 Access to Rights-of-Way Incident to the Use of CEVs and Similar Structures. SBC KANSAS will provide CLEC nondiscriminatory access, consistent with the requirements of the Pole Attachment Act and Telecommunications Act of 1996, and as provided in Sections 5.03 above, to rights-of-way containing Controlled Environment Vaults (CEVs), huts, cabinets, and other similar structures. SBC KANSAS will place no restrictions on access to such rights-of-way that are more restrictive than those SBC KANSAS places on itself; provided, however, that neither party shall conduct activities on such rights-of-way which interfere with the facilities of the other party, with the privacy of communications carried over the other party's network, or with the other party's access to and use of its own facilities. This section relates only to access to rights-of-way and shall not be construed as granting access to the CEVs, huts, cabinets, and similar structures located on such rights-of-way. Access, if any, to CEVs, huts, cabinets, and similar structures, and to ducts, conduits, and risers which serve no purpose other than to provide a means of entering or exiting such structures, shall be governed by the tariff, agreement, or order, if any, granting CLEC access to such structures.

## ARTICLE 6: SPECIFICATIONS

- 6.01 Compliance with Requirements, Specifications, and Standards. CLEC agrees that CLEC's facilities attached to SBC KANSAS' poles or occupying space in its ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Appendix.

- 6.02 Design to Minimize the Need for Access to SBC KANSAS' Poles, Ducts, and Conduits. The parties shall each design their facilities to minimize the need for the parties to access SBC KANSAS' poles, ducts, and conduits.
- 6.03 Infrequent Construction Techniques and Connectivity Solutions. Unless precluded by documented engineering criteria or written guidelines SBC KANSAS applied to itself as of January 1, 1996, consistent with considerations of safety, reliability, and or engineering practices, SBC KANSAS agrees to permit CLEC at its own expense to utilize the following techniques to avoid high or unusual expenditures: (a) placement of pole attachments on both the "field" side and "road" side of a pole; (b) placement of extension arms or stand-off brackets on poles; and (c) building conduit branches into SBC KANSAS' conduit systems. CLEC acknowledges that use of the above techniques will be rare, and will be permitted only on a case-by-case basis.
- 6.04 Published Standards. SBC KANSAS and CLEC agree that the following standards equally apply to either party with respect to facilities attached to or placed in SBC KANSAS' poles, ducts, conduits, and rights-of-way and further agree that facilities shall be placed, constructed, maintained, repaired, and removed in accordance with, current (as of the date when such work is performed) editions of the following publications:
- (a) the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book";
  - (b) the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE"); and
  - (c) the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA").
- 6.05 Additional Electrical Design Specifications: Conduit. The parties agree that, in addition to the specifications and requirements referred to in Sections 6.01-6.04 above, facilities placed in SBC KANSAS' conduit system after the effective date of this Appendix shall meet all of the electrical design specifications set forth in this section.
- (a) No facilities shall be placed in SBC KANSAS' conduit system in violation of FCC regulations, including regulations relating to electrical interference. In addition, neither party shall place any facility in SBC KANSAS' conduit system which causes or may cause electrical interference with the facilities of the other party or joint users sufficient to jeopardize network integrity or degrade the quality of any communications services offered by either party or a joint user. If either party is notified by the other party or a joint user that its facilities are causing, or have the potential to cause, unacceptable levels of electrical interference, the party notified shall either correct the problem, remove the facility, or initiate good faith negotiations with the complaining party or joint user to resolve the issue.
  - (b) Facilities placed in SBC KANSAS' conduit system shall not be designed to use the earth as the sole conductor for any part of the circuits.
  - (c) Facilities placed in SBC KANSAS' conduit system and carrying more than 50 volts AC (rms) to ground or 135 volts DC to ground shall be enclosed in an effectively grounded sheath or shield.
  - (d) No coaxial cable shall be placed in SBC KANSAS' conduit system unless such cable meets the voltage limitations of Article 820 of the National Electrical Code.
  - (e) Coaxial cable placed in SBC KANSAS' conduit system may carry continuous DC voltages up to 1800 volts to ground where the conductor current will not exceed one-half ampere and where such cable has two separate grounded metal sheaths or shields and a suitable insulating jacket over the outer sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer sheath shall not exceed 200 microamperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.
  - (f) CLEC shall not circumvent the corrosion mitigation measures of SBC KANSAS or joint users.
- 6.06 Additional Physical Design Specifications: Conduit. Facilities placed in SBC KANSAS' conduit system following the effective date of this Appendix shall meet all of the following physical design specifications:

- (a) Except as otherwise specifically agreed in this Appendix or licenses issued hereunder CLEC's facilities shall enter SBC KANSAS' conduit system at locations consistent with the physical design specifications that SBC KANSAS applies to itself (typically through a manhole) or at such other designated locations agreed upon in writing (e.g., through the licensing process) by the parties in accordance with Section 6.03 (infrequent construction techniques and connectivity solutions).
  - (b) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in SBC KANSAS' conduit or ducts.
  - (c) The integrity of SBC KANSAS' conduit system and overall safety of personnel require that "dielectric cable" be used within SBC KANSAS' conduit system when a cable facility utilizes a duct or route shared in the same trench by any electric transmissions facility such as the facilities of a power utility.
  - (d) New construction splices in cables (including but not limited to fiber optic and twisted pair cables) shall be located in manholes, pull boxes or handholes.
- 6.07 Efficient Use of Conduit. To ensure efficient use of conduits, SBC KANSAS will, when cable diameters permit, install inner ducts in multiples that fully utilize duct space (typically three or four inner ducts in a full four-inch duct) as needed for SBC KANSAS' own business purposes and to accommodate CLEC and other joint users; provided, however, that SBC KANSAS shall not be required to install inner duct in anticipation of potential future requests for access by CLEC and other joint users.
- 6.08 Specifications Applicable to Connections: Conduit. Except as otherwise specifically agreed in this Appendix or licenses issued hereunder, or as mutually agreed upon by the parties in writing, the following specifications apply to connections of CLEC's conduit to SBC KANSAS' conduit system:
- (a) CLEC shall not bore, make, or enlarge any hole in, or otherwise structurally modify or alter any manhole, handhole, duct, conduit, or other facility which is part of SBC KANSAS' conduit system except as provided in this Appendix or licenses issued hereunder, or as mutually agreed upon by the parties in writing.
  - (b) Nothing contained in subsection (a) shall be construed as precluding CLEC or qualified personnel acting on CLEC's behalf from reattaching cable racks or performing similar routine work which is minor in nature and associated with the placing and splicing of cable.
  - (c) Where CLEC's duct or facility physically connects with SBC KANSAS' manhole the section of CLEC's facility which connects to SBC KANSAS' manhole shall be installed by SBC KANSAS or its contractor at CLEC's expense (which shall be SBC KANSAS' actual costs or the price charged SBC KANSAS by the contractor). SBC KANSAS will perform this work in an interval consistent with the intervals SBC KANSAS performs work for itself. If SBC KANSAS' interval for beginning or completing this work does not meet CLEC's needs, CLEC as an authorized contractor may perform the work itself or use subcontractor(s) selected by CLEC from a list of mutually agreeable qualified "bidders" developed by SBC KANSAS and CLEC.
  - (d) SBC KANSAS will have the option to monitor the entrance and exit of CLEC's facilities into SBC KANSAS' conduit system and the physical placement of CLEC's facilities in SBC KANSAS' conduit system. Notice requirements for, and expenses associated with, this monitoring are addressed in Section 6.11 of this Appendix.
  - (e) If CLEC constructs or utilizes a duct connected to SBC KANSAS' conduit system, the duct and all connections between that duct and SBC KANSAS' conduit system shall be sealed to prevent the entry of gases or liquids into SBC KANSAS' conduit system. If CLEC's duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into SBC KANSAS' conduit system.
- 6.09 General Requirements Relating to Personnel, Equipment, Materials, and Public Safety. The parties contemplate that CLEC, its contractors, and other persons acting on its behalf will perform work for CLEC on, within, and in the vicinity of SBC KANSAS' poles, ducts, conduits, and rights-of-way. The provisions of this section are intended to protect the integrity of the networks, facilities and operations of SBC KANSAS, CLEC and joint users, to protect the health and safety of persons working on, within, or in the vicinity of SBC KANSAS' poles, ducts, conduits, and rights-of-way, and to protect the public at large.

- (a) Neither party nor any person acting on such party's behalf shall permit any person to climb on or work on SBC KANSAS' poles or in the vicinity of SBC KANSAS' poles, or enter SBC KANSAS' manholes or work within or in the vicinity of SBC KANSAS' conduit system, unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to the pole or conduit system and to perform the work safely.
- (b) Neither party nor any person acting on such party's behalf shall permit any person acting on its behalf to perform any work on, within, or in the vicinity of SBC KANSAS' poles, ducts, conduits, or rights-of-way without first verifying, to the extent practicable, on each date when such work is to be performed, that conditions at the work site (including but not limited to the physical condition of the pole or any part of SBC KANSAS' conduit system) are sufficiently safe for the work to be performed. If CLEC or any person acting on CLEC's behalf determines that the condition of the pole, duct, conduit, conduit system, or rights-of-way is not safe enough for the work to be performed, CLEC shall notify SBC KANSAS of the condition of the pole or conduit system in question and shall not proceed with the work until CLEC is satisfied that the work can be safely performed.
- (c) Neither party nor any person acting on such party's behalf shall knowingly permit defective equipment or materials to be used on, within, or in the vicinity of SBC KANSAS' poles, ducts, conduits, or rights-of-way.
- (d) When CLEC or personnel performing work on its behalf are working on, within, or in the vicinity of SBC KANSAS' poles, ducts, conduits, or rights-of-way located within, under, over, adjacent to, or in the vicinity of streets, highways, alleys or other traveled rights-of-way, CLEC and all personnel performing work on CLEC's behalf shall follow procedures which CLEC deems appropriate for the protection of persons and property. CLEC and its contractors shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. CLEC or its designated contractor will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers, and property from danger. CLEC and its contractors shall have sole responsibility for the safety of all personnel performing work on CLEC's behalf, for the safety of bystanders, and for insuring that all operations conform to current OSHA regulations and all other governmental rules, ordinances or statutes.
- (e) Neither party nor any persons acting on such party's behalf shall engage in any conduct which damages public or private property in the vicinity of SBC KANSAS' poles, ducts, conduits, or rights-of-way or creates a hazard or nuisance on such property (including but not limited to a hazard or nuisance resulting from any abandonment of or failure to remove its facilities or any construction debris from the property, failure to erect warning signs or barricades as may be necessary to give notice to others of unsafe conditions on the premises while work performed on its behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).
- (f) CLEC shall promptly suspend activities on, within, or in the vicinity of SBC KANSAS' poles, ducts, or conduits, if notified by SBC KANSAS that such activities create an unreasonable risk of injury to persons or property (including unreasonable risks of service interruptions). CLEC shall not resume such activities on or in the vicinity of CLEC's poles until CLEC is satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified and shall not resume such activities within or in the vicinity of SBC KANSAS' conduit system until both CLEC and SBC KANSAS are satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified. In the event that SBC KANSAS requires CLEC to suspend work activities and it is later determined that there was no reasonable basis for the work suspension, SBC KANSAS agrees to compensate CLEC for the cost resulting from the delay.
- (g) All personnel acting on CLEC's behalf shall, while working on or in SBC KANSAS' poles, ducts, conduits, or rights-of-way, carry with them suitable identification and shall, upon the request of any SBC KANSAS employee or representative, produce such identification.
- (h) CLEC (and any person acting on CLEC's behalf) may report unsafe conditions on, within, or in the vicinity of SBC KANSAS' poles or conduit system to SBC KANSAS.

