



# **ATTACHMENT 02 - ISP - NETWORK INTERCONNECTION**



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## **1.0 Introduction**

- 1.1 This Attachment sets forth terms and conditions for Network Interconnection, Trunking and Inter-carrier Compensation for **AT&T-22STATE** and CLEC.
- 1.1.1 This Attachment describes the Network Interconnection Methods (NIM) provided by **AT&T-22STATE** including, the physical architecture for Interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic between the respective End Users of the Parties pursuant to Section 251(c)(2) of the Act.
- 1.1.2 This Attachment describes the trunking requirements of CLEC and **AT&T-22STATE**. Any references to incoming and outgoing trunk groups are from the perspective of CLEC. Described herein are the required and optional trunk groups for Section 251(b)(5) Traffic, ISP-Bound Traffic, IntraLATA Toll Traffic, IXC carried Meet Point Traffic, Third Party Traffic, Mass Calling, E911, Operator Services and Directory Assistance Traffic. Requirements associated with Out of Exchange Traffic are also included.
- 1.1.3 Inter-carrier Compensation arrangements for inter-carrier Telecommunications traffic exchanged between **AT&T-22STATE** and CLEC, are provided for within this Agreement.
- 1.1.3.1 In **AT&T-13STATE**, the Inter-carrier Compensation provisions of this Attachment apply to Telecommunications traffic originated and terminated between the Parties over each Party's own facilities or originated by CLEC over local circuit switching purchased by CLEC from **AT&T-13STATE** on a wholesale basis (non-resale) in a separate agreement and used in providing wireline local telephone exchange (dial tone) service to its End Users.
- 1.1.3.2 In the **AT&T SOUTHEAST REGION 9-STATE** region, the Inter-carrier Compensation provisions of this Attachment apply to Telecommunications traffic originated and terminated between the Parties over each Party's own facilities only and do not apply to traffic originated by CLEC over local circuit switching purchased by CLEC from **AT&T SOUTHEAST REGION 9-STATE** on a wholesale basis. Compensation for such traffic is addressed in a separate commercial agreement.
- 1.1.3.3 **AT&T-22STATE** or CLEC, as the originating carrier will compensate the terminating carrier in accordance with this Attachment for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic (also known as "Optional Calling Area Traffic") and IntraLATA Toll Traffic that originates from an End User that is served by a carrier providing Telecommunications services utilizing **AT&T-22STATE**'s Resale Service.
- 1.1.4 **AT&T-22STATE** will provide Recording, Message Processing and message detail services to a Facility-Based Provider. The terms and conditions under this Attachment will also apply when the Facility-Based Provider is the Recording Company.

## **2.0 Definitions**

- 2.1 "Network Interconnection Methods (NIMs)" mean, but are not limited to, Physical Collocation, Virtual Collocation, Fiber Meet Point; and other technically feasible methods of obtaining Interconnection which is incorporated into the Interconnection Agreement by amendment. One or more of these methods must be used to effect the Interconnection pursuant to Section 251(c)(2) of the Act.

- 2.2 "Access Tandem Switch" is a switching machine within the Public Switched Telecommunications Network (PSTN) that is used to connect and switch trunk circuits between and among End Office Switches for IXC carried traffic and IntraLATA Toll Traffic as designed and used in some regions as well as switching Section 251(b)(5) Traffic and ISP-Bound Traffic as designed and used in some regions.
- 2.3 "Access Usage Record (AUR)" is a message Record which contains the usage measurement reflecting the service feature group, duration and time of day for a message and is subsequently used to bill access to IXCs.
- 2.4 "Assembly and Editing" means the aggregation of recorded customer message details to create individual message Records and the verification that all necessary information required ensuring all individual message Records meet industry specifications is present.
- 2.5 "Billing Company" is the company that bills End Users for the charges incurred in transported calls.
- 2.6 "Billable Message" is a message Record containing details of a completed transported call which is used to bill an End User.
- 2.7 "Data Transmission" is the forwarding of Billable Message detail and/or AUR detail in EMI format over a mutually agreed upon medium to the appropriate Billing Company.
- 2.8 "Interexchange Carrier (IXC) Transported" are Telecommunications Services provided by an IXC or traffic transported by facilities belonging to an IXC.
- 2.9 "IntraLATA Toll Trunk Group" is a trunk group carrying only non-IXC carried IntraLATA Toll Traffic.
- 2.10 "ISP-Bound Traffic" is as defined in Section 6.3.1 below.
- 2.11 "Local/Access Tandem Switch" is a switching machine within the PSTN that is used to connect and switch trunk circuits between and among other Central Office Switches for Section 251(b)(5)/IntraLATA Toll Traffic and IXC-carried traffic.
- 2.12 "Local Interconnection Trunk Groups" are trunks used to carry Section 251(b)(5)/IntraLATA Toll Traffic between CLEC End Users and **AT&T-22STATE** End Users. Local Interconnection Trunk Groups are established according to Telcordia Technical Reference GR 317-CORE.
- 2.12.1 They are established and used as two-way trunk groups in **AT&T-12STATE**.
- 2.12.2 They are established and used as one-way trunk groups in **AT&T CONNECTICUT**.
- 2.12.3 They may be established and used as either one-way or two-way (upon mutual agreement) trunk groups in **AT&T SOUTHEAST REGION 9-STATE**.
- 2.13 "Local/IntraLATA Tandem Switch" is a switching machine within the PSTN that is used to connect and switch trunk circuits between and among subtending End Office Switches for Section 251(b)(5)/IntraLATA Toll Traffic.
- 2.14 "Local Only Tandem Switch" is a switching machine within the PSTN that is used to connect and switch trunk circuits between and among other End Office Switches for Section 251(b)(5) and ISP-Bound Traffic.
- 2.15 "Local Only Trunk Groups" are trunk groups used to carry Section 251(b)(5) and ISP-Bound Traffic only.
- 2.16 "Local Tandem" is any Local Only, Local/IntraLATA, Local/Access or Access Tandem Switch serving a particular local calling area.

- 2.17 "Meet Point Trunk Group" (**AT&T-13STATE** only) is a trunk group which carries traffic between the CLEC's End Users and IXC's via **AT&T-13STATE** Access or Local/Access Tandem Switches.
- 2.18 "Message Processing" is the creation of individual EMI formatted Billable Message detail Records from individual Recordings that reflect specific billing detail for use in billing the End User and/or AURs from individual Recordings that reflect the service feature group, duration and time of day for a message, Carrier Identification Code, among other fields, for use in billing access to the IXC's. Message Processing includes performing CMDS online edits required to ensure message detail and AURs are consistent with CMDS specifications.
- 2.19 "Offers Service" is when CLEC opens an NPA-NXX, ports a CLEC number to serve an End User or pools a block of numbers to serve End Users.
- 2.20 "Out of Exchange LEC (OE-LEC)", for purposes of this Attachment only, means CLEC when it is operating within **AT&T-22STATE**'s incumbent local Exchange Area and also providing Telecommunications Services in another ILEC's incumbent local Exchange Area in the same LATA unless traffic is associated with Commission ordered InterLATA local calling.
- 2.21 "Out of Exchange Traffic" for purposes of this Attachment only, is Section 251(b)(5) Traffic, ISP-Bound Traffic, FX, IntraLATA traffic and/or InterLATA Section 251(b)(5) Traffic exchanged pursuant to an FCC approved or court ordered InterLATA boundary waiver that:
- 2.21.1 Originates from an OE-LEC End User located in another ILEC's incumbent local Exchange Area and terminates to an **AT&T-22STATE** End User located in an **AT&T-22STATE** local Exchange Area or;
  - 2.21.2 Originates from an **AT&T-22STATE** End User located in an **AT&T-22STATE** local Exchange Area and terminates to an OE-LEC End User located in another ILEC's incumbent local Exchange Area.
- 2.22 "Point of Interconnection (POI)" is a point on the **AT&T-22STATE** network (End Office or Tandem building) where the Parties deliver Section 251(b)(5)/IntraLATA Toll Traffic to each other, and also serves as a demarcation point between the facilities that each Party is responsible to provide.
- 2.23 "Provision of Message Detail" is the sorting of all Billable Message detail and AUR detail by Revenue Accounting Office, Operating Company Number or Service Bureau, splitting of data into packs for invoicing, and loading of data into files for Data Transmission to CLEC for those Records created internally or received from other Local Exchange Carrier Companies or IXC's through **AT&T-22STATE**'s internal network or national CMDS.
- 2.24 "Record" means the logical grouping of information as described in the programs that process information and create the data files.
- 2.25 "Recording" is the creation and storage on a mutually agreed upon medium of the basic billing details of a message in AMA format converted to EMI layout.
- 2.26 "Recording Company" is the company that performs the functions of Recording and Message Processing of IXC transported messages and the Provision of Message Detail.
- 2.27 "Section 251(b)(5) Traffic" is as defined in Section 6.2 below.
- 2.28 "Section 251(b)(5)/IntraLATA Toll Traffic" for purposes of this Attachment means, (i) Section 251(b)(5) Traffic, and/or (ii) ISP-Bound Traffic, and/or (iii) IntraLATA Toll Traffic originating from an End User obtaining

local dial tone from either Party where that Party is both the Section 251(b)(5) Traffic and IntraLATA Toll provider.

- 2.29 "Third Party Trunk Group" (**AT&T SOUTHEAST REGION 9-STATE** only) is a trunk group between CLEC and **AT&T SOUTHEAST REGION 9-STATE**'s Tandem that is designated and utilized to transport Traffic that neither originates with nor terminates to an **AT&T SOUTHEAST REGION 9-STATE** End User, including interexchange traffic (whether IntraLATA or InterLATA) to/from CLEC End Users and IXCs. All such traffic is collectively referred to as Third Party Traffic.

### **3.0 Network Interconnection Methods**

- 3.1 The Interconnection provided herein may not be used solely for the purpose of originating a Party's own interexchange traffic.

#### **3.2 Network Interconnection Architecture Plan:**

- 3.2.1 **AT&T-22STATE**'s network is partly comprised of End Office Switches, Local Only Tandem Switches (**AT&T-10STATE**), Local/IntraLATA Tandem Switches, Local/Access Tandem Switches, and Access Tandem Switches. **AT&T-22STATE**'s network architecture in any given local Exchange Area and/or LATA can vary markedly from another local Exchange Area/LATA. Using one or more of the NIMs herein, the Parties will agree to a physical architecture plan for a specific Interconnection area. A physical architecture plan will, at a minimum, include the location of CLEC's switch(es) and **AT&T-22STATE**'s End Office Switch(es) and/or Tandem Switch(es) to be interconnected, the facilities that will connect the two (2) networks and which Party will provide (be financially responsible for) the Interconnection facilities. At the time of implementation in a given local Exchange Area or LATA the plan will be documented and signed by appropriate representatives of the Parties, indicating their mutual agreement to the physical architecture plan.

- 3.2.2 The Parties may utilize any method of Interconnection described in this Attachment. Unless otherwise specified in this Attachment, each Party is financially responsible for the provisioning of facilities on its side of the negotiated POI(s). Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to its side of the POI(s). The Parties agree to provide sufficient facilities for the trunk groups required in Section 4.0 below for the exchange of traffic between CLEC and **AT&T-22STATE**.

- 3.2.2.1 For each NXX code used by either Party, the Party that owns the NXX (or pooled code block) must maintain network facilities (whether owned or leased) used to actively provide, in part, local Telecommunications Service in the geographic area assigned to such NXX code. If either Party uses its NXX Code to provide Foreign Exchange (FX) service to its customers outside of the geographic area assigned to such code, that Party shall be solely responsible to transport traffic between its Foreign Exchange service customers and such code's geographic area.