- 6.10 Specific Requirements Relating to Personnel, Equipment, Materials, and Construction Practices Within or in the Vicinity of SBC KANSAS' Conduit Systems. When SBC KANSAS or CLEC, their contractors, and other persons acting on their behalf perform work on, within, or in the vicinity of SBC KANSAS' ducts, conduits, and rights-of-way where such ducts or conduits are located, they will be guided by the following:
- (a) Except as may be mutually agreed upon by the parties in writing, CLEC shall not "rod" or clear any duct or inner duct in SBC KANSAS' conduit system other than a duct or inner duct assigned to CLEC. Following the assignment of a specific duct or inner duct to CLEC, CLEC may request that SBC KANSAS rod or clear the duct or inner duct. If the duct or inner duct cannot be cleared, SBC KANSAS shall assign to CLEC the next available duct or inner duct. CLEC's request for assignment of the next available duct shall be in writing, may be transmitted to SBC KANSAS via fax or other transmission media mutually agreed upon by the parties, and shall be processed within the same intervals applicable to the processing of similar requests by SBC KANSAS' own personnel.
  - (b) Personnel performing work within SBC KANSAS' conduit system on either party's behalf shall not climb on, step on, or otherwise disturb the cables, air pipes, equipment, or other facilities located in any manhole or other part of SBC KANSAS' conduit system.
  - (c) Personnel performing work within or in the vicinity of SBC KANSAS' conduit system (including any manhole) on either party's behalf shall, upon completing their work, make reasonable efforts to remove all tools, unused materials, wire clippings, cable sheathing and other materials brought by them to the work site.
  - (d) All of CLEC's facilities shall be firmly secured and supported in accordance with Bellcore and industry standards and any applicable construction standards adopted by SBC KANSAS and applicable to SBC KANSAS' own facilities.
  - (e) CLEC's facilities shall be plainly identified with CLEC's name in each manhole with a firmly affixed permanent tag that meets the identification standards set by SBC KANSAS for its own facilities.
  - (f) Manhole pumping and purging required in order to allow work operations to proceed shall be performed in accordance with the requirements of Sections 6.14 and 6.15.
  - (g) Planks or other types of platforms shall be supported only by cable racks.
  - (h) Any leak detection liquid or device used by CLEC or personnel performing work on CLEC's behalf within or in the vicinity of SBC KANSAS' conduit system shall be of a type approved by SBC KANSAS and included on SBC KANSAS' then-current list of approved types of leak-detection liquids and devices; provided, however, that CLEC may use any type of leak detection liquid or device which meets Bellcore's published standards if SBC KANSAS has not provided CLEC SBC KANSAS' list of approved types of leak detection liquids or devices at least 60 days in advance of CLEC's work.
  - (i) CLEC and its contractors shall be responsible for providing proper ventilation while work is being performed in SBC KANSAS' conduit system on CLEC's behalf. Except for protective screens, no temporary cover shall be placed over an open manhole unless it is at least four feet above the surface level of the manhole opening.
  - (j) Smoking or the use of any open flame is prohibited in manholes, in any other portion of the conduit system, or within 10 feet of any open manhole entrance.
  - (k) Artificial lighting, when required by CLEC, will be provided by CLEC. Only explosion-proof lighting fixtures shall be used.
  - (l) Neither SBC KANSAS nor CLEC nor personnel performing work on its behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in SBC KANSAS' conduit system (including any manhole) during work operations performed within or in the vicinity of SBC KANSAS' conduit system.
  - (m) All parties shall abide by any laws, regulations, and ordinances regarding the use of spark producing tools, equipment, or devices (including but not limited to such tools as electric drills and hammers, meggers, breakdown sets, induction sets, and the like) in manholes or in any other portions of the conduit system.

- (n) Cable lubricants used in conduit systems shall be of a type or types approved by SBC KANSAS and included on SBC KANSAS' then-current list of approved types of cable lubricants; provided, however, that CLEC may use any type of cable lubricant which meets Bellcore's published standards if SBC KANSAS has not provided CLEC SBC KANSAS' list of approved types of cable lubricants at least 60 days in advance of CLEC's work.
- 6.11 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of SBC KANSAS' manholes and access to SBC KANSAS' conduit system.
- (a) CLEC will notify SBC KANSAS not less than 5 business days in advance before entering SBC KANSAS' 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, CLEC shall, when feasible, provide SBC KANSAS with 10 working days advance notice before entering SBC KANSAS' conduit system.
  - (b) The parties contemplate that CLEC may need to perform operations in SBC KANSAS' conduit system other than during normal business hours and may occasionally require access to manholes on shorter notice than contemplated in subsection (a) above. Under these circumstances, CLEC shall notify SBC KANSAS as soon as is reasonably possible of its intent to enter and perform work in the conduit system and SBC KANSAS shall not, without due cause and justification, insist on literal compliance with the scheduling requirements of subsection (a) in such circumstances. SBC KANSAS will establish procedures enabling SBC KANSAS to receive notices from CLEC under this subsection 24 hours a day, seven days a week.
  - (c) Each party must obtain any necessary authorization from appropriate authorities to open manholes for such party's own conduit work and operations therein.
  - (d) A single authorized employee or representative of SBC KANSAS may be present any time when CLEC or personnel acting on CLEC's behalf enter or perform work within SBC KANSAS' conduit system. CLEC shall reimburse SBC KANSAS for costs associated with the presence of SBC KANSAS' authorized employee or representative. Each party must obtain any necessary authorization from appropriate authorities to open manholes.
- 6.12 OSHA Compliance. Each party agrees:
- (a) its facilities attached to SBC KANSAS' poles or placed in SBC KANSAS' ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the Occupational Safety and Health Act (OSHA) and all rules and regulations promulgated thereunder and
  - (b) all persons shall, when working on, within, or in the vicinity of SBC KANSAS' poles or conduit system, comply with OSHA and all rules and regulations thereunder.
- 6.13 Environmental Contaminants in SBC KANSAS' Conduit System. CLEC acknowledges that, from time to time, environmental contaminants may enter SBC KANSAS' conduit system and accumulate in manholes or other conduit facilities.
- (a) CLEC may, at its expense, perform such inspections and tests at the site of any pole, duct, conduit, or right-of-way occupied by or assigned to CLEC as CLEC may deem necessary to determine the presence at such sites of environmental contaminants. SBC KANSAS will assist CLEC, at CLEC's request and expense, in the performance of such inspections and tests.
  - (b) SBC KANSAS makes no representations to CLEC or personnel performing work on CLEC's behalf that SBC KANSAS' poles, ducts, conduits, or rights-of-way will be free from environmental contaminants at any particular time. Before entering a manhole or performing any work within or in the vicinity of SBC KANSAS' conduit system or any other site subject to access under this Appendix, CLEC or personnel acting on CLEC's behalf shall independently determine, to their satisfaction, whether such contaminants are present and conduct their work operations accordingly.

- (c) Each party shall promptly notify the other of environmental contaminants known by such party to be present on, within or in the vicinity of poles, ducts, conduits, or rights-of-way occupied by or assigned to CLEC if, in the sole judgment of such party, such environmental contaminants create a serious danger to (1) the health or safety of personnel working within or in the vicinity of the conduit or (2) the physical condition of the other party's facilities placed or to be placed within the conduit.
  - (d) Nothing contained in this Appendix (including but not limited to the acknowledgments and representations set forth in this section) shall relieve either party from its responsibility to comply with all applicable environmental laws or its responsibility for any liability arising out of such party's failure to comply with such laws.
- 6.14 Compliance with Environmental Laws and Regulations. CLEC and SBC KANSAS agree to comply with the following provisions relating to compliance with environmental laws and regulations.
- (a) All persons acting on CLEC's or SBC KANSAS' behalf, including but not limited to CLEC's or SBC KANSAS' employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of SBC KANSAS' poles, ducts, conduits, or rights-of-way, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.
- 6.15 Compliance with Other Governmental Requirements (Including Aeronautical Navigation Safeguards). CLEC and SBC KANSAS agree that their facilities attached to SBC KANSAS' poles or placed in SBC KANSAS' ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter (including but not limited to any valid ordinances, rules, and regulations requiring permits, certificates, licenses or the like). CLEC and SBC KANSAS shall comply with all statutes, ordinances, rules, regulations, and other laws requiring the marking and lighting of aerial wires, cables, and other structures to ensure that such wires, cables, and structures are not a hazard to aeronautical navigation.
- 6.16 Responsibility for Condition of Facilities. Each party will be responsible at all times for the condition of its facilities (including but not limited to those extending from SBC KANSAS' poles, ducts, conduits, or rights-of-way directly to any other location) and for its compliance with the requirements and specifications of this article and all applicable laws, rules, regulations, and ordinances.

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

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

signing such a nondisclosure agreement. CLEC shall reimburse SBC KANSAS for all reasonable costs incurred by SBC KANSAS in granting CLEC's requests for access to records and information under this section.