#### **3.2.3 Types of Points of Interconnection:**

- 3.2.3.1 A "Tandem Serving Area (TSA)" is an **AT&T-22STATE** area defined by the sum of all local calling areas served by **AT&T-22STATE** End Offices that subtend an **AT&T-22STATE** Tandem for Section 251(b)(5)/IntraLATA Toll Traffic as defined in the LERG.
- 3.2.3.2 The Parties will interconnect their network facilities at a minimum of one CLEC designated POI within **AT&T-22STATE**'s network in the LATA where CLEC Offers Service.

- 3.2.3.3 A "Single POI" is a single point of Interconnection within a LATA on AT&T-22STATE's network that is established to interconnect AT&T-22STATE's network and CLEC's network for the exchange of Section 251(b)(5)/IntraLATA Toll Traffic.
- 3.2.3.4 The Parties agree that CLEC has the right to choose a Single POI or multiple POIs.
- 3.2.3.5 When CLEC has established a Single POI (or multiple POIs) in a LATA, CLEC agrees to establish an additional POI:
  - 3.2.3.5.1 at an AT&T-22STATE TSA separate from the existing POI arrangement when traffic through the existing POI arrangement to that AT&T-22STATE TSA exceeds twenty-four (24) DS1s at peak over three (3) consecutive months, or
  - 3.2.3.5.2 at an AT&T-22STATE End Office in a local calling area not served by an AT&T-22STATE Tandem for Section 251(b)(5)/IntraLATA Toll Traffic when traffic through the existing POI arrangement to that local calling area exceeds twenty-four (24) DS1s at peak over three (3) consecutive months.
- 3.2.3.6 The additional POI(s) will be established within ninety (90) calendar days of notification that the threshold has been met.
- 3.2.4 A Party seeking to change the physical architecture plan shall provide thirty (30) calendar days advance written Notice of such intent. After Notice is served, the normal project planning process as described in Section 3.0 above will be followed for all physical architecture plan changes.
- 3.2.5 CLEC is solely responsible, including financially, for the facilities that carry OS/DA, E911, Mass Calling, Third Party and Meet Point Trunk Groups.
- 3.2.6 Technical Interfaces
  - 3.2.6.1 The Interconnection facilities provided by each Party shall be formatted using either Alternate Mark Inversion (AMI) line code with Superframe format framing or Bipolar 8-Zero Substitution with Extended Superframe (B8ZS ESF) format framing or any mutually agreeable line coding and framing.
- 3.3 Methods of Interconnection:
  - 3.3.1 Physical and Virtual Collocation - Attachment 12 - Collocation describes the terms and conditions for Interconnection via Collocation.
  - 3.3.2 Fiber Meet Point:
    - 3.3.2.1 Fiber Meet Point between AT&T-22STATE and CLEC can occur at any mutually agreeable and technically feasible point at an AT&T-22STATE Tandem or End Office building within each LATA.
    - 3.3.2.2 When the Parties agree to Interconnect their networks pursuant to the Fiber Meet Point, a single point-to-point linear chain SONET system must be utilized (in a Unidirectional Path Switched Ring (UPSR) software configuration for AT&T SOUTHEAST REGION 9-STATE). Only Local Interconnection Trunk Groups shall be provisioned over this jointly provided facility.

- 3.3.2.3 Neither Party will be allowed to access the Data Communications Channel (DCC) of the other Party's Fiber Optic Terminal (FOT). The Fiber Meet Point will be designed so that each Party may, as far as is technically feasible, independently select the transmission, multiplexing, and fiber terminating equipment to be used on its side of the POI(s). The Parties will work cooperatively to achieve equipment and vendor compatibility of the FOT equipment.
- 3.3.2.4 Requirements for Interconnection specifications will be defined in joint engineering planning sessions between the Parties.
- 3.3.2.5 In addition to the semi-annual trunk forecast process, discussed in Section 4.0 below, discussions to provide relief to existing facilities can be initiated by either Party. Actual system augmentations will be initiated only upon mutual agreement. Facilities will be planned to accommodate the verified and agreed upon trunk forecast for the Local Interconnection Trunk Group(s).
- 3.3.2.6 The Parties will negotiate a project service date and corresponding work schedule to construct relief facilities prior to facilities exhaust.
- 3.3.2.7 CLEC will provide fiber cable to the last entrance (or AT&T-22STATE designated) manhole at the AT&T-22STATE Tandem or End Office building. AT&T-22STATE shall make all necessary preparations in the manhole to receive and to allow and enable CLEC to deliver fiber optic facilities into that manhole. CLEC will provide a sufficient length of fiber cable for AT&T-22STATE to pull through to the AT&T-22STATE cable vault. CLEC shall deliver and maintain such strands at its own expense up to the POI. AT&T shall take the fiber from the manhole and terminate it inside AT&T-22STATE's Tandem or End Office building at the cable vault at AT&T-22STATE's expense. In this case, the POI shall be at the AT&T-22STATE designated manhole location. Each Party shall provide its own source for the synchronized timing of its FOT equipment.
- 3.3.2.8 CLEC and AT&T-22STATE will mutually agree on the capacity of the FOT(s) to be utilized based on equivalent DS1s or DS3s. 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 in Section 4.0 below of this document.
- 3.3.2.9 Electrical handoffs for Fiber Meet Point will be at the DS1 or DS3 level. When a DS3 handoff is agreed to by the Parties, AT&T-22STATE will provide any multiplexing required for DS1 facilities or trunking at its end and CLEC will provide any DS1 multiplexing required for facilities or trunking at its end.

#### 3.4 Responsibilities of the Parties:

- 3.4.1 For each local Interconnection within an AT&T-22STATE area, CLEC shall provide written notice to AT&T-22STATE of the need to establish Interconnection in each local Exchange Area (AT&T SOUTHWEST REGION 5-STATE) or LATA (AT&T MIDWEST REGION 5-STATE, AT&T SOUTHEAST REGION 9-STATE, AT&T WEST REGION 2-STATE and AT&T CONNECTICUT). CLEC shall provide all applicable network information on forms acceptable to AT&T-22STATE (as set forth in AT&T-22STATE's CLEC Handbook, published on the AT&T CLEC OnLine website).
- 3.4.2 Upon receipt of CLEC's Notice to interconnect, the Parties shall schedule a meeting to document



the network architecture (including trunking) as discussed in Section 3.2.1 above. The Interconnection Activation Date for an Interconnection shall be established based on then-existing force and load, the scope and complexity of the requested Interconnection and other relevant factors.

- 3.4.3 Either Party may add or remove switches. The Parties shall provide 120 calendar days written Notice to establish such Interconnection; and the terms and conditions of this Attachment will apply to such Interconnection.
- 3.4.4 The Parties recognize that a facility handoff point must be agreed upon to establish the demarcation point for maintenance and provisioning responsibilities for each Party on its side of the POI.

#### **4.0 Interconnection Trunking**

##### **4.1 Provisioning and Administration of Trunk Groups:**

- 4.1.1 CLEC shall issue ASRs for two-way trunk groups and for one-way trunk groups originating at CLEC's switch. **AT&T-22STATE** shall issue ASRs for one-way trunk groups originating at the **AT&T-22STATE** switch.
- 4.1.2 Trunk groups for ancillary services (e.g., OS/DA, BLVI, High Volume Call In, and E911) and Meet Point or Third Party (as appropriate) Trunk Groups can be established between CLEC's switch and the appropriate **AT&T-22STATE** Tandem Switch as further provided in this Section 4.0.
- 4.1.3 Signaling Protocol:
  - 4.1.3.1 SS7 Signaling is **AT&T-22STATE**'s preferred method for signaling. Where MF signaling is currently used, the Parties agree to use their best efforts to convert to SS7. If SS7 services are provided by **AT&T-22STATE**, they will be provided in accordance with the provisions of the applicable access tariffs.
  - 4.1.3.2 Where MF signaling is currently used, the Parties agree to interconnect their networks using MF or dual tone MF (DTMF) signaling, subject to availability at the End Office Switch or Tandem Switch at which Interconnection occurs. The Parties acknowledge that the use of MF signaling may not be optimal. **AT&T-22STATE** will not be responsible for correcting any undesirable characteristics, service problems or performance problems that are associated with MF/SS7 inter-working or the signaling protocol required for Interconnection with CLEC employing MF signaling.
- 4.1.4 The number of digits to be exchanged by the Parties shall be ten (10) unless otherwise mutually agreed.
- 4.1.5 Where available, a trunk group utilization report (TIKI) may be accessed from the AT&T CLEC OnLine website. The report is provided in an MS-Excel format.

##### **4.2 Embedded Base-One-Way trunks (**AT&T-12STATE** only):**

- 4.2.1 **AT&T-12STATE** acknowledges that CLEC may have an embedded base of one-way trunks ordered and installed prior to the Effective Date of this Agreement that were used for termination of CLEC's Section 251(b)(5)/IntraLATA Toll Traffic to **AT&T-12STATE** (Embedded Base). To the extent that CLEC has such an Embedded Base, CLEC shall only augment trunk groups in the Embedded Base with the mutual agreement of the Parties. CLEC shall not order any new one-way

trunk groups following the Effective Date of this Agreement. Moreover, the Parties agree that the Embedded Base will be converted to two-way trunk groups under the following circumstances:

- 4.2.1.1 With reasonable notification from **AT&T-12STATE**, and upon **AT&T-12STATE**'s request, CLEC shall convert all of its Embedded Base to two-way trunks.
- 4.2.1.2 At any time an Embedded Base trunk group (either originating or terminating) requires augmentation, **AT&T-12STATE** can require the associated originating and terminating trunks to be converted to a single two-way trunk group prior to the augmentation.
- 4.2.1.3 When any network changes are to be performed on a project basis (i.e., central office conversions, tandem re-homes, etc.), upon request and reasonable notice by **AT&T-12STATE**, CLEC will convert all of its Embedded Base affected by the project within the intervals and due dates required by the project parameters.
- 4.2.1.4 In addition to the foregoing, CLEC may choose, at any time, to convert its Embedded Base to two-way trunk groups.
- 4.2.1.5 The Parties will coordinate any trunk group migration, trunk group prioritization, and implementation schedule. **AT&T-12STATE** agrees to develop a cutover plan within thirty (30) days of notification to CLEC of the need to convert pursuant to Section 4.2.1.1 above and Section 4.2.1.3 above.

4.3 Establishment of Local Only and Local Interconnection Trunk Groups Per Region:

- 4.3.1 When CLEC Offers Service in a Local Exchange Area or LATA, the following trunk groups described in this Section 4.3 shall be used to transport traffic between CLEC End Users and **AT&T-22STATE** End Users.
- 4.3.2 Local Only and Local Interconnection Trunk Group(s) in each Local Exchange Area: **AT&T SOUTHWEST REGION 5-STATE**. These trunk groups will utilize SS7 where available and multi-frequency (MF) signaling protocol where SS7 is not available.
  - 4.3.2.1 A two-way Local Only Trunk Group shall be established between CLEC's switch and each **AT&T SOUTHWEST REGION 5-STATE** Local Only Tandem Switch in the local Exchange Area. Inter-Tandem switching is not provided.
  - 4.3.2.2 A two-way Local Interconnection Trunk Group shall be established between CLEC's switch and each **AT&T SOUTHWEST REGION 5-STATE** Local/IntraLATA Tandem Switch and each Local/Access Tandem Switch in the local Exchange Area. Inter-Tandem switching is not provided.
  - 4.3.2.3 **AT&T SOUTHWEST REGION 5-STATE** reserves the right to initiate a one-way IntraLATA Trunk Group to CLEC in order to provide Tandem relief when a community of interest is outside the local Exchange Area in which CLEC is interconnected.
  - 4.3.2.4 Where traffic from CLEC switch to an **AT&T SOUTHWEST REGION 5-STATE** End Office is sufficient (24 or more trunks), a Local Interconnection Trunk Group shall also be established to the **AT&T SOUTHWEST REGION 5-STATE** End Office. Once such trunks are provisioned, traffic from CLEC to **AT&T SOUTHWEST REGION 5-STATE** must be redirected to route first to the Direct End Office Trunk Group (DEOT) with overflow traffic alternate routed to the appropriate **AT&T SOUTHWEST REGION 5-STATE** Tandem that switches Section 251(b)(5)/IntraLATA Toll Traffic. If an **AT&T**

**SOUTHWEST REGION 5-STATE** End Office does not subtend an **AT&T SOUTHWEST REGION 5-STATE** Tandem that switches Section 251(b)(5)/IntraLATA Toll Traffic, a direct final DEOT will be established by CLEC and there will be no overflow of Section 251(b)(5)/IntraLATA Toll Traffic.

- 4.3.2.5 A Local Interconnection Trunk Group shall be established from CLEC's switch to each **AT&T SOUTHWEST REGION 5-STATE** End Office in a local Exchange Area that has no Local Tandem. This trunk group shall be established as a direct final.
- 4.3.2.6 When **AT&T SOUTHWEST REGION 5-STATE** has a separate Local Only Tandem Switch(es) in the local Exchange Area, and a separate Access Tandem Switch that serves the same local Exchange Area, a two-way IntraLATA Toll Trunk Group shall be established to the **AT&T SOUTHWEST REGION 5-STATE** Access Tandem Switch. In addition a two-way Local Only Trunk Group(s) shall be established from CLEC's switch to each **AT&T SOUTHWEST REGION 5-STATE** Local Only Tandem Switch.
- 4.3.2.7 Each Party shall deliver to the other Party over the Local Only Trunk Group(s) only such traffic that originates and terminates in the same local exchange area.
- 4.3.3 Local Only and/or Local Interconnection Trunk Group(s) in each LATA: **AT&T MIDWEST REGION 5-STATE**, **AT&T SOUTHEAST REGION 9-STATE**, **AT&T WEST REGION 2-STATE** and **AT&T CONNECTICUT**.
  - 4.3.3.1 Tandem Trunking – **AT&T MIDWEST REGION 5-STATE** and **AT&T WEST REGION 2-STATE**
    - 4.3.3.1.1 Section 251(b)(5) and ISP Bound Traffic shall be routed on Local Only Trunk Groups established at all **AT&T MIDWEST REGION 5-STATE** and **AT&T WEST REGION 2-STATE** Local Only Tandems in the LATA for calls destined to or from all **AT&T MIDWEST REGION 5-STATE** End Offices that subtend the designated Tandem. These trunk groups shall be two-way and will utilize SS7 signaling.
    - 4.3.3.1.2 In **AT&T MIDWEST REGION 5-STATE** and **AT&T WEST REGION 2-STATE** all Section 251(b)(5)/IntraLATA Toll Traffic shall be routed on two-way Local Interconnection Trunk Groups using SS7 signaling. These trunk groups shall be established at all Local/IntraLATA and Local/Access Tandem switches in **AT&T MIDWEST REGION 5-STATE** and at the Access Tandem Switches in **AT&T WEST REGION 2-STATE** in the LATA, for calls destined to or from End Offices that subtend each Tandem.
    - 4.3.3.1.3 A Local Interconnection Trunk Group shall be established from CLEC's switch to each **AT&T MIDWEST REGION 5-STATE** and each **AT&T WEST REGION 2-STATE** End Office in any LATA where the **AT&T MIDWEST REGION 5-STATE** and **AT&T WEST REGION 2-STATE** End Office does not subtend an **AT&T MIDWEST REGION 5-STATE** and **AT&T WEST REGION 2-STATE** Local Tandem. This trunk group shall be established as a direct final.
  - 4.3.3.2 Tandem Trunking – **AT&T CONNECTICUT**

4.3.3.2.1 Section 251(b)(5)/IntraLATA Toll Traffic shall be routed on Local Interconnection Trunk Groups established at all **AT&T CONNECTICUT** Access Tandems in the LATA for calls destined to or from all **AT&T CONNECTICUT** End Offices that subtend the designated Tandem. These trunk groups shall be one-way and will utilize SS7 signaling.

4.3.3.2.2 Local Interconnection Trunk Groups in **AT&T CONNECTICUT** shall be ordered and provisioned as one-way to accommodate billing and technical limitations.

4.3.3.3 Tandem Trunking – **AT&T SOUTHEAST REGION 9-STATE**

4.3.3.3.1 Section 251(b)(5)/IntraLATA Toll Traffic shall be routed on Local Interconnection Trunk Groups established at each **AT&T SOUTHEAST REGION 9-STATE** Access Tandem in the LATA where CLEC homes its NPA/NXX codes for calls destined to or from all **AT&T SOUTHEAST REGION 9-STATE** End Offices that subtend the designated Tandem. These trunk groups shall be one-way except where two-way trunks have been mutually agreed and will utilize SS7 signaling. Where CLEC does not interconnect at every Access Tandem switch location in the LATA, CLEC must use Multiple Tandem Access (MTA) to route traffic to End Users through those Tandems within the LATA to which CLEC is not interconnected. To utilize MTA, CLEC must establish Local Interconnection Trunk Groups to a minimum of one (1) Access Tandem within each LATA as required. **AT&T SOUTHEAST REGION 9-STATE** will route CLEC originated 251(b)(5)/IntraLATA Toll traffic for LATA-wide transport and termination. Compensation for MTA is described in Section 6.2.9 below.

4.3.4 Direct End Office Trunking

4.3.4.1 DEOTs transport Section 251(b)(5)/IntraLATA Toll Traffic between CLEC's switch and an **AT&T-22STATE** End Office and are not switched at a Tandem location. When actual or projected End Office Section 251(b)(5)/IntraLATA Toll Traffic requires twenty-four (24) or more trunks CLEC shall establish the following:

4.3.4.1.1 a two-way DEOT in **AT&T-12STATE**,

4.3.4.1.2 a one-way DEOT in **AT&T CONNECTICUT**,

4.3.4.1.3 a one-way DEOT in **AT&T SOUTHEAST REGION 9-STATE** (except where the parties have agreed to use two-way trunks.)

4.3.4.2 Once such trunks are provisioned, traffic from CLEC to **AT&T-22STATE** must be redirected to route first to the DEOT with overflow traffic alternate routed to the appropriate **AT&T-22STATE** Tandem that switches Section 251(b)(5)/IntraLATA Toll Traffic. If an **AT&T-22STATE** End Office does not subtend an **AT&T-22STATE** Tandem that switches Section 251(b)(5)/IntraLATA Toll Traffic, a direct final DEOT will be established by CLEC and there will be no overflow of Section 251(b)(5)/IntraLATA Toll Traffic.

- 4.3.4.3 All traffic received by **AT&T-22STATE** on the DEOT from CLEC must terminate in the End Office, i.e. no Tandem switching will be performed in the End Office. Where End Office functionality is provided in a remote End Office switch of a host/remote configuration, CLEC shall establish the DEOT at the host switch.
- 4.3.5 Meet Point Trunk Group: **AT&T-13STATE**
- 4.3.5.1 IXC carried traffic shall be transported between CLEC's switch and the **AT&T-13STATE** Access Tandem Switch or Local/Access Tandem Switch over a Meet Point Trunk Group separate from Section 251(b)(5)/IntraLATA Toll Traffic. The Meet Point Trunk Group will be established for the transmission and routing of exchange access traffic between CLEC's End Users and IXCs via an **AT&T-13STATE** Access Tandem Switch or Local/Access Tandem Switch.
- 4.3.5.2 Meet Point Trunk Groups shall be provisioned as two-way, and each Party is responsible for delivering traffic utilizing SS7 signaling, except MF signaling will be used on a separate Meet Point Trunk Group to complete originating calls to switched access customers that use MF FGD signaling protocol.
- 4.3.5.3 When **AT&T-13STATE** has more than one Access or Local/Access Tandem Switch in a local exchange area or LATA, CLEC shall establish a Meet Point Trunk Group to every **AT&T-13STATE** Access or Local/Access Tandem Switch where CLEC has homed its NXX code(s) or is the code holder of a pooled code block.
- 4.3.5.4 **AT&T-13STATE** will not block switched access traffic delivered to any **AT&T-13STATE** Access Tandem Switch or Local/Access Tandem Switch for completion on CLEC's network. The Parties understand and agree that Meet Point trunking arrangements are available and functional only to/from switched access customers who directly connect with any **AT&T-13STATE** Access Tandem Switch or Local/Access Tandem Switch that CLEC's switch subtends in each LATA. In no event will **AT&T-13STATE** be required to route such traffic through more than one of its Tandem Switches for connection to/from switched access customers. **AT&T-13STATE** shall have no responsibility to ensure that any switched access customer will accept traffic that CLEC directs to the switched access customer.
- 4.3.5.5 CLEC shall provide all SS7 signaling information including, without limitation, charge number and originating line information (OLI). For terminating FGD, **AT&T-13STATE** will pass all SS7 signaling information including, without limitation, Calling Party Number (CPN) if it receives CPN from FGD carriers. All privacy indicators will be honored. Where available, network signaling information such as transit network selection (TNS) parameter, carrier identification codes (CIC) (CCS platform) and CIC/OZZ information (non SS7 environment) will be provided by CLEC wherever such information is needed for call routing or billing. The Parties will follow all Ordering and Billing Forum (OBF) adopted standards pertaining to TNS and CIC/OZZ codes.
- 4.3.5.6 Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s).
- 4.3.6 Third Party Trunk Group: **AT&T SOUTHEAST REGION 9-STATE**