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

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

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

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

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

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

8.01 Selection of Space. SBC KANSAS will select or approve CLEC's selection of the space CLEC will occupy on poles or in conduit systems based upon the same criteria SBC KANSAS applies to itself as referenced in Article 6. In conduit systems owned or controlled by SBC KANSAS, maintenance ducts (as defined in Section 3.25) shall not be considered available for CLEC's use except as specifically provided elsewhere in this Appendix. All ducts associated with the conduit system which are not assigned or occupied shall be

deemed available for use by SBC KANSAS, CLEC, and third parties entitled to access under the Pole Attachment Act.

- 8.02 Pole, Duct, and Conduit Space Assignments. Poles, duct and conduit system will be assigned to CLEC as provided in this section. Information received by SBC KANSAS in connection with this section shall be subject to the provisions of Article 27 of this Appendix (Confidentiality of Information).
- (a) On receipt of CLEC's application for a pole attachment or conduit occupancy license the associated pole, duct, and conduit space shall be assigned to CLEC for a pre-occupancy period not to exceed 12 months, beginning with the date of such assignment. The assignment (and date and time) of assignment shall be logged and recorded in the appropriate SBC KANSAS records.
  - (b) Intentionally Left Blank
  - (c) CLEC's obligation to pay semi-annual pole attachment or conduit occupancy fees shall commence from the date the assignment or provisional assignment is logged and recorded in the appropriate SBC KANSAS records.
  - (d) During the 12-month assignment period following the date space is assigned to CLEC and entered into the appropriate SBC KANSAS record, SBC KANSAS shall not occupy or use such space without CLEC's permission, shall not assign such space to any party other than CLEC, and shall not knowingly permit any party other than CLEC to occupy or use such space without CLEC's permission except as otherwise specifically provided in this Appendix. The assignment to CLEC shall automatically lapse 12 months after the date the assignment has been entered into the appropriate SBC KANSAS record if CLEC has not occupied such assigned space within such 12-month period; provided, however, that if CLEC's failure to occupy the space within such 12-month period results from SBC KANSAS' failure to perform make-ready work on schedule, the parties shall negotiate a single extension of the assignment period, which extension shall not extend the assignment period beyond three months from the date of completion of SBC KANSAS' make-ready work; and, provided further, that if CLEC can demonstrate that its failure to occupy the space within such 12-month period results from the actions of SBC KANSAS or third parties other than persons acting on CLEC's behalf, or from acts of God, the assignment may be extended for a period no longer than three months from the date CLEC is first able to commence construction activities at the site involved. Assignments to third parties shall be subject to the same rules applicable to CLEC under this subsection. Extensions permitted under this subsection must be requested in writing before expiration of the original 12-month period and shall be recorded on the appropriate SBC KANSAS records available for inspection under Section 7.03.
  - (e) SBC KANSAS may assign space to itself by making appropriate entries in the same records used to log assignments to CLEC and third parties. If SBC KANSAS assigns pole, duct, or conduit space to itself, such assignment shall automatically lapse 12 months after the date the assignment has been entered into the appropriate SBC KANSAS record if SBC KANSAS has not occupied such assigned space within such 12-month period; provided, however, that if SBC KANSAS' failure to occupy the space within such 12-month period results from the actions of CLEC or third parties other than persons acting on SBC KANSAS' behalf, or from acts of God, SBC KANSAS' assignment may be extended for a period no longer than three months from the date SBC KANSAS is able to commence construction at the site involved. Extensions permitted under this subsection must be recorded before expiration of the original 12-month period on the appropriate SBC KANSAS records available for inspection under Section 7.03.
  - (f) If facilities modifications, capacity expansions, or other make-ready work are required due to the assignment of space to CLEC or SBC KANSAS under this section, the party to whom such space has been assigned shall reimburse the person or entity incurring the costs for such facilities modifications, capacity expansions, or make-ready work, if the party to whom such space has been assigned fails to occupy the assigned space within the 12-month assignment period or any extension thereof.
  - (g) 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 CLEC, SBC

KANSAS, 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.

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

- 9.01 Licenses Required. CLEC shall apply in writing for and receive a license before attaching facilities to specified SBC KANSAS poles or placing facilities within specified SBC KANSAS ducts or conduits manholes, or handholes. License applications and information received by SBC KANSAS in connection with such applications shall be subject to the provisions of Article 27 of this Appendix (Confidentiality of Information).
- 9.02 Application Form. To apply for a pole attachment or conduit occupancy license under this Appendix, CLEC shall submit to SBC KANSAS two signed copies of the appropriate application forms. SBC KANSAS represents that the forms specified in subsections (a) and (b) are forms in use prior to the effective date of this Appendix and that SBC KANSAS plans to revise such forms to conform to the provisions of this Appendix and to streamline the application process. The parties therefore agree that the forms specified in subsections (a) and (b) shall be interim forms only. SBC KANSAS reserves the right to change the format and content of these forms upon 60 days written notice to CLEC.
- (a) To apply for a pole attachment license, CLEC shall submit to SBC KANSAS two signed copies of SBC KANSAS' Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9433. An application for a pole attachment license shall not be complete or subject to processing by SBC KANSAS until these forms have been submitted to SBC KANSAS; provided, however, that such forms shall be deemed to be substantially complete if they contain the information specified in subsections (c)-(g) below, as applicable. Copies of Forms SW-9433 and SW-9434, are attached to this Appendix as parts of Exhibit III.
  - (b) To apply for a conduit occupancy license, CLEC shall submit to SBC KANSAS two signed copies of SBC KANSAS Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9435 ("Conduit Occupancy"). An application for a conduit occupancy license shall not be complete or subject to processing by SBC KANSAS until these forms have been submitted to SBC KANSAS; provided, however, that such forms shall be deemed to be substantially complete if they contain the information specified in subsections (c)-(g) below, as applicable. Copies of Forms SW-9434 and SW-9435, are attached to this Appendix as parts of Exhibit III.
  - (c) Each application for a license under this Appendix shall include the following information, at a minimum:
    - (1) the poles, ducts, and conduits (including all manholes) along CLEC's proposed route to or within which CLEC desires to attach or place its facilities, as well as associated maps and manhole detailed butterfly drawings;
    - (2) a description of the facilities to be attached to SBC KANSAS' poles and a description of the facilities to be placed within each component of SBC KANSAS' conduit system (including but not limited to ducts, conduits, manholes, and handholes) along the proposed route; and
    - (3) for poles, the proposed points of attachment.
  - (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 permitted apparatus enclosures and other facilities to be attached to SBC KANSAS' poles or placed in SBC KANSAS' conduit system.
  - (e) When it appears to CLEC that facilities modification, capacity expansion, or make-ready work, may be required to accommodate CLEC's access requests, CLEC shall describe the facilities modification,

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

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

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

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

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

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

- (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 SBC KANSAS or its authorized representative. Primary purposes of the field inspection will be to enable SBC KANSAS to (1) confirm or determine the

facilities modification, capacity expansion, and make-ready work, if any, necessary to accommodate CLEC's facilities; (2) plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare SBC KANSAS' poles, ducts, conduits, rights-of-way, and associated facilities for CLEC's proposed attachments or occupancy; and (3) estimate the costs associated with such facilities modification, capacity expansion, or make-ready work.

- (b) The administrative processing portion of the pre-license survey (which includes processing the application and reviewing records) will be performed by SBC KANSAS.
- (c) Before performing any portion of the pre-license survey, SBC KANSAS shall obtain CLEC's written authorization to perform such work. Authorization may be given, when possible, when the application is submitted.

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

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

- (a) If access is granted, SBC KANSAS shall, no later than 45 days after CLEC's submission of the license application, further advise CLEC in writing (1) what facilities modifications, capacity expansions, or make-ready work, if any, will be required to prepare SBC KANSAS' pole or conduit facilities (2) provide CLEC an estimate of charges for such facilities modifications, capacity expansions, or make-ready work, (3) disclose to CLEC any hazardous substances known by SBC KANSAS to be present at the site.
- (b) If access is denied, SBC KANSAS will confirm the denial in writing by the 45th day after the receipt by SBC KANSAS of CLEC's completed application. The denial of access shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how such evidence and information relates to a denial of access for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. If CLEC in its completed application sets forth in writing specific proposals for expanding capacity, the denial statement shall specifically address such proposals.
- (c) CLEC agrees that if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific poles, ducts, or conduit facilities, CLEC shall promptly withdraw or amend its application, thereby minimizing the administrative burdens on SBC KANSAS of processing and responding to the application.

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

- (a) SBC KANSAS agrees to modify its outside plant facilities to the extent that CLEC agrees to pay for the modification at cost, such as but not limited to cable consolidations, as long as such modifications are consistent with capacity, safety, reliability, and engineering considerations which SBC KANSAS would apply to SBC KANSAS if the work were performed for its own benefit. SBC KANSAS may recover from

CLEC the costs of modifying its outside plant facilities for CLEC's space. SBC KANSAS will require payment of the full amount in advance subject to the true-up of the estimated costs with the actual costs.

- (b) SBC KANSAS agrees to install inner duct in a timely manner to accommodate CLEC's space needs in accordance with the same time interval SBC KANSAS provides to itself. If SBC KANSAS' interval for beginning or completing make-ready work does not meet CLEC's needs, CLEC, as a qualified contractor, may perform the inner-duct installation itself or utilize authorized subcontractor(s) selected by CLEC from a list of mutually agreeable qualified "bidders" developed by SBC KANSAS and CLEC. When inner duct is installed by CLEC or an authorized contractor in SBC KANSAS' conduit system, CLEC shall bear all installation expenses. Inner duct installed by CLEC or an authorized contractor shall be installed in accordance with the same standards and practices which would be followed if the inner duct were being installed by SBC KANSAS or SBC KANSAS' contractors. CLEC will indemnify SBC KANSAS for damages, resulting from CLEC's self-provisioning of the inner-duct.
- (c) SBC KANSAS agrees to remove cables at CLEC's expense 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, CLEC, at its option, may excavate the obstruction or request that SBC KANSAS excavate the obstruction. The excavation would be at CLEC's expense.

10.04 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 SBC KANSAS or by authorized contractors or other persons acting on SBC KANSAS' behalf and shall be performed by SBC KANSAS in accordance with the same time intervals which would be applicable if SBC KANSAS were performing the work for itself.