- 4.3.6.1 Third Party Traffic trunks shall be two-way trunks and must be ordered by CLEC to deliver and receive Third Party Traffic. Establishing Third Party Traffic trunks at Access and Local Tandems provides Intra-Tandem Access to the Third Party also interconnected at those Tandems. CLEC shall be responsible for all recurring and nonrecurring charges associated with Third Party Traffic trunks and facilities.
- 4.3.7 800/(8YY) Traffic: **AT&T-22STATE**
- 4.3.7.1 If CLEC chooses **AT&T-22STATE** to handle 800/(8YY) database queries from **AT&T-22STATE**'s switches, all CLEC originating 800/(8YY) traffic will be routed over the Meet Point Trunk Groups or the Third Party Trunk Groups. This traffic will include a combination of both IXC 800/(8YY) service and CLEC 800/(8YY) service which will be identified and segregated by carrier through the database query function in the **AT&T-22STATE** Access or Local/Access Tandem Switch.
- 4.3.7.2 Where CLEC requests that **AT&T-22STATE** perform the Service Switching Point (SSP) function (e.g. the database query) on originating Toll Free Service 800/(8YY) calls, all such calls shall be delivered using GR-394 format over the Meet Point Trunk Group or over the Third Party Trunk Group. Carrier Code "0110" and Circuit Code (to be determined for each LATA) shall be used for all such calls.
- 4.3.7.3 CLEC may handle its own 800/(8YY) database queries from its own switch. Where it does so, CLEC will determine the nature of the 800/(8YY) call (local/intraLATA or IXC-carried) based on the response from the database. If the query determines that the call is a local or IntraLATA 800/(8YY) number, CLEC will route the post-query local or IntraLATA converted ten-digit local number to **AT&T-22STATE** over the Local Interconnection Trunk Group and shall provide an 800/(8YY) billing Record to **AT&T-22STATE**. If the query reveals the call is an IXC-carried 800/(8YY) number, CLEC shall route the post-query IXC-carried call (800/(8YY) number) directly from its switch for carriers interconnected with its network or over the Meet Point Trunk Group or Third Party Trunk Group, as appropriate, to carriers not directly connected to its network but which are connected to **AT&T-22STATE**'s Access or Local/Access Tandem Switch. Calls will be routed to **AT&T-22STATE** over the appropriate trunk group as defined above, within the LATA in which the calls originate.
- 4.3.7.4 All post-query Toll Free Service 800/(8YY) calls for which CLEC performs the SSP function, if delivered to **AT&T-22STATE**, shall be delivered using GR-394 format over the Meet Point Trunk Group or over the Third Party Trunk Group for calls destined to IXCs, or shall be delivered by CLEC using GR-317 format over the Local Only and/or Local Interconnection Trunk Group for calls destined to End Offices that directly subtend the Tandem.
- 4.3.8 E911 Trunk Group:
- 4.3.8.1 Attachment 05 - 911/E911 specifies E911 trunk group requirements.
- 4.3.9 High Volume Call In (HVCI)/Mass Calling (Choke) Trunk Group: **AT&T-21STATE**
- 4.3.9.1 CLEC must establish a dedicated trunk group to the designated Public Response HVCI/Mass Calling Network Access Tandem in each Serving Area. This trunk group shall be one-way outgoing only and shall utilize MF signaling. As the HVCI/Mass Calling trunk group is designed to block all excessive attempts toward HVCI/Mass

Calling NXXs, it is necessarily exempt from the one percent (1%) blocking standard described elsewhere in this Attachment. CLEC will have administrative control for the purpose of issuing ASRs on this one-way trunk group. The Parties will not exchange live traffic until successful testing is completed by both Parties.

4.3.9.1.1 Upon demonstration that the CLEC switch is unable to utilize MF signaling, the CLEC may utilize SS7 signaling for its HVC/Mass Calling Trunk Group.

4.3.9.2 The HVC trunk group shall be sized as follows:

Number of Access Lines Served	Number of Mass Calling Trunks
0 – 10,000	2
10,001 – 20,000	3
20,001 – 30,000	4
30,001 – 40,000	5
40,001 – 50,000	6
50,001 – 60,000	7
60,001 – 75,000	8
75,000 +	9 maximum

4.3.9.3 If CLEC should acquire a HVC/Mass Calling customer, e.g. a radio station, CLEC shall notify **AT&T-21STATE** at least sixty (60) days in advance of the need to establish a one-way outgoing SS7 or MF trunk group from the **AT&T-21STATE** HVC/Mass Calling Serving Office to the CLEC End User's serving office. CLEC will have administrative control for the purpose of issuing ASRs on this one-way trunk group.

4.3.9.4 If CLEC finds it necessary to issue a new choke telephone number to a new or existing HVC/Mass Calling customer, CLEC may request a meeting to coordinate with **AT&T-21STATE** the assignment of the HVC/Mass Calling telephone number from the existing choke NXX. In the event that the CLEC establishes a new choke NXX, CLEC must notify **AT&T-21STATE** a minimum of ninety (90) days prior to deployment of the new HVC/Mass Calling NXX. **AT&T-21STATE** will perform the necessary translations in its End Offices and Tandem(s) and issue ASRs to establish a one-way outgoing SS7 or MF trunk group from the **AT&T-21STATE** Public Response HVC/Mass Calling Network Access Tandem to CLEC's choke serving office.

- 4.3.9.5 In **AT&T CONNECTICUT**, where HVCI/Mass Calling NXXs have not been established, the Parties agree to utilize "call gapping" as the method to control high volumes of calls, where technically feasible in the originating switch, to specific high volume customers or in situations such as those described in Network Maintenance and Management of the General Terms and Conditions.
- 4.3.10 Operator Services/Directory Assistance/Inward Assistance Operator Services Trunk Group(s):
  - 4.3.10.1 Attachment 06 - Customer Information Services specifies the trunk group requirements for Operator Services/Directory Assistance/Inward Assistance Operator Services.
- 4.4 Trunk Forecasting Responsibilities:
  - 4.4.1 CLEC agrees to provide an initial forecast for all trunk groups described in this Attachment. **AT&T-22STATE** shall review this trunk forecast and provide any additional information that may impact the trunk forecast information provided by CLEC. Subsequent trunk forecasts shall be provided on a semi-annual basis, not later than January 1<sup>st</sup> and July 1<sup>st</sup> of each year in order to be considered in the semi-annual publication of the **AT&T-22STATE** General Trunk Forecast. Parties agree to the use of Common Language Location Identification (CLLI) coding and Common Language Circuit Identification for Message Trunk coding (CLCI-MSG) which is described in TELCORDIA TECHNOLOGIES documents BR795-100-100 and BR795-400-100 respectively. Inquiries pertaining to use of TELCORDIA TECHNOLOGIES Common Language Standards and document availability should be directed to TELCORDIA TECHNOLOGIES at 1-800-521-2673.
  - 4.4.2 The semi-annual forecasts shall include:
    - 4.4.2.1 Yearly forecasted trunk quantities for all trunk groups required in this Attachment for a minimum of three (3) (current plus two (2) future) years; and
    - 4.4.2.2 A description of major network projects anticipated for the next six (6) months. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, orders greater than eight (8) DS1s, or other activities that are reflected by a significant increase or decrease in trunking demand for the following forecasting period.
    - 4.4.2.3 The Parties shall agree on these forecasts to ensure efficient trunk utilization. For forecast quantities that are in dispute, the Parties shall make all reasonable efforts to develop a mutually agreeable forecast.
    - 4.4.2.4 Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as mutually agreed to by the Parties. The Parties shall make all reasonable efforts and cooperate in good faith to develop alternative solutions to accommodate these orders.
  - 4.4.3 CLEC shall be responsible for forecasting two-way trunk groups. **AT&T-22STATE** shall be responsible for forecasting the one-way trunk groups terminating to CLEC and CLEC shall be responsible for forecasting the one-way trunk groups terminating to **AT&T-22STATE**, unless otherwise specified in this Attachment.
  - 4.4.4 Each Party shall provide a specified point of contact for planning and forecasting purposes.
- 4.5 Trunk Design Blocking Criteria



- 4.5.1.1 Trunk requirements for forecasting and servicing shall be based on the blocking objectives shown in Table 1. Trunk requirements shall be based upon time consistent average busy season busy hour twenty (20) day averaged loads applied to industry standard Neal-Wilkinson Trunk Group Capacity algorithms (using Medium day-to-day Variation and 1.0 Peakedness factor until actual traffic data is available).

Trunk Group Type	Design Blocking Objective
Local Interconnection Trunk Group – Direct End Office (Primary High)	ECCS <sup>1</sup>
Local Interconnection Trunk Group – Direct End Office (Final)	2%
IntraLATA Toll Trunk Group (Local/Access or Access Tandem Switch)	1%
Local Interconnection Trunk Group (Local Tandem)	1%
Meet Point (Local/Access or Access Tandem Switch) ( <b>AT&amp;T-13STATE</b> only)	0.5%
E911	1%
Operator Services (DA/DACC)	1%
Operator Services (0+, 0-)	1%
Busy Line Verification/Emergency Interrupt	1%
Third Party ( <b>AT&amp;T SOUTHEAST REGION 9-STATE</b> only)	1%

**Table 1**

#### 4.6 Trunk Servicing

- 4.6.1 Both Parties will jointly manage the capacity of Local Only, Local Interconnection, Third Party and Meet Point Trunk Groups. Either Party may send a Trunk Group Service Request (TGSR) to the other Party to trigger changes to the Local Only, Local Interconnection, Third Party and Meet Point Trunk Groups based on capacity assessment. The TGSR is a standard industry support interface

<sup>1</sup> During implementation the Parties will mutually agree on an Economic Centum Call Seconds (ECCS) or some other means for the sizing of this trunk group.

developed by the OBF 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. Contact TELCORDIA TECHNOLOGIES at 1-800-521-2673 regarding the documentation availability and use of this form.

4.6.2 Orders greater than eight (8) DS1s shall be submitted as a project as described in Section 4.7 below.

4.6.3 Utilization: Utilization shall be defined as Trunks required as a percentage of Trunks in Service.

4.6.3.1 In A Blocking Situation (Over-utilization)

4.6.3.1.1 In a blocking situation, CLEC is responsible for issuing ASRs on all two-way Local Only, Local Interconnection, Third Party and Meet Point Trunk Groups and one-way CLEC originating Local Only and/or Local Interconnection Trunk Groups to reduce measured blocking to design objective blocking levels based on analysis of trunk group data. If an ASR is not issued, AT&T-22STATE will issue a TGSR. CLEC will issue an ASR within three (3) business days after receipt and review of the TGSR. CLEC will note "Service Affecting" on the ASR.

4.6.3.1.2 In a blocking situation, AT&T-22STATE is responsible for issuing ASRs on one-way AT&T-22STATE originating Local Only and/or Local Interconnection Trunk Groups to reduce measured blocking to design objective blocking levels based on analysis of trunk group data. If an ASR is not issued, CLEC will issue a TGSR. AT&T-22STATE will issue an ASR within three (3) business days after receipt and review of the TGSR.

4.6.3.1.3 If an alternate final Local Only Trunk Group or Local Interconnection Trunk Group is at seventy-five percent (75%) utilization, a TGSR may be sent to CLEC for the final trunk group and all subtending high usage trunk groups that are contributing any amount of overflow to the alternate final route.

4.6.3.1.4 If a direct final Meet Point Trunk Group is at seventy-five percent (75%) utilization, a TGSR may be sent to CLEC. If a direct final Third Party Trunk Group is at ninety percent (90%) utilization, a TGSR may be sent to CLEC.

4.6.3.2 Underutilization

4.6.3.2.1 Underutilization of Local Only Trunk Groups, Local Interconnection Trunk Groups, Third Party Trunk Group and Meet Point Trunk Groups exists when provisioned capacity is greater than the current need. Those situations where more capacity exists than actual usage requires will be handled in the following manner:

4.6.3.2.1.1 If a Local Only Trunk Group, Local Interconnection Trunk Group, Third Party Trunk Group or a Meet Point Trunk Group is under sixty-five percent (65%) of CCS capacity on a monthly average basis for AT&T-13STATE or under eighty percent (80%) for AT&T SOUTHEAST REGION 9-STATE, for each month of any three (3) consecutive months period,

either Party may request the issuance of an order to resize the Local Only Trunk Group, Local Interconnection Trunk Group, Third Party Trunk Group or the Meet Point Trunk Group, which shall be left with not less than twenty-five percent (25%) excess capacity for AT&T-13STATE or not less than fifteen percent (15%) for AT&T SOUTHEAST REGION 9-STATE. In all cases, grade of service objectives shall be maintained.

- 4.6.3.2.1.2 Either Party may send a TGSR to the other Party to trigger changes to the Local Only Trunk Groups, Local Interconnection Trunk Groups, Third Party Trunk Groups or Meet Point Trunk Groups based on capacity assessment. Upon receipt of a TGSR, the receiving Party will issue an ASR to the other Party within twenty (20) business days after receipt of the TGSR.
- 4.6.3.2.1.3 Upon review of the TGSR, if a Party does not agree with the resizing, the Parties will schedule a joint planning discussion within the twenty (20) business days. The Parties will meet to resolve and mutually agree to the disposition of the TGSR.
- 4.6.3.2.1.4 If AT&T-22STATE does not receive an ASR, or if CLEC does not respond to the TGSR by scheduling a joint discussion within the twenty (20) business day period, AT&T-22STATE will attempt to contact CLEC to schedule a joint planning discussion. If CLEC will not agree to meet within an additional five (5) business days and present adequate reason for keeping trunks operational, AT&T-22STATE reserves the right to issue ASRs to resize the Local Only Trunk Groups, Local Interconnection Trunk Groups, Third Party Trunk Groups or Meet Point Trunk Groups.

- 4.6.4 The Parties will process trunk service requests submitted via a properly completed ASR within ten (10) business days of receipt of such ASR unless defined as a major project. Incoming orders will be screened by AT&T-22STATE for reasonableness based upon current utilization and/or consistency with forecasts. If the nature and necessity of an order requires determination, the ASR will be placed in held status, and a joint planning discussion conducted. The Parties agree to expedite this discussion in order to minimize delay in order processing. Extension of this review and discussion process beyond two (2) Business Days from ASR receipt will require the ordering Party to supplement the order with proportionally adjusted Customer Desired Due Dates. Facilities must also be in place before trunk orders can be completed.

#### 4.7 Projects:

- 4.7.1 Projects require the coordination and execution of multiple orders or related activities between and among AT&T-22STATE and CLEC work groups, including but not limited to the initial establishment of Local Only, Local Interconnection, Third Party or Meet Point Trunk Groups and

service in an area, NXX code moves, rehomes, facility grooming, or network rearrangements.

4.7.1.1 Orders that comprise a project, i.e. greater than eight (8) DS1s, shall be submitted at the same time, and their implementation shall be jointly planned and coordinated.

4.7.2 Projects - Tandem Rehomes/Switch Conversion/Major Network Projects:

4.7.2.1 **AT&T-22STATE** will advise CLEC of all projects significantly affecting CLEC trunking. Such projects may include Tandem Rehomes, Switch Conversions and other major network changes. An Accessible Letter with project details will be issued at least six (6) months prior to the project due dates. **AT&T-22STATE** may follow with a TGSR approximately four (4) to six (6) months before the due date of the project. A separate TGSR will be issued for each CLEC trunk group and will specify the required CLEC ASR issue date. Failure to submit ASR(s) by the required date may result in **AT&T-22STATE** ceasing to deliver traffic until the ASR(s) are received and processed.

## 5.0 **Out of Exchange Traffic**

5.1.1 Interconnection services are available in accordance with Section 251(a)(1) of the Act for the purposes of exchanging traffic to/from a non-**AT&T-22STATE** incumbent exchange in accordance with this Section 5.0.

5.1.2 The Parties acknowledge and agree that **AT&T-22STATE** is only obligated to make available Interconnection under Section 251(c)(2) of the Act to CLEC at technically feasible points within **AT&T-22STATE**'s network and not in locations, such as territories of other ILECs, where **AT&T-22STATE** does not maintain a network. Other Attachments to this Agreement set forth the terms and conditions pursuant to which **AT&T-22STATE** agrees to provide CLEC with access to Unbundled Network Elements under Section 251(c)(3) of the Act, Collocation under Section 251z(c)(6) of the Act and/or Resale under Section 251(c)(4) of the Act in **AT&T-22STATE**'s incumbent local Exchange Areas for the provision of CLEC's Telecommunications Services.

5.1.3 For purposes of this Attachment, OE-LEC intends to operate and/or provide Telecommunications Services outside of **AT&T-22STATE** incumbent local Exchange Areas and desires to interconnect OE-LEC's network with **AT&T-22STATE**'s network(s).

5.1.4 For purposes of this Attachment, OE-LEC agrees to interconnect with **AT&T-22STATE** pursuant to Section 251(a) of the Act.

5.1.5 Network Connections For Out of Exchange Traffic:

5.1.5.1 OE-LEC represents that it operates as a CLEC within **AT&T-22STATE** Exchange Areas and has a POI located within **AT&T-22STATE** Exchange Areas for the purpose of providing telephone Exchange Service and Exchange Access in such **AT&T-22STATE** Exchange Areas. Based upon the foregoing, the Parties agree that **AT&T-22STATE**'s originating traffic will be delivered to OE-LEC's existing POI arrangements in the LATA where the traffic originates in accordance with the POI requirements set forth in this Agreement. **AT&T-22STATE** will accept OE-LEC's Out of Exchange Traffic at its Tandem Switch over local interconnection facilities that currently exist or may exist in the future between the Parties to or from OE-LEC's out of Exchange Areas to or from **AT&T-22STATE**'s End Offices. When such Out of Exchange Traffic is Section 251(b)(5) Traffic and ISP-Bound Traffic that is exchanged between the End Users of OE-LEC and **AT&T-22STATE**, the Parties agree to establish a direct End Office trunk

group when traffic levels exceed one DS1 (24 DS0s) to or from an AT&T-22STATE End Office.

- 5.1.5.2 OE-LEC shall establish a trunk group for Out of Exchange Traffic from OE-LEC to each AT&T-22STATE serving Tandem in a LATA. This requirement may be waived upon mutual agreement of the Parties.
- 5.1.5.2.1 In AT&T SOUTHEAST REGION 9-STATE, where CLEC does not interconnect at every AT&T serving Tandem in a LATA, CLEC must use Multiple Tandem Access (MTA) to route traffic in accordance with Section 4.3.3.3.1 above.
- 5.1.5.3 Transport facilities for 911, Mass Calling, OS/DA, Third Party and Meet Point Trunk Groups are the responsibility of OE-LEC from OE-LEC to the serving Tandem or platform that provides each such service type.
- 5.1.5.4 OE-LEC shall route originating Out of Exchange Traffic to the serving Tandem as defined by the Tandem owner in the LERG.
- 5.1.5.5 If AT&T-22STATE is not the serving Tandem as reflected in the LERG, the OE-LEC shall route Out of Exchange Traffic directly to the serving AT&T-22STATE End Office.
- 5.1.5.6 Except as otherwise provided in this Section 5.0, for OE-LEC originated/AT&T-22STATE terminated traffic or AT&T-22STATE originated/ OE-LEC terminated traffic, if any such traffic is improperly routed by one Party over any trunk groups to the other Party and/or not routed in accordance with this Section 5.0, the Parties will work cooperatively to correct the problem.
- 5.1.5.7 AT&T-22STATE shall not compensate any Third Party Local Exchange Carrier and/or Telecommunications Carrier for any traffic that is inappropriately routed to AT&T-22STATE (as reflected in the LERG). The obligation to correctly route traffic also includes traffic that is destined to End Offices that do not subtend an AT&T-22STATE Tandem. Any compensation due AT&T-22STATE for such misrouted traffic shall be paid by OE-LEC. AT&T-22STATE shall provide notice to OE-LEC pursuant to the Notices provisions of this Agreement that such misrouting has occurred. In the notice, OE-LEC shall be given thirty (30) calendar days to cure such misrouting.
- 5.1.5.8 Neither Party shall deliver traffic destined to terminate at the other Party's End Office via a Third Party ILEC's End Office or Tandem.
- 5.1.5.9 Connection of a trunk group from OE-LEC to AT&T-22STATE's Tandem(s) will provide OE-LEC access to End Offices, IXC's, LEC's, CMRS providers and NXX's which subtend that Tandem(s). Connection of a trunk group from one Party to the other Party's End Office(s) will provide the connecting Party access only to the NXX's served by that individual End Office(s) to which the connecting Party interconnects. Direct End Office Trunk groups that connect the Parties End Office(s) shall provide the Parties access only to the NXX's that are served by that End Office(s).
- 5.1.5.9.1 In AT&T SOUTHEAST REGION 9-STATE, if OE-LEC does not choose Access Tandem interconnection at every AT&T SOUTHEAST REGION 9-STATE Access Tandem within a LATA, OE-LEC must utilize AT&T SOUTHEAST REGION 9-STATE's MTA Interconnection. To utilize MTA,

OE-LEC must establish an interconnection trunk group(s) at a minimum of one AT&T SOUTHEAST REGION 9-STATE Access Tandem within each LATA as required.

- 5.1.5.10 AT&T-22STATE will open OE-LEC NPA-NXX codes, rated to or identified to reside in non-AT&T-22STATE Exchange Areas, in AT&T-22STATE Tandems and End Offices using AT&T-22STATE's standard code opening timeframes.
- 5.1.6 Intercarrier Compensation for Out of Exchange Traffic:
  - 5.1.6.1 The compensation arrangement for Out of Exchange Traffic exchanged between the Parties is described in Section 6.0 below.
- 5.1.7 InterLATA Section 251(b)(5) Traffic:
  - 5.1.7.1 AT&T-22STATE will exchange AT&T-22STATE InterLATA Section 251(b)(5) Traffic that is covered by an FCC approved or court ordered InterLATA boundary waiver. AT&T-22STATE will exchange such traffic using two-way direct final trunk groups (i) via a facility to OE-LEC's POI in the originating LATA, or (ii) via a facility meet point arrangement at or near the Exchange Area Boundary (EAB), (iii) via a mutually agreed to meet point facility within the AT&T-22STATE Exchange Area covered under such InterLATA waiver, or (iv) via another mutually agreeable method. If the exchange where the traffic is terminating is not an AT&T-22STATE exchange, AT&T-22STATE shall exchange such traffic using a two-way Direct Final (DF) trunk group (i) via a facility to OE-LEC's POI within the originating LATA, (ii) via a mutually agreed to facility meet point arrangement at or near the EAB, or (iii) via another mutually agreeable method. AT&T-22STATE will not provision or be responsible for facilities located outside of AT&T-22STATE Exchange Areas.
  - 5.1.7.2 The Parties agree that the AT&T-22STATE InterLATA Section 251(b)(5) traffic from each AT&T-22STATE End Office will not overflow to an alternate route.
  - 5.1.7.3 OE-LEC must provide AT&T-22STATE a separate Access Customer Terminal Location (ACTL) and Local Routing Number (LRN) specific to each InterLATA local calling arrangement covered by an FCC approved or court ordered InterLATA boundary waiver.

## **6.0 Intercarrier Compensation**

### **6.1 Responsibilities of the Parties**

- 6.1.1 For all traffic originated on a Party's network including, without limitation, Switched Access Traffic, such Party shall provide CPN as defined in 47 C.F.R. § 64.1600(c) and in accordance with Section 6.1.3 below. CPN shall, at a minimum, include information in an industry recognized standard format, consistent with the requirements of the NANP containing an NPA and seven digit (NXX-XXXX) telephone number. Each Party to this Agreement will be responsible for passing on any CPN it receives from a Third Party for traffic delivered to the other Party. In addition, each Party agrees that it shall not strip, alter, modify, add, delete, change, or incorrectly assign any CPN. 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.