- (a) CLEC and SBC KANSAS will mutually establish and maintain a list of authorized contractors who may be selected by CLEC to perform make-ready work when SBC KANSAS' interval for beginning or completing such make ready work does not meet CLEC's needs.
- (b) If SBC KANSAS' interval for beginning or completing make-ready work does not meet CLEC's needs, CLEC may, as an authorized contractor, perform the make-ready work itself or arrange for the work to be performed by an authorized contractor selected by CLEC from the applicable list of authorized contractors. Subject to the availability of personnel, CLEC may also request that SBC KANSAS perform the work on an expedited basis; provided, however, that make-ready work will not be performed on an expedited basis unless CLEC 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 or other vendors may be approved by CLEC and SBC KANSAS to perform make-ready work in the event that the workload exceeds the capacity of the authorized contractors on the approved list to perform the make-ready work in a timely manner.
- (d) Nothing contained in this section authorizes CLEC, any authorized contractor selected by CLEC, or any other person acting on CLEC's behalf to consolidate SBC KANSAS' cables, remove slack, or perform any splicing (wire work) on SBC KANSAS' cables.

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

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

SBC KANSAS of its willingness to perform the proposed make-ready work itself. If CLEC advises SBC KANSAS that it is willing to perform the make-ready work proposed by SBC KANSAS in accordance with a design approved by SBC KANSAS, and SBC KANSAS' specifications, SBC KANSAS will not, without due cause and justification, refuse to accept CLEC's offer to perform the work. Authorization shall be accomplished by CLEC's signing the estimate and returning it to SBC KANSAS 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 CLEC's signing the revised estimate and returning it to SBC KANSAS within the original 20-day acceptance period, or within such period of time as may be mutually agreed upon by the parties.
  - (e) If CLEC 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, CLEC shall notify SBC KANSAS in writing by the 20th day whether CLEC is withdrawing its application, electing to perform the make-ready work itself as provided in subsection (c) or electing to treat SBC KANSAS' 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, SBC KANSAS shall contact CLEC to determine whether CLEC intends to withdraw its application. CLEC shall be deemed to have withdrawn its application if, in response to SBC KANSAS' inquiry, CLEC does not immediately sign and return the estimate to SBC KANSAS.
    - (2) If CLEC timely notifies SBC KANSAS that it is electing to treat SBC KANSAS' make-ready requirements as a denial of access, SBC KANSAS shall, within 20 days after receiving the notice, provide CLEC 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 SBC KANSAS' decision to grant access only if the specified make-ready work is performed, and shall explain how such evidence and information relates to SBC KANSAS' decision for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. The statement shall also set forth the basis for SBC KANSAS' make-ready proposals and specifically address SBC KANSAS' rationale for rejecting CLEC's alternative written proposals, if any.
- 10.06 Multiple Applications. Applications shall be processed on a first-come, first-served basis. Applications filed on the same date shall be treated as having been filed simultaneously and shall be processed accordingly.
- 10.07 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. CLEC shall make arrangements with the owners of other facilities attached to SBC KANSAS' poles or occupying space in SBC KANSAS' conduit system regarding reimbursement for any expenses incurred by them in transferring or rearranging their facilities to accommodate the attachment or placement of CLEC's facilities to or in SBC KANSAS' poles, ducts, and conduits.
- 10.08 Reimbursement for the Creation or Use of Additional Capacity. CLEC acknowledges that if any additional capacity is created as a result of make-ready work performed to accommodate CLEC's facilities, CLEC shall not have any preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to SBC KANSAS for the use of such additional capacity. If SBC KANSAS utilizes additional space or capacity created at CLEC's expense, SBC KANSAS will reimburse CLEC on a pro-rata basis for SBC KANSAS' share, if any, of CLEC's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. SBC KANSAS will notify the CLEC if any entity, including SBC KANSAS, attaches facilities to additional capacity on SBC KANSAS' structure created at CLEC's expense. SBC KANSAS shall not be required to collect or remit any such amounts to CLEC, to resolve or adjudicate disputes over reimbursement between CLEC and Other Users.
- 10.09 License and Attachment. After all required make-ready work is completed, SBC KANSAS will issue a license confirming that CLEC may attach specified facilities to SBC KANSAS' poles or place specified

facilities in SBC KANSAS' conduit system. CLEC shall have access to attach or place only those facilities specifically described in licenses subject to this Appendix, and no others.

#### **ARTICLE 11: CONSTRUCTION OF CLEC'S FACILITIES**

- 11.01 Responsibility for Attaching and Placing-Facilities. Each party shall be responsible for the actual attachment of its facilities to SBC KANSAS' poles and the actual placement of its facilities in SBC KANSAS' ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities. In this regard, each party shall be solely responsible for (a) paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and attachment of its facilities and (b) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SBC KANSAS' poles, ducts, conduits, and rights-of-way.
- 11.02 Construction Schedule. After the issuance of a license, CLEC shall provide SBC KANSAS with an updated construction schedule and shall thereafter keep SBC KANSAS informed of anticipated changes in the construction schedule. Construction schedules received by SBC KANSAS shall be subject to the provisions of Article 27 of this Appendix (Confidentiality of Information). Construction schedules required by this section shall include, at a minimum, the following information:
- (a) the name, title, business address, and business telephone number of the manager responsible for construction of the facilities;
  - (b) the names of each contractor and subcontractor that will be involved in the construction activities;
  - (c) the estimated dates when construction will begin and end; and
  - (d) the approximate dates when CLEC or personnel working on CLEC's behalf will be performing construction work in connection with the attachment of CLEC's facilities to SBC KANSAS' poles or the placement of CLEC's facilities in any part of SBC KANSAS' conduit system.

#### **ARTICLE 12: USE AND ROUTINE MAINTENANCE OF CLEC'S FACILITIES**

- 12.01 Use of CLEC's Facilities. Each license granted under this Appendix authorizes CLEC to have access to CLEC's facilities on or within SBC KANSAS' poles, ducts, and conduits as needed for the purpose of serving CLEC's customers.
- 12.02 Routine Maintenance of CLEC's Facilities. Each license granted under this Appendix authorizes CLEC to engage in routine maintenance of facilities located on or within SBC KANSAS' poles, ducts, and conduits pursuant to such license. Routine maintenance does not include the replacement or modification of CLEC's facilities in any manner which results in CLEC's attachments differing substantially in size, weight, or physical characteristics from the attachments described in CLEC's license.
- 12.03 Installation of Drive Rings and J-Hooks. CLEC may install drive rings and J-hooks on SBC KANSAS' 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 CLEC.
  - (b) If attachment space has already been licensed to CLEC on a given SBC KANSAS pole, CLEC may install drive rings and J-hooks within the space assigned to CLEC (e.g., typically six inches above and six inches below CLEC's point of attachment on the pole if the point of attachment is in the center of the space assigned to CLEC) 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 CLEC's licensed attachment space.
- 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 SBC KANSAS, CLEC, 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 SBC KANSAS. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify SBC KANSAS of such use and must either vacate the maintenance duct within 30 days or, with SBC KANSAS' consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if a designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within 30 days after such party occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies which may occur while the maintenance duct is occupied.

- 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 SBC KANSAS' poles, ducts, conduits, and rights-of-way.
- 12.06 Information Concerning the Maintenance of CLEC's Facilities. Promptly after the issuance of a license, CLEC shall provide SBC KANSAS with the name, title, business address, and business telephone number of the manager responsible for routine maintenance of CLEC's facilities and shall thereafter notify SBC KANSAS of changes to such information. The manager responsible for routine maintenance of CLEC's facilities shall, on SBC KANSAS' request, identify any authorized contractor or other person performing maintenance activities on CLEC's behalf at a specified site.

### **ARTICLE 13: MODIFICATION OF CLEC'S FACILITIES**

- 13.01 Notification of Planned Modifications. CLEC shall notify SBC KANSAS in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities attached to a pole, or located in any SBC KANSAS duct or conduit. The notice shall contain sufficient information to enable SBC KANSAS to determine whether the proposed addition, relocation, replacement, or modification is permitted under CLEC'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 SBC KANSAS' poles, ducts, or conduits, and having no effect on the ability of SBC KANSAS or joint users to use or have access to SBC KANSAS' 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 CLEC occupy additional space on SBC KANSAS' poles (except on a temporary basis in the event of an emergency);
  - (b) requires that CLEC occupy additional space (other than space in the maintenance duct in accordance with Sections 12.04, 13.03, and 15.02 of this Appendix) in any SBC KANSAS duct or conduit except on a temporary basis in the event of an emergency;
  - (c) results in the facilities attached being different from those described as authorized attachments in CLEC's present application, current license, notice of intent to occupy, or license application and supplemental documentation (e.g., different duct or size increase causing a need to re-calculate storm loadings, guying, or pole class);
  - (d) requires additional holding or loading capacity on a permanent basis.
- 13.03 Use of Maintenance Duct in Connection with Facility Modifications and Replacements. Non-emergency access to the maintenance duct in connection with facilities modifications and replacements shall be subject to the provisions of Section 12.04 of this Appendix.

- 13.04 Replacement of Facilities and Spinning/Overlashing Additional Cables. CLEC 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. CLEC will be required to ensure pole loadings are not exceeded.
- 13.05 Streamlined Procedures for the Issuance of Amended Licenses. SBC KANSAS may streamline procedures for the issuance of amended licenses with respect to proposed additions, relocations, replacements, or modifications of CLEC's facilities when it appears to SBC KANSAS that the proposed additions, relocations, replacements, or modifications will not require make-ready work by SBC KANSAS, will not interfere with SBC KANSAS' use of its poles, conduit systems, or facilities attached or connected thereto or contained therein, and will not interfere with the use of existing facilities attached or connected thereto or contained therein by joint users.