- 6.1.2 If one Party is passing CPN but the other Party is not properly receiving information, the Parties will work cooperatively to correct the problem.
- 6.1.3 For traffic which is originated by one Party to be terminated on the other Party's network in AT&T SOUTHWEST REGION 5-STATE, AT&T MIDWEST REGION 5-STATE, AT&T SOUTHEAST REGION 9-STATE and AT&T CONNECTICUT, 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 (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 at Intrastate Switched Access rates.
- 6.1.4 For those CLEC to AT&T WEST REGION 2-STATE call usage based charges where actual charge information is not determinable by AT&T WEST REGION 2-STATE because the jurisdiction (i.e., intrastate vs. local) or origin of the CLEC to AT&T WEST REGION 2-STATE traffic is unidentifiable, the Parties will jointly develop a Percent Local Usage (PLU) factor in order to determine the appropriate charges to be billed to the CLEC in accordance with Section 6.12.2 or a default factor of fifty percent (50%) will be applied.
- 6.1.5 For AT&T SOUTHEAST REGION 9-STATE, each Party will report to the other Percent Interstate Usage (PIU), Percent Local Usage (PLU) and Percent Local Facility (PLF) factors in order to determine the appropriate charges to be billed to the originating Party in accordance with Section 6.12.3 below.
- 6.1.6 CLEC has the sole obligation to enter into compensation arrangements with all Third Parties with whom CLEC exchanges traffic including without limitation anywhere CLEC originates traffic to or terminates traffic from an End User being served by a Third Party who has purchased a local switching product from AT&T-21STATE on a wholesale basis (non-resale) which is used by such Telecommunications carrier to provide wireline local telephone Exchange Service (dial tone) to its End Users. In no event will AT&T-21STATE 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 with whom CLEC does not have a traffic compensation agreement, CLEC will indemnify, defend and hold harmless AT&T-21STATE against any and all losses including without limitation, charges levied by such Third Party. The Third Party and CLEC will bill their respective charges directly to each other. AT&T-21STATE will not be required to function as a billing intermediary, e.g., clearinghouse. AT&T-21STATE may provide information regarding such traffic to Third Party carriers or entities as appropriate to resolve traffic compensation issues.
- 6.1.7 Notwithstanding the classification of traffic under this Attachment, either Party is free to define its own "local" calling area(s) for purposes of its provision of Telecommunications services to its End Users.
- 6.1.8 For Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic, and IntraLATA Toll Traffic, the Party whose End User originates such traffic shall compensate the Party who terminates such traffic to its End User for the transport and termination of such traffic at the applicable rate(s) provided in this Attachment and the Pricing Schedule and/or the applicable switched access tariffs.
- 6.1.8.1 In AT&T CONNECTICUT, when CLEC purchases local switching from AT&T CONNECTICUT on a wholesale basis to provide service to its End Users, all Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic, and IntraLATA Toll Traffic

originated by CLEC's End Users are not subject to intercarrier compensation as addressed in Section 6.2.8.3 below.

- 6.1.9 To the extent that the Parties are not currently exchanging traffic in a given LATA or local calling area, the Parties' obligation to pay intercarrier compensation to each other shall commence on the date the Parties agree that the Interconnection is complete (i.e., each Party has established its originating trunks as well as all ancillary traffic trunking such as Operator Services, 911 or Mass Calling trunks) and is capable of fully supporting originating and terminating End User traffic. In addition, the Parties agree that test traffic is not subject to compensation pursuant to this Attachment.
- 6.1.10 The Parties acknowledge that Section 6.0 above addresses the method of compensation for traffic properly exchanged by the Parties under this Agreement.
- 6.2 Reciprocal Compensation for Termination of Section 251(b)(5) Traffic:
- 6.2.1 Section 251(b)(5) Traffic shall mean Telecommunications traffic in which the originating End User of one Party and the terminating End User of the other Party are:
- 6.2.1.1 both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state Commission or regulatory agency; or both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes.
- 6.2.2 **AT&T-21STATE** made an offer (the "Offer") to all Telecommunications carriers to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan of the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Compensation Order") which was remanded but not vacated in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002).
- 6.2.3 **AT&T-21STATE** and CLEC agree to carry out the FCC's interim ISP terminating compensation plan on the date designated by **AT&T-21STATE** in a particular state without waiving, and expressly reserving, all appellate rights to contest FCC, judicial, legislative, or other regulatory rulings regarding ISP-Bound traffic, including but not limited to, appeals of the FCC's ISP Compensation Order. By agreeing to this Attachment, both Parties reserve the right to advocate their respective positions before courts, state or federal commissions, or legislative bodies.
- 6.2.3.1 Should a regulatory agency, court or legislature change or nullify the **AT&T-21STATE's** designated date to begin billing under the FCC's ISP terminating compensation plan, then the Parties also agree that any necessary billing true-ups, reimbursements, or other accounting adjustments shall be made symmetrically and to the same date that the FCC terminating compensation plan was deemed applicable to all traffic in that state exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to the extent they are ordered by intervening law, to apply uniformly to all traffic among **AT&T-21STATE**, CLEC and CMRS carriers in the state where traffic is exchanged as local calls within the meaning of this Attachment.



- 6.2.4 In AT&T-21STATE the rates, terms and conditions for compensation of Section 251(b)(5) Traffic, as defined in Section 6.2.1 above, are set forth in this Section 6.2 and ISP-Bound Traffic, as defined in Section 6.3.1 below will be compensated at the FCC's interim ISP terminating compensation rate as set forth in Section 6.3.4.2 below in a specific state on the Effective Date of this Agreement.
- 6.2.4.1 Until and unless AT&T CONNECTICUT chooses to offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic on and after a designated date pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan, the compensation set forth in this Section 6.2 will apply to all Section 251(b)(5) Traffic and ISP-Bound Traffic for Connecticut. The Parties will also agree that any billing true-ups, reimbursements, or other accounting adjustments on past traffic shall be made uniformly and on the same date as for all traffic exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments to apply to all traffic among AT&T CONNECTICUT, CLEC, and CMRS carriers in Connecticut where traffic is exchanged as local calls within the meaning of this Attachment.
- 6.2.5 In instances where the originating carrier is originating Telecommunications traffic over its own facilities (i.e., not leased or purchased from AT&T-22STATE) the following Tandem serving rate elements are applicable on a terminating MOU basis and include compensation for the following sub-elements if such network functions are actually provided by the terminating Party for the termination of the originating Party's traffic:
- 6.2.5.1 Tandem Switching – compensation for the use of Tandem Switching consists of a call set-up rate element (per message) where applicable, and a duration (per minute) rate element.
- 6.2.5.2 Common (Tandem) Transport – compensation for the transmission facilities (1) between the Tandem Switch and the End Offices subtending that Tandem, (2) between Tandem Switches, and/or (3) between host and remote End Office Switches consists of a transport termination (per minute) rate element and a transport facility mileage (per minute, per mile) rate element.
- 6.2.5.3 End Office Switching in a Tandem Serving Arrangement – compensation for the local End Office Switching and line termination necessary to complete the transmission in a Tandem-Served Arrangement consists of a call set-up rate element (per message in AT&T-13STATE) and a call duration (per minute) rate element.
- 6.2.6 In instances where the originating carrier is originating Telecommunications traffic over its own facilities (i.e., not leased or purchased from AT&T-22STATE), the following End Office switching rate elements are applicable on a terminating MOU basis:
- 6.2.6.1 End Office switching – compensation for the local End Office switching and line termination necessary to complete the transmission in an End Office serving arrangement. It consists of a call set-up rate element (per message in AT&T-13STATE) where applicable, and a call duration (per minute) rate element.
- 6.2.7 CLEC shall only be paid End Office Switching rate element(s).
- 6.2.8 Intercarrier Compensation for Wholesale Local Switching Traffic for AT&T-13STATE:

6.2.8.1 Where CLEC purchases local switching from AT&T-12STATE pursuant to the terms of a Section 271 Agreement (herein after referred to as "switching on a wholesale basis"), CLEC will deal directly with Third Party carriers for purposes of reciprocal compensation for calls originated by or terminated to the End Users served by such arrangements. AT&T-12STATE is required to provide CLEC with timely, complete and correct information to enable CLEC to meet the requirements of this Section.

6.2.8.2 The following reciprocal compensation terms shall apply to all traffic exchanged between AT&T-12STATE and CLEC when CLEC purchases local switching from AT&T-12STATE on a wholesale basis:

6.2.8.2.1 For intra-switch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between AT&T-12STATE and CLEC, the Parties agree to impose no call termination charges pertaining to reciprocal compensation on each other.

6.2.8.2.2 For interswitch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between AT&T-12STATE and CLEC where CLEC's End User originates a call that is terminated to a AT&T-12STATE End User, such traffic shall be paid for reciprocally at the End Office Switching rate set forth in the Pricing Schedule and as specified in Section 6.2.5 above for the transport and termination of Section 251(b)(5) Traffic, excluding ISP-Bound Traffic and the FCC Plan rate set forth in Section 6.3.4.2 below for the transport and termination of ISP-Bound Traffic.

6.2.8.3 In AT&T CONNECTICUT, when CLEC purchases local switching from AT&T CONNECTICUT on a wholesale basis to provide service to its End Users, AT&T CONNECTICUT will be solely responsible for compensating the terminating Third Party carrier for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from CLEC's End Users. When CLEC purchases local switching from AT&T CONNECTICUT on a wholesale basis, CLEC can not seek intercarrier compensation from AT&T CONNECTICUT for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from either an AT&T CONNECTICUT End User or a Third Party carrier's End User.

#### 6.2.9 Multiple Tandem Access (MTA) Interconnection (AT&T SOUTHEAST REGION 9-STATE)

6.2.9.1 Compensation for MTA shall be at the applicable Tandem Switching and transport charges specified in the Pricing Schedule and shall be billed in addition to any call transport and termination charges.

6.2.9.2 To the extent CLEC routes its traffic in such a way that utilizes AT&T SOUTHEAST REGION 9-STATE's MTA service without properly ordering MTA, CLEC shall pay AT&T SOUTHEAST REGION 9-STATE the associated MTA charges.

#### 6.3 Rates, Terms and Conditions of FCC's Interim ISP Terminating Compensation Plan:

6.3.1 In accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Compensation 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"), "ISP-Bound Traffic" shall mean Telecommunications traffic exchanged between CLEC and AT&T-22STATE in which the

originating End User of one Party and the ISP served by the other Party are:

- 6.3.1.1 both physically located in the same ILEC Local Exchange Area as defined by the ILEC's Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or
  - 6.3.1.2 both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory EAS, mandatory ELCS or other types of mandatory expanded local calling scopes.
- 6.3.2 In states in which **AT&T-22STATE** has offered to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic pursuant to the FCC's interim ISP terminating compensation plan set forth in the FCC ISP Compensation Order, traffic is presumed to be ISP-Bound Traffic in accordance with the rebuttable presumption set forth in Section 6.3.5 below of this Attachment.
- 6.3.3 The rates, terms and conditions set forth in Section 6.3 above shall apply to the termination of all ISP-Bound Traffic exchanged between the Parties in each of the applicable state(s) for which **AT&T-22STATE** has made an offer as described in Section 6.2 above effective on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in the particular state. All ISP-Bound Traffic is subject to the rebuttable presumption.
- 6.3.4 Intercarrier Compensation for ISP-Bound Traffic:
- 6.3.4.1 The rates, terms, and conditions in Section 6.3 above apply only to the termination of all ISP-Bound Traffic as defined in Section 6.3.1 above and are subject to the rebuttable presumption.
  - 6.3.4.2 The Parties agree to compensate each other for the transport and termination of all ISP-Bound Traffic on a MOU basis per the Pricing Schedule.
  - 6.3.4.3 Payment of Intercarrier 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.
- 6.3.5 ISP-Bound Traffic Rebuttable Presumption
- 6.3.5.1 In accordance with Paragraph 79 of the FCC's ISP Compensation Order, the Parties agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic (excluding traffic originated by carriers purchasing a local switching product from AT&T) and ISP-Bound Traffic exchanged between the Parties exceeding a 3:1 terminating to originating ratio is presumed to be ISP-Bound Traffic subject to the compensation terms in this Section 6.3.5 above. Either Party has the right to rebut the 3:1 ISP-Bound Traffic presumption by identifying the actual ISP-Bound Traffic by any means 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, the Parties will remain obligated to pay the reciprocal compensation rates

set forth in Section 6.2 above for Section 251(b)(5) Traffic, and the rates set forth in Section 6.3.4.2 above for ISP-Bound Traffic. ISP-Bound Traffic is 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.

6.3.6 For purposes of this Section 6.3.6, all Section 251(b)(5) Traffic and all ISP-Bound Traffic shall be referred to as "Billable Traffic" and will be billed in accordance with Section 6.12 below.

6.3.6.1 For combined Section 251(b)(5) Traffic (excluding traffic originated by carriers purchasing a local switching product from AT&T) and ISP-Bound Traffic exchanged between the Parties which does not exceed a 3:1 terminating to originating ratio as set forth Section 6.3.5 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 6.2 above for Section 251(b)(5) Traffic.

6.3.6.2 For combined Section 251(b)(5) Traffic (excluding traffic originated by carriers purchasing a local switching product from AT&T) and ISP-Bound Traffic exchanged between the Parties exceeding a 3:1 terminating to originating ratio as set forth in Section 6.3.5 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 based on the reciprocal compensation rate elements set forth in Section 6.2.5 above and the Pricing Schedule; (2) for ISP-Bound Traffic, the rates shall be the FCC's interim ISP terminating compensation rates set forth in Section 6.3.4.2 above.

6.4 Other Telecommunications Traffic:

6.4.1 Except as set forth in Section 6.3 above, the terms of this Attachment are not applicable to (i) interstate or intrastate Exchange Access traffic, (ii) Information Access traffic, or (iii) any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission, with the exception of ISP-Bound Traffic which is addressed in this Attachment. All Exchange Access traffic and IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

6.4.2 FX services are retail service offerings purchased by FX End Users which allow such FX End Users to obtain exchange service from a mandatory local calling area other than the mandatory local calling area where the FX customer is physically located, but within the same LATA as the number that is assigned. FX service enables particular End Users to avoid what might otherwise be toll calls between the FX End User's physical location and End Users in the foreign exchange. FX Telephone Numbers are those telephone numbers with rating and routing points that are different from those of the geographic area in which the End User is physically located. FX Telephone Numbers that deliver second dial tone with the ability for the calling party to enter access codes and an additional recipient telephone number remain classified as FGA calls, and are subject to the originating and terminating carriers' tariffed Switched Exchange Access rates (also known as "Meet Point Billed" compensation). There are two types of FX service:

6.4.2.1 "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.

- 6.4.2.2 "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.
- 6.4.2.3 FX Traffic is not Section 251(b)(5) Traffic and instead the transport and termination compensation for FX Traffic is subject to a Bill and Keep arrangement in AT&T-21STATE.
- 6.4.2.3.1 To the extent that ISP-Bound Traffic is provisioned via an FX-type arrangement, such traffic is subject to a Bill and Keep arrangement. "Bill and Keep" refers to an arrangement in which neither of two interconnecting parties charges the other for terminating FX traffic that originates on the other Party's network.
- 6.4.2.4 Pursuant to the Connecticut Commission decision in Docket No. 01-01-29RE01, the originating Party will bill the terminating Party the appropriate originating access charges for all traffic except ISP-Bound Traffic that is terminated to a number that is provisioned as a Virtual FX, Dedicated FX or FX-type service as defined in Section 6.4.2 above in AT&T CONNECTICUT. In such circumstances, for ISP-Bound Traffic the appropriate compensation mechanism is bill and keep.
- 6.4.2.5 Segregating and Tracking FX Traffic:
- 6.4.2.5.1 For AT&T-12STATE, the terminating carrier is responsible for separately identifying IntraLATA Virtual FX, Dedicated FX, and FX-type traffic from other types of Inter-carrier traffic for compensation purposes. The terminating carrier will be responsible for providing the originating carrier with an FX usage summary which includes a ten (10) digit telephone number level detail of the MOUs terminated to FX Telephone Numbers on its network each month (or in each applicable billing period, if not billed monthly), or by any means mutually agreed by the Parties.
- 6.4.2.5.2 Terminating carrier will not assess compensation charges to the Voice FX MOU and ISP FX MOU in AT&T-21STATE.
- 6.4.2.5.3 AT&T CONNECTICUT, FX traffic must be identified as voice FX and ISP FX. AT&T CONNECTICUT will work with CLEC in reviewing its data to

determine the volume of IntraLATA FX traffic being exchanged for an agreed-upon period of time. Once the data review is completed, the Parties will estimate the percentage of MOUs that is attributable to FX traffic and assign percentage factors. For AT&T CONNECTICUT ISP FX percentage will be assigned ("PIFX") and voice FX percentage will be assigned ("PVFX"). The PIFX and PVFX ("FX factor") will be used in lieu of providing the actual MOUs data. This plan will be applied on an individual CLEC basis.

6.4.2.5.3.1 The FX factor will be applied to the measured local usage MOUs and result in the following billing adjustments:

6.4.2.5.3.1.1 Terminating carrier will subtract both the voice FX MOU and ISP FX MOU from the measured local MOU prior to assessing terminating compensation charges.

6.4.2.5.3.1.2 Originating carrier will apply the appropriate originating access charges only to the Voice FX MOU in AT&T CONNECTICUT.

6.4.2.5.4 In AT&T-13STATE either Party may request an audit of the FX Usage Summary or the FX Factor on no fewer than thirty (30) Business Day's written Notice and any audit shall be accomplished during normal business hours at the office of the Party being audited. Such audit must be performed by a mutually agreed-to auditor paid for by the Party requesting the audit. If mutual agreement cannot be reached, the Parties shall use one of the following independent auditors: PricewaterhouseCoopers, Ernst & Young, KPMG, or Deloitte Touche Tohmatsu (Big-4 Auditors). Selection of the Big-4 Auditor shall be made by the Party requesting the audit and the selected Big-4 Auditor must be independent as determined by current accounting and auditing standards promulgated by the appropriate accounting governing body. Such audits shall be requested within six (6) months of having received the FX Usage Summary or the FX Factor and associated usage from the other Party and may not be requested more than twice per year, once per calendar year, unless the audit finds there has been a five percent (5%) or higher net error or variance in calculations, in which case a subsequent audit is required. Based upon the audit, previous compensation, billing and/or settlements will be adjusted for the past six (6) months.

6.4.2.5.4.1 If the FX factor is adjusted based upon the audit results, the adjusted FX factor will apply for the six (6) month period following the completion of the audit. If, as a result of the audit, either Party has overstated the FX factor or underreported the FX Usage by five percent (5%) or more, that Party shall reimburse the auditing Party for the cost of the audit and will pay for the cost of a subsequent audit which is to happen within nine (9) months of the initial audit.

- 6.4.3 Private Line Services include private line-like and special access services and are not subject to intercarrier compensation. Private Line Services are defined as a digital point-to-point connection that provides a dedicated circuit of pre-subscribed bandwidth between any two (2) points. Private Line Services are used to consolidate communications over one (1) line for voice, data, video and multimedia.
- 6.4.4 The Parties recognize and agree that ISP and Internet traffic (excluding ISP-Bound Traffic as defined in Section 6.3.1 above) could also be exchanged outside of the applicable local calling scope, or routed in ways that could make the rates and rate structure in Section 6.2 above and Section 6.3 above not apply, including but not limited to ISP calls that meet the definitions of:
- 6.4.4.1 FX Traffic
  - 6.4.4.2 Optional EAS Traffic
  - 6.4.4.3 IntraLATA Toll Traffic
  - 6.4.4.4 800, 888, 877, ("8YY") Traffic
  - 6.4.4.5 FGA Traffic
  - 6.4.4.6 MCA Traffic
- 6.4.5 The Parties agree that, for the purposes of this Attachment, either Party's End Users remain free to place ISP calls under any of the above classifications. Notwithstanding anything to the contrary herein, to the extent such ISP calls are placed, the Parties agree that the compensation mechanisms set forth in Section 6.2 above and Section 6.3 above do not apply. The applicable rates, terms and conditions for: (a) FX Traffic are set forth in Section 6.4.2 above; (b), Optional EAS Traffic are set forth in Section 6.5 below; (c) 8YY Traffic are set forth in Section 6.8 below; (d) FGA Traffic are set forth in Section 6.4.2 above; (e) IntraLATA Toll Traffic are set forth in Section 6.11 below; and/or (f) MCA Traffic are set forth in Section 6.6 below.
- 6.5 Optional Calling Area Traffic – **AT&T ARKANSAS**, **AT&T KANSAS** and **AT&T TEXAS**:
- 6.5.1 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 Section 6.2.1 above and Section 6.3.1 above. The transport and termination rate applies when **AT&T ARKANSAS**, **AT&T KANSAS** or **AT&T TEXAS** transports traffic and terminates it at its own switch.
- 6.5.2 In the context of this Attachment, Optional Calling Areas (OCAs) exist only in the States of Arkansas, Kansas and Texas, and are outlined in the applicable state Local Exchange tariffs. This rate is independent of any retail service arrangement established by either Party. CLEC and **AT&T ARKANSAS**, **AT&T KANSAS** and **AT&T TEXAS** are not precluded from establishing their 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 Attachment.
- 6.5.3 The state specific OCA Transport and Termination rates are identified in the Pricing Schedule.
- 6.6 MCA Traffic - **AT&T MISSOURI**:
- 6.6.1 For compensation purposes in the State of Missouri, Section 251(b)(5) Traffic and ISP-Bound Traffic shall be further defined as MCA Traffic and Non-MCA Traffic. MCA Traffic is traffic

originated by a party providing a local calling scope plan pursuant to the Missouri Public Service Commission Orders in Case No. TO-92-306 and Case No. TO-99-483 (MCA Orders) and the call is Section 251(b)(5) Traffic based on the calling scope of the originating party pursuant to the MCA Orders. Non-MCA Traffic is all Section 251(b)(5) Traffic and ISP-Bound Traffic that is not defined as MCA Traffic.

6.6.1.1 Either party providing Metropolitan Calling Area (MCA) service shall offer the full calling scope prescribed in Case No. TO-92-306, without regard to the identity of the called Party's local service provider. The Parties may offer additional toll-free outbound calling or other services in conjunction with MCA service, but in any such offering the Party shall not identify any calling scope other than that prescribed in Case No. TO-92-306 as "MCA" service.

6.6.1.2 Pursuant to the Missouri Public Service Commission Order in Case No. TO-99-483, MCA Traffic shall be exchanged on a Bill and Keep intercompany compensation basis meaning that the Party originating a call defined as MCA Traffic shall not compensate the terminating Party for terminating the call.

6.6.2 The Parties agree to use the LERG to provision the appropriate MCA NXXs in their networks. The LERG should be updated at least forty-five (45) calendar days in advance of opening a new code to allow the other Party the ability to make the necessary network modifications. If the Commission orders the Parties to use an alternative other than the LERG, the Parties will comply with the Commission's final order.

6.6.3 If CLEC provides service via Resale or in conjunction with ported numbers in the MCA, the appropriate MCA NXXs will be updated by AT&T MISSOURI.