#### **ARTICLE 14: REARRANGEMENT OF CLEC'S FACILITIES**

- 14.01 Notice of Planned Modifications. The parties acknowledge that the Pole Attachment Act recites in part that "Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment." The parties further acknowledge that the FCC, in its First Report and Order in CC Docket No. 96-98, recites that "... absent a private agreement establishing notification procedures, written notification of a modification must be provided to parties holding attachments on the facility to be modified at least 60 days prior to the commencement of the physical modification itself." This article is intended by the parties to alter the above-described notification requirements only as provided in Section 14.02(b) below.
- 14.02 Rearrangement of CLEC's Facilities at SBC KANSAS' Request. CLEC acknowledges that, from time to time, it may be necessary or desirable for SBC KANSAS 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 SBC KANSAS' own business needs or by factors outside of SBC KANSAS' control, such as the decision by a municipality to widen streets or the decision by another person or entity to seek access to SBC KANSAS' poles, ducts, conduits, or rights-of-way.
- (a) CLEC agrees that CLEC will cooperate with SBC KANSAS and joint users in making such rearrangements as may be necessary to enable such changes to be made and that costs incurred by CLEC in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the parties in accordance with then-applicable statutes, rules, regulations, and commission orders, including the Pole Attachment Act and rules, regulations and commission orders thereunder.
- (b) CLEC shall make all rearrangements of its facilities within 60 days after receiving written notification by SBC KANSAS of the required rearrangements. SBC KANSAS may request that such modification be made within a shorter period of time, in which event CLEC 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 SBC KANSAS' request to CLEC;
  - (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 CLEC from advising SBC KANSAS, within 60 days from the date of the notice, of its desire to add to or modify its existing attachments.

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

- 15.01 **Applicability.** The parties acknowledge that in the event of an emergency, services provided by the parties and joint users to their respective customers may be interrupted, that it may not be possible for all service providers with facilities attached to SBC KANSAS' poles to restore service to all customers at the same time, that disputes may arise between the parties concerning the manner in which emergency repairs shall be made, that it is essential that decisions be made quickly and that it is highly desirable that all service providers utilizing SBC KANSAS' poles, ducts, and conduits enter into appropriate arrangements relating to emergency repairs and service restoration. In the absence of prearranged agreements it is expected that disputes will be immediately resolved at the site among the affected parties based upon the criteria set forth in Section 15.05 of this Appendix. The parties further agree that the provisions of this article shall apply in the absence of more comprehensive agreements relating to emergency repairs.
- 15.02 **Responsibility for Emergency Repairs; Access to Maintenance Duct.** In general, each party plans and practices which will enable it to make such emergency repairs.
- (a) Nothing contained in this Appendix shall be construed as requiring either party to perform any repair or service restoration work of any kind with respect to the other party's facilities or the facilities of joint users.
- (b) Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any person or entity (including but not limited to SBC KANSAS, CLEC, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located; provided, however, that a party using the maintenance duct for emergency repair activities shall immediately notify SBC KANSAS of such use and must either vacate the maintenance duct within 30 days or, with SBC KANSAS' consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if a designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within 30 days after such party occupies the maintenance duct. The parties agree not to exceed 30 days' use except in unusual emergencies that may require longer than 30 days to rectify.
- (c) If necessary, other unoccupied ducts may be used on a short-term basis when the maintenance duct is unavailable. Any such use shall be subject to the same rules applicable to the maintenance duct and shall be subject to the rights of any party or joint user to whom such duct has been assigned.
- 15.03 **Designation of Emergency Repair Coordinators and Other Information.** For each SBC KANSAS construction district, CLEC shall provide SBC KANSAS with the emergency contact number of CLEC's designated point of contact for coordinating the handling of emergency repairs of CLEC's facilities and shall thereafter notify SBC KANSAS of changes to such information.
- 15.04 **Reporting of Conditions Requiring Emergency Repairs.** CLEC shall notify SBC KANSAS at the earliest practicable opportunity after discovering any condition on or in any of SBC KANSAS' poles, ducts, conduits, or rights-of-way requiring emergency repairs to SBC KANSAS' facilities and SBC KANSAS shall notify CLEC at the earliest practicable opportunity after discovering any condition on or in any of SBC KANSAS' poles, ducts, conduits, or rights-of-way requiring emergency repairs to CLEC'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, SBC KANSAS, CLEC, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties in accordance with the following principles:
- (a) Emergency service restoration work requirements shall take precedence over other work operations.

- (b) Except as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The parties shall exercise good faith in assigning priorities and shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.
  - (c) SBC KANSAS shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected parties are unable to reach prompt agreement; provided, however, that these decisions shall be made by SBC KANSAS on a nondiscriminatory basis in accordance with the principles set forth in this section.
- 15.06 Unilateral Corrective Action. When SBC KANSAS or CLEC reasonably believes that, due to the condition of either party's facilities placed on, within, or in the vicinity of SBC KANSAS' 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 SBC KANSAS' or CLEC's facilities, or SBC KANSAS' or CLEC's ability to meet its service obligations, SBC KANSAS or CLEC may unilaterally perform such limited corrective work as may be necessary to prevent or mitigate against the injury threatened. For example, if facilities have become detached or partially detached from a pole, or detached or partially detached from supporting racks or wall supports within a manhole, SBC KANSAS or CLEC may reattach them as provided in this section but shall not be obligated to do so.
  - (a) Before performing any corrective work involving facilities, SBC KANSAS or CLEC shall 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, SBC KANSAS or CLEC may perform corrective work without first giving notice to the other, and shall promptly notify the other of the corrective work performed and the reason why notice was not given.
- 15.07 Emergency Pole Replacements. CLEC agrees to cooperate fully with SBC KANSAS when emergency pole replacements are required.
  - (a) When emergency pole replacements are required, SBC KANSAS shall promptly make a good faith effort to contact CLEC to notify CLEC of the emergency and to determine whether CLEC will respond to the emergency in a timely manner.
  - (b) If notified by SBC KANSAS that an emergency exists which will require the replacement of a pole, CLEC shall transfer its facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to a SBC KANSAS replacement pole, the transfer shall be in accordance with SBC KANSAS' placement instructions.
  - (c) If CLEC is unable to respond to the emergency situation immediately, CLEC shall so advise SBC KANSAS and thereby authorize SBC KANSAS (or any joint user sharing the pole with SBC KANSAS) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on CLEC's behalf.
- 15.08 Expenses Associated with Emergency Repairs. Each party shall bear all reasonable expenses arising out of or in connection with any emergency repairs of its facilities and transfers or rearrangements of its facilities associated with emergency pole replacements made in accordance with the provisions of this article.
  - (a) Each party shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such party's facilities.
  - (b) CLEC agrees to reimburse SBC KANSAS for the costs incurred by SBC KANSAS for work performed by SBC KANSAS on CLEC's behalf in accordance with the provisions of this article; provided, however, that when the costs incurred by SBC KANSAS are for work performed in part for CLEC and in part for

SBC KANSAS and third parties, CLEC shall only reimburse SBC KANSAS for CLEC's share of the costs.

#### **ARTICLE 16: INSPECTION BY SBC KANSAS OF CLEC'S FACILITIES**

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

#### **ARTICLE 17: TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS**

- 17.01 Facilities to Be Marked. CLEC shall tag or otherwise mark all of CLEC's facilities placed on or in SBC KANSAS' poles, ducts, conduits, and rights-of-way in a manner sufficient to identify the facilities as CLEC's facilities.
- 17.02 Removal of Untagged or Unauthorized Facilities. Subject to the provisions of subsections (a)-(c) of this section, SBC KANSAS may, without notice to any person or entity, remove from SBC KANSAS' poles or any part of SBC KANSAS' conduit system any untagged or unmarked facilities, including any such facilities owned or used by CLEC, if SBC KANSAS determines that such facilities are not the subject of any current license authorizing their continued attachment to SBC KANSAS' poles or occupancy of SBC KANSAS' conduit system and are not otherwise lawfully present on SBC KANSAS' poles or in SBC KANSAS' conduit system.
- (a) Before removing any such untagged or unmarked facilities, SBC KANSAS shall first attempt to determine whether the facilities are being used by CLEC or any other firm, are authorized by any license subject to this Appendix, or are otherwise lawfully present on SBC KANSAS' poles or in SBC KANSAS' conduit system.
  - (b) SBC KANSAS shall not remove untagged or unmarked facilities which are thought to be operational without first making reasonable efforts to (1) determine the identity of the owner or other person or entity thought to be responsible for the facilities and (2) give advance written notice to such person or entity.
  - (c) If the facilities appear to be facilities which are subject to a current license granted to CLEC under this Appendix, or if the facilities are otherwise lawfully present on SBC KANSAS' poles or in SBC KANSAS' conduit system, SBC KANSAS shall give written notice to CLEC requesting CLEC to tag or mark the facilities within 60 days and CLEC shall either tag the facilities within 60-day period, advise SBC KANSAS in writing of its schedule for tagging the facilities, or notify SBC KANSAS in writing that it disclaims ownership of or responsibility for the facilities. If CLEC disclaims ownership of or responsibility for the facilities, CLEC shall disclose to SBC KANSAS the identity of the owner or other party thought by CLEC to be responsible for the facilities.
  - (d) If any of CLEC's facilities for which no license is presently in effect are found attached to SBC KANSAS' poles or within any part of SBC KANSAS' conduit system or rights-of-way, SBC KANSAS shall send a written notice to CLEC advising CLEC that no license is presently in effect with respect to the facilities. Within 30 days of receiving such notice, CLEC shall acknowledge receipt of the notice and submit to

SBC KANSAS, in writing, an application for a new or amended license with respect to such facilities. CLEC shall be liable to SBC KANSAS for all fees and charges associated with the unauthorized attachments. Such fees and charges shall continue to accrue until the unauthorized attachments are removed from SBC KANSAS poles, conduits or rights-of-way or until a new or amended occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if CLEC and its predecessors had continuously complied with all applicable SBC KANSAS licensing requirements. In addition, CLEC shall be liable for an unauthorized attachment fee in the amount of 5 times the annual attachment and occupancy fees in effect on the date CLEC is notified by SBC KANSAS of the unauthorized attachment or occupancy. CLEC shall also rearrange or remove its unauthorized facilities at SBC KANSAS' request to comply with applicable placement standards and shall remove its facilities from any space occupied by or assigned to SBC KANSAS or another entity within 30 days of receiving notice to do so. CLEC shall pay SBC KANSAS for all costs incurred by SBC KANSAS in connection with any rearrangements, modifications or replacements necessitated as a result of the presence of CLEC's unauthorized facilities. All fees and charges associated with the unauthorized attachments shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. If CLEC does not obtain a new or amended license with respect to unauthorized facilities within the specified period of time, SBC KANSAS shall by written notice advise CLEC to remove its unauthorized facilities within 60 days from the date of notice and CLEC shall remove the facilities within the time specified in the notice. If the facilities have not been removed within the time specified in the notice, SBC KANSAS may, at SBC KANSAS' option, remove CLEC's facilities at CLEC's expense.

- 17.03 Updating of Plant Location Records. CLEC shall furnish SBC KANSAS, upon request, with such information as may from time to time be necessary for SBC KANSAS to correct and update SBC KANSAS' 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.

#### **ARTICLE 18: REMOVAL OF CLEC'S FACILITIES**

- 18.01 Responsibility for Removing Facilities. CLEC shall be responsible for and shall bear all expenses arising out of in connection with the removal of its facilities from SBC KANSAS' poles, ducts, conduits, and rights-of-way. Such removals shall be performed in accordance with the provisions of this article.
- (a) CLEC shall give SBC KANSAS, when practicable, at least 30 days' advance notice in writing of its intent to remove facilities from any part of SBC KANSAS' conduit system and the proposed method of removal. The notice shall include the locations of the facilities to be removed, the name, telephone number of the manager responsible for the removal of the facilities, and the estimated dates when the removal of the facilities will begin and end.
  - (b) CLEC shall, if requested by SBC KANSAS to do so, place a pull mandrel (slug) through all or any specified part of the duct which was occupied by CLEC.
  - (c) Except as otherwise agreed upon in writing by the parties, CLEC must, after removing its facilities, plug all previously occupied ducts at the entrances to SBC KANSAS' manholes (if SBC KANSAS would itself plug the ducts under the same circumstances) in accordance with the standards set by SBC KANSAS for its operations, provided that such standards have been communicated in writing to CLEC at least 10 days in advance of the removal of CLEC's facilities.
  - (d) CLEC shall be solely responsible for the removal of its own facilities and for (1) paying all persons and entities which provide materials, labor, access to real or personal property, or other goods or services in connection with the removal of CLEC's facilities from SBC KANSAS' poles, ducts, conduits, or rights-of-way and (2) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SBC KANSAS' poles, ducts, conduits, or rights-of-way.
  - (e) When CLEC no longer intends to occupy space on a pole or in a conduit CLEC will provide written notification to SBC KANSAS 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 CLEC's facilities, the license shall terminate and the space shall be available for reassignment.

- 18.02 Removal of Facilities Not in Active Use. At SBC KANSAS' request, CLEC shall remove from SBC KANSAS' poles, ducts, conduits, and rights-of-way any of CLEC's facilities which are no longer in active use; provided, however, that CLEC shall not be required to remove such facilities when due cause and justification exists for allowing them to remain in place. CLEC 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. CLEC 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 Appendix. CLEC shall not abandon any of its facilities by leaving them on SBC KANSAS' poles, in SBC KANSAS' ducts, conduits, or rights-of-way, at any location where they may block or obstruct access to SBC KANSAS' poles or any part of SBC KANSAS' conduit system, or on any public or private property (other than property owned or controlled by CLEC) in the vicinity of SBC KANSAS' poles, ducts, conduits, or rights-of-way.
- 18.03 Removal Following Termination of License. CLEC shall remove its facilities from SBC KANSAS' 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 SBC KANSAS' poles or the placement of such facilities in SBC KANSAS' ducts, conduits, or rights-of-way.
- 18.04 Removal Following Replacement of Facilities. Except as provided in Section 18.02, CLEC shall remove facilities no longer in service from SBC KANSAS' 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 CLEC 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 Appendix and not by this subsection.
- 18.05 Notice of Completion of Removal Activities. CLEC shall give written notice to SBC KANSAS stating the date on which the removal of its facilities from SBC KANSAS' poles, ducts, conduits, and rights-of-way has been completed. Charges shall continue to accrue with respect to such facilities until CLEC's facilities have been removed, pull mandrels (slugs) have been pulled if required by Section 18.01(b) of this Appendix, CLEC has plugged all previously occupied ducts at the entrances to SBC KANSAS' manholes as required by Section 18.01(c) of this Appendix, and the notice required by this section has been given.
- 18.06 Notice of SBC KANSAS' Intent to Remove Facilities. If CLEC fails to remove its facilities from SBC KANSAS' poles or conduit system, in accordance with the provisions of Sections 18.01 and 18.05 of this Appendix, SBC KANSAS may remove such facilities 60 days after giving CLEC written notice of its intent to do so. The notice shall state:
- (a) the date when SBC KANSAS plans to commence removal of CLEC's facilities, and that CLEC may remove the facilities at CLEC's sole cost and expense at any time before the date specified;
  - (b) SBC KANSAS' plans with respect to disposition of the facilities removed; and
  - (c) that CLEC's failure to remove the facilities or make alternative arrangements with SBC KANSAS for removal and disposition of the facilities shall constitute an abandonment of the facilities and of any interest therein.
- 18.07 Removal of Facilities by SBC KANSAS. If SBC KANSAS removes any of CLEC's facilities pursuant to this article, CLEC shall reimburse SBC KANSAS for SBC KANSAS' costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.
- 18.08 Reattachment or Subsequent Attachment Following Removal. After CLEC's facilities have been properly removed pursuant to the provisions of this article, neither the removed facilities nor replacement facilities shall be attached to SBC KANSAS' poles or placed in SBC KANSAS' conduit system until CLEC has first submitted new applications for the facilities and complied with the provisions of this Appendix.

- 18.09 Termination of Licenses After Removal of Facilities. CLEC agrees to provide written notice to SBC KANSAS when it ceases to use facilities attached to SBC KANSAS' poles or placed in any part of SBC KANSAS' conduit system. Upon the giving of such notice and the removal of such facilities, CLEC's license with respect to such facilities and the space occupied by those facilities shall terminate.

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

- 19.01 Application Fees.  
SBC KANSAS will charge CLEC an Application Fee for each application requesting access to poles, conduits and rights-of-way, as set forth in the Pricing Schedule.
- 19.02 Semiannual Attachment and Occupancy Fees.  
SBC KANSAS' semiannual fees for attachments to SBC KANSAS' poles and occupancy of SBC KANSAS' ducts and conduits are specified in Exhibit I. For all attachments to SBC KANSAS' poles and occupancy of SBC KANSAS' ducts and conduits, CLEC agrees to pay SBC KANSAS semiannual charges as specified in Exhibit I.
- 19.03 Billing for Attachment and Occupancy Fees.  
Semiannual attachment and occupancy fees under this Appendix and licenses issued hereunder shall be payable in advance. Fees for pole attachments shall be based on the number of poles attachments for which licenses have been issued as of the date of billing by SBC KANSAS, shall be determined in accordance with the schedule of charges set forth in Exhibit I and shall be payable semiannually in advance. Fees for conduit occupancy shall be based on the number of duct feet subject to occupancy by CLEC under licenses issued as of the date of billing by SBC KANSAS, shall be determined in accordance with the schedule of charges set forth in Exhibit I and shall be payable semiannually in advance. Pole attachment and conduit occupancy space assigned to CLEC prior to the issuance of a license shall be billed in the same manner as if a license had been issued.
- (a) Bills shall be submitted to CLEC 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 CLEC's facilities (in accordance with Article 18) and shall be retroactively adjusted as a credit on the next semiannual bill.
- 19.04 Pre-license Survey Fees. With respect to pre-license surveys conducted by SBC KANSAS pursuant to Section 9.05 of this Appendix, SBC KANSAS may charge CLEC cost-based pre-license survey fees pursuant to such methodologies as shall be approved by the KANSAS Corporation Commission following the filing of SBC KANSAS of any required study providing cost justification for the imposition of pre-license survey fees.
- 19.05 Make-Ready Charges. CLEC agrees to pay make-ready charges, if any, as specified in this section. SBC KANSAS may recover from CLEC the costs of make-ready work performed by SBC KANSAS or persons acting on SBC KANSAS' behalf. SBC KANSAS will require payment of the full amount in advance, subject to true up of the estimated costs with the actual costs.
- 19.06 Charges for Work Performed by SBC KANSAS employees. Except as otherwise specifically required by applicable commission orders, SBC KANSAS' charges to CLEC for work performed by SBC KANSAS employees pursuant to this Appendix shall be computed by multiplying the fully loaded hourly rates for such employees times the number of hours required to perform the work. Disputes over SBC KANSAS' charges for work performed by SBC KANSAS 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 Appendix, CLEC shall have the right to challenge the

methodology utilized by SBC KANSAS to determine hourly rates for SBC KANSAS employees at any time in any forum having jurisdiction over the subject matter.

- 19.06 Due Date for Payment. For all fees and charges other than make ready charges, each bill or invoice submitted by SBC KANSAS to CLEC for any fees or charges under this Appendix shall state the date that payment is due, which date shall be not less than 60 days after the date of the bill or invoice. CLEC agrees to pay each such bill or invoice on or before the stated due date.

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

- 20.01 Bond May Be Required. SBC KANSAS may require CLEC, authorized contractors, and other persons acting on CLEC's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of their respective obligations arising out of or in connection with this Appendix only as provided in subsections (a)-(b) of this section. Bonds shall not be required for entities meeting all self-insurance requirements of Section 21.02 of this Appendix.
- (a) If CLEC elects to perform facilities modification, capacity expansion, or make-ready work under Section 6.08(c) or Sections 10.02-10.05 of this Appendix, SBC KANSAS may require CLEC, authorized contractors, and other persons acting on CLEC's behalf to execute bonds equivalent to those which would be required by SBC KANSAS if the work had been performed by contractors, subcontractors, or other persons selected directly by SBC KANSAS. No bonds shall be required of CLEC, authorized contractors, or other persons acting on CLEC's behalf except in those situations where a bond would be required if the work were being performed on SBC KANSAS' behalf.
  - (b) No other bond shall be required of CLEC to secure obligations arising under this Appendix absence of due cause and justification.
  - (c) If a bond or similar form of assurance is required of CLEC, an authorized contractor, or other person acting on CLEC's behalf, CLEC shall promptly submit to SBC KANSAS, upon request, adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be canceled, changed or materially altered without first providing SBC KANSAS 60 days written notice.
  - (d) SBC KANSAS may communicate directly with the issuer of any bond issued pursuant to this section to verify the terms of the bond, to confirm that the bond remains in force, and to make demand on the issuer for payment or performance of any obligations secured by the bond.

## **ARTICLE 21: INSURANCE**

- 21.01 Insurance Required. CLEC shall comply with the insurance requirements specified in this section.
- (a) Unless CLEC has provided proof of self-insurance as permitted in Section 21.02 below, CLEC shall obtain and maintain in full force and effect, for so long as this Appendix remains in effect, insurance policies specified in Exhibit IV of this Appendix. Each policy shall name SBC KANSAS as an additional insured and shall include provisions requiring the insurer to give SBC KANSAS notice of any lapse, cancellation, or termination of the policy or any modification to the policy affecting SBC KANSAS' rights under the policy, including but not limited to any decrease in coverage or increase in deductibles.
  - (b) Exclusions from coverage or deductibles, other than those expressly permitted in EXHIBIT IV, must be approved in writing by SBC KANSAS.
  - (c) Authorized contractors and other contractors performing work on, within, or in the vicinity of SBC KANSAS' poles, ducts, conduits, or rights-of-way on CLEC's behalf shall be required to meet the same insurance requirements applicable to contractors performing similar work on SBC KANSAS' behalf. CLEC shall be responsible for securing compliance by its contractors with this requirement and shall be liable to SBC KANSAS 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 CLEC and authorized contractors) meeting the self-insurance requirements set forth in Section 21.02 of this Appendix.

- 21.02 Proof of Insurance or Self-insurance. Proof of insurance or self-insurance shall be made pursuant to the provisions of this section.
- (a) CLEC shall submit to SBC KANSAS adequate proof (as determined by SBC KANSAS) that the companies insuring CLEC are providing all coverages required by this Appendix. CLEC's insurers shall provide SBC KANSAS with certifications that the required coverages will not be canceled, changed, or materially altered (e.g., by increasing deductibles or altering exclusions from coverages) except after 30 days written notice to SBC KANSAS.
  - (b) SBC KANSAS 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. SBC KANSAS will accept self-insurance by a person or entity in lieu of other Commercial General Liability and Automobile Liability Coverage if such person or entity warrants that its net worth, as shown by its most recent audited financial statement with no negative notes, is a least 10 times the minimum liability limits set forth in Exhibit IV and SBC KANSAS is satisfied that such person or entity will be able to meet its liability obligations under this Appendix.
- 21.03 Licensing Contingent on Proof of Insurance. All insurance required in accordance with Exhibit IV, or self-insurance as permitted in Section 21.02, must be in effect before SBC KANSAS will issue pole attachment or conduit occupancy licenses under this Appendix and shall remain in force until all of CLEC's facilities have been removed from SBC KANSAS' poles, ducts, conduits, and rights-of-way.
- 21.04 Failure to Obtain or Maintain Coverage. CLEC's failure to obtain and maintain the required levels and types of insurance coverage required under this Appendix may be grounds for termination of this Appendix and licenses subject to policies of insurance required under this Appendix will be canceled or changed in any manner which will result in CLEC's failure to meet the requirements of this Appendix, SBC KANSAS may terminate this Appendix and all licenses subject to this Appendix not less than 60 days after giving CLEC written notice of its intention to do so, and such termination shall be effective on the termination date specified in the notice unless CLEC has obtained (or made arrangements satisfactory to SBC KANSAS to obtain) the required coverage from another source. In the alternative, SBC KANSAS may, in its sole discretion, elect to take such action as may be necessary to keep the policy in effect with the required coverages.

## **ARTICLE 22: TERMINATION OF AGREEMENT OR LICENSES; REMEDIES FOR BREACHES**

- 22.01 Termination of Appendix Due to Non-Use of Facilities. CLEC shall, by written notice to SBC KANSAS, terminate this Appendix if CLEC ceases to do business in this State, or ceases to make active use of SBC KANSAS' poles, ducts, conduits, and rights-of-way in this State.
- 22.02 Limitation, Termination, or Refusal of Access Due to Certain Material Breaches. CLEC's access to SBC KANSAS' poles, ducts, conduits, and rights-of-way will not materially interfere with or impair service over any facilities of SBC KANSAS or any joint user, cause material damage to SBC KANSAS' plant or the plant of any joint user, impair the privacy of communications carried over the facilities of SBC KANSAS or any joint user, or create serious hazards to health or safety of any persons working on, within, or in the vicinity of SBC KANSAS' poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, SBC KANSAS may limit, terminate or refuse access if CLEC violates this provision; provided, however, that such limitation, termination or refusal will be limited to CLEC's access to poles, ducts, conduits, and rights-of-way located in the SBC KANSAS construction district in which the violation occurs, shall be as narrowly limited in time and geographic scope as may be necessary to enable CLEC to adopt suitable controls to prevent further violations, and shall be subject to review, at CLEC's request, pursuant to the dispute resolution procedures set forth in this Appendix (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 CLEC invokes dispute resolution procedures or seeks review before a court, agency, or other

tribunal having jurisdiction over the subject matter, the limitation, termination, or refusal of access may be stayed or suspended by agreement of the parties or by order of the tribunal having jurisdiction over the parties' dispute.

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

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

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

(b) Except as provided in Section 22.02 and subsection (c) of this section, the complaining party shall not be entitled to pursue any remedies available under this Appendix or relevant law unless such notice is given and (1) the breaching party fails to cure the breach within 30 days of such notice, if the breach is one which can be cured within 30 days, or (2) the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure; provided, however, that nothing contained in this section shall preclude either party from invoking the dispute resolution procedures set forth in Article 30 of this Appendix, 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).

### **ARTICLE 23: CONFIDENTIALITY OF INFORMATION**

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

23.02 Access Limited to Persons with a Need to Know. Confidential or Proprietary information provided by CLEC to SBC KANSAS in connection with this Appendix shall not be disclosed to, shared with, or accessed by any person or persons (including but not limited to personnel involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities) other than those who have a need to know such information for the limited purposes set forth in Sections 23.03 to 23.06.

23.03 Permitted Uses of CLEC's Confidential or Proprietary Information. SBC KANSAS and persons acting on SBC KANSAS' behalf, except for personnel involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities, may utilize CLEC's Confidential or Proprietary information for the following purposes (a) posting information, as necessary, to SBC KANSAS' outside plant records; (b) placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SBC KANSAS' poles, ducts, conduits, and rights-of-way and any SBC KANSAS facilities located on, within, or in the vicinity of such poles, ducts,

- conduits, and rights-of-way; (c) performing SBC KANSAS' 3 obligations under this Appendix and similar agreements with third parties; (d) performing SBC KANSAS' general obligations to afford nondiscriminatory access to telecommunications carriers and cable television systems under the Pole Attachment Act; (e) determining which of SBC KANSAS' poles, ducts, conduits, and rights-of-way are (or may in the future be) available for SBC KANSAS' own use, and making planning, engineering, construction, and budgeting decisions relating to SBC KANSAS' poles, ducts, conduits, and rights-of-way; (f) preparing cost studies; (g) responding to regulatory requests for information; (h) maintaining SBC KANSAS' financial accounting records; and (i) complying with other legal requirements relating to poles, ducts, conduits, and rights-of-way.
- 23.04 Access by Third Parties. Information reflecting the assignment of pole attachment and conduit occupancy space to CLEC may be made available to personnel of third parties seeking access to SBC KANSAS' records under provisions, and subject to protections, equivalent to those contained in and required by Section 7.03 of this Appendix.
- 23.05 Defense of Claims. In the event of a dispute between SBC KANSAS and any person or entity, including CLEC, concerning SBC KANSAS' performance of this Appendix, satisfaction of obligations under similar agreements with third parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, SBC KANSAS may utilize Confidential or Proprietary information submitted by CLEC in connection with this Appendix as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that SBC KANSAS shall not disclose CLEC's Proprietary or Confidential Information without first, at SBC KANSAS' option, (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of the information; (b) seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing CLEC notice of the subpoena or order and the opportunity to protect the Proprietary or Confidential Information.
- 23.06 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding SBC KANSAS from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that SBC KANSAS shall not disclose CLEC's proprietary or confidential information without first, at SBC KANSAS' option: (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of CLEC'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 CLEC notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.
- 23.07 Other Uses of Confidential Information. No other uses of Confidential or Proprietary information received from CLEC pursuant to this Appendix are authorized or permitted without CLEC's express written consent.

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

**SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC KANSAS  
BY SBC OPERATIONS, INC., ITS AUTHORIZED AGENT**

By:

\_\_\_\_\_  
Signature of SBC KANSAS' Authorized Officer/Employee:

\_\_\_\_\_  
Name of SBC KANSAS' Authorized Officer/Employee (Printed or Typed)

\_\_\_\_\_  
Position/Title of SBC KANSAS' Authorized Officer/Employee

\_\_\_\_\_  
Date

**CLEC**

By:

\_\_\_\_\_  
Signature of CLEC's Authorized Officer/Employee

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

\_\_\_\_\_  
Title of CLEC's Authorized Officer/Employee

\_\_\_\_\_  
Date

## **EXHIBIT I**

### **POLE AND CONDUIT ATTACHMENT RATES**

SBC KANSAS may charge reasonable, cost based ancillary fees to recover administrative costs incurred in processing CLECs request for pole attachments and conduit space pursuant to SEC. 224 of the Telecommunications Act of 1996. The pole and conduit rates will be calculated using the FCC Rate formula on an annual basis as described in 47 C.F.R. 1.14. These rates will be communicated to CLEC no later than November 1<sup>st</sup> for the succeeding year.

## EXHIBIT II IDENTIFICATION OF APPLICANT (KANSAS)

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

Applicant's legal name is: CLEC.

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

Applicant does business under the following assumed names:

\_\_\_\_\_.

Applicant is:

☐ [ ] a corporation organized under the laws of the State of \_\_\_\_\_,  
charter no. \_\_\_\_\_;

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

☐ [ ] another entity, as follows:

\_\_\_\_\_.

Applicant represents that Applicant is:

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

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

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

### **EXHIBIT III**

## **ADMINISTRATIVE FORMS AND NOTICES (KANSAS)**

This Exhibit is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached and contains administrative forms referred to in the Master Agreement or used in connection with the provision of access to SBC KANSAS' 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 SBC KANSAS 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 SBC KANSAS to CLEC 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

## EXHIBIT IV INSURANCE REQUIREMENTS (KANSAS)

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

- 1) Premises. As used in this Exhibit, the term "premises" refers to any site located on, within, or in the vicinity of SBC KANSAS' poles, ducts, conduits, or rights-of-way and any location where CLEC or any person acting on CLEC's behalf may be physically present while traveling to or departing from any such site.
- 2) Requirements Applicable to CLEC and All Persons and Entities Acting on CLEC's Behalf. CLEC shall maintain, at all times during the term of this Agreement, all insurance and coverages set forth below. Such insurance and coverages shall not only cover CLEC but all contractors, subcontractors, and other persons or entities acting on CLEC's behalf at the premises described in 1) above. CLEC should require that all contractors, subcontractors, and other persons or entities acting on CLEC's behalf at premises described in 1) above obtain the same insurance and coverages.
- 3) Workers' Compensation Insurance. CLEC shall maintain, at all times during the term of the 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. CLEC shall require any contractor, subcontractor, or other person or entity acting on CLEC'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 CLEC.
- 4) General Liability Insurance. To protect SBC KANSAS from any liability for bodily injury or property damage, CLEC shall maintain, at all times during the term of the Master Agreement, General Liability insurance satisfactory to SBC KANSAS. SBC KANSAS shall be added as an additional insured in the standard policy or an endorsement thereto. CLEC shall also require any contractor, subcontractor, or other person or entity acting on CLEC's behalf to provide General Liability coverage with the same limits and with SBC KANSAS added as an additional insured unless such contractor, subcontractor, or other person or entity is covered by the General Liability protection afforded by CLEC.
  - 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 CLEC and any contractor, subcontractor, or other person or entity acting on CLEC's behalf. The coverages may be provided by the standard policy or endorsements thereto. Exclusion endorsements deleting these coverages will not be accepted.
    - 1) Personal Injury and Advertising Injury coverage.
    - 2) Premises/Operations coverage, including also coverage for any newly acquired ownership or controlled premises or operations.
    - 3) Independent Contractors coverage to provide protection for CLEC's contractors, subcontractors, and other persons or entities acting on CLEC'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 CLEC to meet its indemnification obligations.
    - 7) Broad Form Property Damage (BFPD) coverage for damage to property in the care or custody of CLEC and damage to work performed by or on behalf of CLEC.

- b) Minimum policy limits shall be as follows:
- General Aggregate Limit: \$2,000,000.
- 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.
- 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 SBC KANSAS as an additional insured shall not include exclusions or exceptions which defeat the purpose of protecting SBC KANSAS from any liability for bodily injury or property damage arising out of CLEC's operations.
- 5) Automobile Liability Insurance. The parties contemplate that CLEC and personnel acting on CLEC's behalf will utilize automobiles, trucks, and other motor vehicles on public and private property, including public rights-of-way, in the vicinity of SBC KANSAS' poles, ducts, conduits, and rights-of-way. Accordingly, CLEC shall maintain, at all times during the term of the 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 CLEC or by any person or entity acting on CLEC's behalf in connection with any work performed, or to be performed, on, within, or in the vicinity of SBC KANSAS' poles, ducts, conduits, or rights-of-way.
- 6) Layering of General Liability and Automobile Liability coverages. CLEC'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 Agreement.
- 7) Deductibles. No deductibles shall be allowed without the express written consent of SBC KANSAS.
- 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 SBC KANSAS, must be received by SBC KANSAS prior to the issuance of any licenses pursuant to the Agreement and before CLEC or any person acting on CLEC'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 SBC KANSAS as an Additional Insured.
- c) Deductibles, if permitted, shall be listed on the Certificate of Insurance.
- d) The cancellation clause on the certificate of insurance shall be amended to read as follows:
- "SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED OR MATERIALLY CHANGED BEFORE THE EXPIRATION DATE, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT."
- A certificate which does not include the phrase "or materially changed" does not meet SBC KANSAS' requirements. A certificate reciting that the issuing company will "endeavor to" mail 30 days written notice to the certificate holder does not meet SBC KANSAS' 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: Make  
Southwestern Bell Telephone< L.P.  
Attention: Structure Access Manager  
5305 E 71<sup>st</sup> St  
Floor 1  
Tulsa, OK 74136  
(918) 596-6873
- f) Failure to object to any coverage described in a certificate shall not constitute written permission from SBC KANSAS to any variance from or alteration of any requirement set forth in this Exhibit and shall not be construed as a waiver by SBC KANSAS of any rights under the Agreement.
- 10) Rating of Insurers. SBC KANSAS 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 CLEC's submission of proof that it has met the self-insurance requirements stated in the Master Agreement.

## EXHIBIT V NONDISCLOSURE AGREEMENT (KANSAS)

### Nondisclosure Agreement (SBC KANSAS Pole, Duct, Conduit, and Right-of-Way)

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

1) SBC KANSAS 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 SBC KANSAS owns or controls. SBC KANSAS 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 SBC KANSAS intends to keep secret and which has economic value by virtue of not being generally known to or readily ascertainable by the public, including SBC KANSAS' competitors.

2) SBC KANSAS 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 SBC KANSAS.

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 SBC KANSAS, or, if an individual, that he or she is acting on behalf of \_\_\_\_\_, which is such a cable television system or telecommunications carrier. Recipient further represents that Recipient is seeking access to SBC KANSAS' 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 SBC KANSAS' poles, ducts, conduits, and rights-of-way.

4) SBC KANSAS agrees that permitted uses of records and information concerning SBC KANSAS' poles, ducts, conduits, and rights-of-way are (a) determining which poles, ducts, conduits, and rights-of-way owned or controlled by SBC KANSAS 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 SBC KANSAS not to provide access to such poles, ducts, conduits, and rights-of-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 SBC KANSAS' 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 SBC KANSAS a counterpart of this Agreement prior to receipt of such copies or information.

6) Recipient agrees that Recipient will not without SBC KANSAS' express written authorization copy, duplicate, sketch, draw, photograph, download, photocopy, scan, replicate, transmit, deliver, send, mail, communicate, or convey any of SBC KANSAS' records relating to poles, ducts, conduits, or rights-of-way. Recipient

further agrees that Recipient will not conceal, alter, or destroy any SBC KANSAS 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 SBC KANSAS to Recipient for inspection: pole and conduit route maps, cable plat maps, and plant location records reflecting approximate locations of SBC KANSAS' 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 (SBC KANSAS 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 SBC KANSAS' 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 SBC KANSAS (whether in writing, orally, or in electronic or other 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 SBC KANSAS 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 SBC KANSAS in writing.

12) The Parties agree that, in the event of a breach or threatened breach of this Agreement, SBC KANSAS 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 SBC KANSAS' 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 SBC KANSAS. In the event of any breach of this Agreement for which legal or equitable relief is sought, SBC KANSAS 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 SBC KANSAS 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 Kansas.

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.

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.

**CLEC Coalition****Southwestern Bell Telephone, L.P. d/b/a SBC  
Kansas by SBC Operations, Inc., its authorized  
agent**

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

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

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **EXHIBIT VI NOTICES TO CLEC (KANSAS)**

This Exhibit is an integral part of the Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way to which it is attached. Notices to be sent to the CLEC include, but are not limited to, notices under the following provisions of the Master Agreement.

- 4.03(a) No Effect on SBC KANSAS' Right to Abandon, Convey or Transfer Poles, Ducts, Conduits, or Rights-of-Way.
- 8.XX All Notifications in Article 8
- 9.XX All Notifications in Article 9
- 10.05(a) Make-Ready Work
- 17.02 (b) Removal of Untagged or Unauthorized Facilities
- 17.02 (c) Removal of Untagged or Unauthorized Facilities
- 17.02 (d) Removal of Untagged or Unauthorized Facilities
- 18.06 Notice of SBC KANSAS' Intent to Remove Facilities
- 21.04 Failure to Obtain or Maintain Coverage
- 22.02 Limitation, Termination, or Refusal of Access Due to Certain Material Breaches

## EXHIBIT VII NOTICES TO SBC KANSAS (KANSAS)

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

Structure Access Manager). Except as otherwise stated in this Exhibit, all notices to SBC KANSAS shall be given to the Structure Access Manager designated in EXHIBIT VIII of the Master Agreement. The Structure Access Manager is generally responsible for coordinating applications for access to SBC KANSAS' poles, ducts, conduits, and rights-of-way and serving as CLEC's initial point of contact for matters arising out of or in connection with the administration of the Master Agreement. Notices to the Structure Access Manager shall be given in writing in the manner prescribed in Section 29.02. Notices to be sent to the Structure Access Manager include, but are not limited to, notices under the following provisions of the Master Agreement.

- 7.01        Designation of Primary Points of Contact
- 7.03(a)    Access to Records Relating to SBC KANSAS' Poles, Ducts, Conduits, and Rights-of-Way
- 8.XX       All Notifications in Article 8
- 9.XX       All Notifications in Article 9
- 10.05(e)   Make-Ready Work
- 12.03(d)   Installation of Drive Rings and J-Hooks
- 12.04       Short-term Use of Maintenance Ducts for Repair and Maintenance Activities
- 12.06       Information Concerning the Maintenance of CLEC's Facilities
- 13.01       Notification of Planned Modifications
- 14.02(c)   Rearrangement of CLEC's Facilities at SBC KANSAS' Request
- 15.02(b)   Responsibility for Emergency Repairs; Access to Maintenance Duct
- 15.03       Designation of Emergency Repair Coordinators and Other Information
- 16.01       SBC KANSAS' Right to Make Periodic or Spot Inspections
- 17.02(c)   Removal of Untagged or Unauthorized Facilities
- 18.01(a)   Responsibility for Removing Facilities
- 18.01(e)   Responsibility for Removing Facilities
- 20.01(c)   Bond May Be Required
- 22.01       Termination of Appendix Due to Non-Use of Facilities
- 22.03       Notice and Opportunity to Cure Breach

Other notices. The following notices may be given orally or in writing (including fax) and shall be given to SBC KANSAS' Local Service Center (LSC) at 1-888-344-9101 instead of the Structure Access Manager.

- 6.05(a)    Additional Electrical Design Specifications: Conduit - Notifications relating to electrical interference
- 6.09(h)    General Requirements Relating to Personnel, Equipment, Materials, and Public Safety - Notifications of unsafe conditions
- 6.11(a)    Opening of Manholes and Access to Conduit - Notification of manhole entry

- 6.13(c) Environmental Contaminants in SBC KANSAS' Conduit System - Notification of environmental contaminants
- 15.04 Reporting of Conditions Requiring Emergency Repairs - Notification of conditions requiring emergency repair
- 15.06(a) Unilateral Corrective Action - Notification of performing corrective work on emergency repair. (advanced notice)
- 15.06(b) Unilateral Corrective Action - Notification of performing corrective work on emergency repair. (no advanced notice)

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

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