## 6.7 Primary Toll Carrier Arrangements:

6.7.1 A Primary Toll Carrier (PTC) is a company that provides IntraLATA Toll Traffic Service for its own End User customers and potentially for a Third Party ILEC's End User customers. In this ILEC arrangement, the PTC would receive the ILEC End User IntraLATA toll traffic revenues and pay the ILEC for originating these toll calls. The PTC would also pay the terminating switched access charges on behalf of the ILEC. In AT&T GEORGIA, AT&T INDIANA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T NEVADA, AT&T OKLAHOMA, AT&T SOUTH CAROLINA, and/or AT&T TENNESSEE wherein Primary Toll Carrier arrangements are mandated, and AT&T GEORGIA, AT&T INDIANA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T NEVADA, AT&T OKLAHOMA, AT&T SOUTH CAROLINA, and/or AT&T TENNESSEE is functioning as the PTC for a Third Party ILEC's End User customers, the following provisions apply to the IntraLATA toll traffic which is subject to the PTC arrangement:

6.7.1.1 AT&T INDIANA, AT&T NEVADA, and/or AT&T OKLAHOMA, shall deliver such IntraLATA toll traffic that originated from that Third Party ILEC and terminated to CLEC as the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. Where AT&T INDIANA, AT&T NEVADA, and/or AT&T OKLAHOMA is functioning as the PTC for Third Party ILEC's End User customers, AT&T INDIANA, AT&T NEVADA, and/or AT&T OKLAHOMA shall pay CLEC on behalf of the originating Third Party ILEC for the termination of such IntraLATA toll traffic at the terminating switched access rates as set forth in CLEC's intrastate access service tariff, but such compensation shall not exceed



the compensation contained in the AT&T-22STATE intrastate access service tariff in the respective State.

6.7.1.2 AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T SOUTH CAROLINA, and/or AT&T TENNESSEE shall deliver such IntraLATA toll traffic that originated from that Third Party ILEC and terminated to CLEC as the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. Where AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T SOUTH CAROLINA, and/or AT&T TENNESSEE is functioning as the PTC for a Third Party ILEC's End User customers, the following provisions apply to the minutes of use terminating to CLEC. AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T SOUTH CAROLINA, and/or AT&T TENNESSEE and CLEC will work cooperatively to develop a percentage of the amount of state specific PTC ILEC originated intraLATA toll minutes of use that are within the state specific total ILEC originated minutes of use reflected in the monthly EMI 11-01-01 Records provided to CLEC by AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T SOUTH CAROLINA, and/or AT&T TENNESSEE. CLEC will apply this state specific percentage against the state specific total ILEC originated EMI 11-01-01 minutes of use each month to determine the amount of PTC intraLATA toll minutes of use for which AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T SOUTH CAROLINA, and/or AT&T TENNESSEE will compensate CLEC. Such percentage will be updated no more than twice each year. AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T SOUTH CAROLINA, and/or AT&T TENNESSEE will compensate CLEC for this PTC traffic as it would for AT&T-22STATE originated traffic as set forth in CLEC's Interconnection Agreement with AT&T-22STATE.

6.7.1.3 AT&T GEORGIA, AT&T INDIANA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T NEVADA, AT&T OKLAHOMA, AT&T SOUTH CAROLINA, and/or AT&T TENNESSEE shall deliver such IntraLATA toll traffic that originated from CLEC and terminated to the Third Party ILEC as the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. CLEC shall pay AT&T GEORGIA, AT&T INDIANA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T NEVADA, AT&T OKLAHOMA, AT&T SOUTH CAROLINA, and/or AT&T TENNESSEE for the use of its facilities at the rates set forth in AT&T-22STATE's intrastate access service tariff in the respective state. CLEC shall pay the ILEC directly for the termination of such traffic originated from CLEC.

## 6.8 IntraLATA 800 Traffic:

6.8.1 The Parties shall provide to each other IntraLATA 800 Access Detail Usage Data for Customer billing and IntraLATA 800 Copy Detail Usage Data for access billing in Exchange Message Interface (EMI) format. On a monthly basis, at a minimum, the Parties agree to provide this data to each other at no charge. In the event of errors, omissions, or inaccuracies in data received from either Party, the liability of the Party providing such data shall be limited to the provision of corrected data only. If the originating Party does not send an End User billable Record to the terminating Party, the originating Party will not bill the terminating Party any interconnection

charges for this traffic.

- 6.8.2 IntraLATA 800 Traffic calls are billed to and paid for by the called or terminating Party, regardless of which Party performs the 800 query. For AT&T SOUTHEAST REGION 9 STATE, each Party shall pay the other the appropriate switched access charges set forth in the AT&T SOUTHEAST REGION 9-STATE intrastate or interstate switched access tariffs. CLEC will pay AT&T SOUTHEAST REGION 9-STATE the database query charge as set forth in the AT&T SOUTHEAST REGION 9-STATE intrastate or interstate access services Tariff as filed and in effect with the FCC or appropriate Commission as applicable. Where technically feasible, each Party will provide to the other Party the appropriate Records, in accordance with industry standards, necessary for billing intraLATA 8YY customers. The Records provided will be in a standard EMI format. AT&T SOUTHEAST REGION 9-STATE provision of 8YY Toll Free Dialing (TFD) to CLEC requires interconnection from CLEC to AT&T SOUTHEAST REGION 9-STATE's 8YY Signal Channel Point (SCP). Such interconnections shall be established pursuant to AT&T-22STATE's Common Channel Signaling Interconnection Guidelines and Telcordia's CCS Network Interface Specification document, TR-TSV-000905. CLEC shall establish SS7 interconnection at the AT&T SOUTHEAST REGION 9-STATE Local Signal Transfer Points serving the AT&T SOUTHEAST REGION 9-STATE 8YY SCPs that CLEC desires to query. The terms and conditions for 8YY TFD are set out in AT&T SOUTHEAST REGION 9-STATE's intrastate access services tariff.
- 6.9 Meet-Point Billing (MPB) and IXC Switched Access Traffic Compensation:
- 6.9.1 Inter-carrier compensation for Switched Access Traffic shall be on a MPB basis as described below.
- 6.9.2 The Parties will establish MPB arrangements in order to jointly provide Switched Access Services via the respective carrier's Tandem Office Switch in accordance with the MPB guidelines contained in the OBF's Multiple Exchange Carriers Ordering and Design (MECOD) and Multiple Exchange Carrier Access Billing (MECAB) documents, as amended from time to time.
- 6.9.3 Billing for the Switched Exchange Access Services jointly provided by the Parties via MPB arrangements shall 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 own tariff for that portion of the service it provides. Each Party will bill its own network access service rates. The Residual Interconnection Charge (RIC), if any, will be billed by the Party providing the End Office function.
- 6.9.4 The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.
- 6.9.5 As detailed in the MECAB document, the Parties will exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Access Services traffic jointly handled by the Parties via the MPB arrangement, when the Parties do not have all detailed Recordings for billing.
- 6.9.5.1 The Parties agree that AT&T SOUTHEAST REGION 9-STATE will bill IXCs for originating and terminating access charges from AT&T SOUTHEAST REGION 9-STATE Recordings when AT&T SOUTHEAST REGION 9-STATE has direct connections with IXCs via AT&T SOUTHEAST REGION 9-STATE's access tandem. AT&T SOUTHEAST REGION 9-STATE will pass EMI Records to CLEC when AT&T SOUTHEAST REGION 9-STATE is the Official Recording Company. The Parties also agree that AT&T SOUTHEAST REGION 9-STATE and CLEC will exchange EMI

records when each are acting as the official Recording Company and CLEC is the access tandem company with direct connections with IXCs.

- 6.9.5.2 The Parties also agree that AT&T-13STATE and CLEC will exchange EMI Records when each is acting as the Official Recording Company. 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.
- 6.9.6 Information shall be passed or exchanged in 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 provision of Access Usage Records (AURs) to accommodate MPB will be on a reciprocal, no charge basis. Each Party agrees to provide the other Party with AURs based upon mutually agreed upon intervals.
- 6.9.7 MPB shall also apply to all jointly provided Switched Access MOU traffic bearing the 900, or toll free NPAs (e.g., 800, 877, 866, 888 NPAs, or any other non-geographic NPAs).
- 6.9.7.1 For AT&T-13STATE, the Party that performs the SSP function (launches the query to the 800 database) will bill the 800 Service Provider for this function.
- 6.9.7.2 For AT&T SOUTHEAST REGION 9-STATE, CLEC will pay the database query charge set forth in the AT&T SOUTHEAST REGION 9-STATE intrastate or interstate access services Tariff.
- 6.9.8 AT&T-22STATE and CLEC agree to provide the other Party with notification of any discovered errors in the record exchange process within ten (10) Business Days of the discovery.
- 6.9.9 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) calendar days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no less than three (3) and no more than twelve (12) consecutive months of prior usage data.
- 6.10 Compensation for Origination and Termination of InterLATA Traffic:
- 6.10.1 Where a CLEC originates or terminates its own End User InterLATA Traffic not subject to MPB, the CLEC must purchase feature group access service from AT&T-22STATE's state or federal access tariffs, whichever is applicable, to carry such InterLATA Traffic.
- 6.11 IntraLATA Toll Traffic Compensation:
- 6.11.1 For intrastate IntraLATA Message Telephone Service (MTS) toll traffic, compensation for termination of such traffic will be at terminating access rates. For intrastate IntraLATA 800 Service, compensation for termination of such traffic will be at originating access rates, including the Carrier Common Line (CCL) charge where applicable. The appropriate access rates are set forth in each Party's intrastate access service tariff, but such compensation shall not exceed the compensation contained in AT&T-22STATE's tariff in whose exchange area the End User is located.
- 6.11.2 For interstate IntraLATA MTS toll traffic, compensation for termination of such traffic will be at terminating access rates. For interstate IntraLATA 800 Service, compensation for termination of such traffic will be originating access rates, including the CCL charge where applicable. The appropriate access rates are set forth in each Party's interstate access service tariff, but such compensation shall not exceed the compensation contained in the AT&T-22STATE's tariff in

whose exchange area the End User is located.

6.12 Billing Arrangements for Termination of Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic:

6.12.1 In AT&T-22STATE, each Party, unless otherwise agreed to by the Parties, will calculate terminating Interconnection MOUs based on standard switch Recordings made within terminating carrier's network for Section 251(b)(5) Traffic, Optional EAS Traffic, ISP-Bound Traffic and IntraLATA Toll Traffic. These Recordings are the basis for each Party to generate bills to the other Party.

6.12.1.1 Where CLEC is using terminating Recordings to bill intercarrier compensation, AT&T-12STATE will provide the terminating Records where available 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 AT&T-12STATE non-resale offering whereby AT&T-12STATE 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.

6.12.2 For those usage based charges where actual charge information is not determinable by AT&T WEST REGION 2-STATE because the jurisdiction (i.e., intrastate vs. local) or origin of the traffic is unidentifiable, the Parties will jointly develop a Percent Local Usage (PLU) factor in order to determine the appropriate charges. PLU is calculated by dividing the Local MOU delivered to a Party for termination by the total MOU delivered to a Party for termination.

6.12.2.1 CLEC and AT&T WEST REGION 2-STATE agree to exchange such reports and/or data as provided in this Attachment to facilitate the proper billing of traffic. Either Party may request an audit of such usage reports on no fewer than thirty (30) Business Days written Notice and any audit shall be accomplished during normal business hours at the office of the Party being audited. Such audit must be performed by a mutually agreed-to auditor paid for by the Party requesting the audit. If mutual agreement cannot be reached within one (1) month of the date of the written request for an audit, the Parties shall use one (1) of the following independent auditors: PricewaterhouseCoopers, Ernst & Young, KPMG, or Deloitte Touche Tohmatsu (Big-4 Auditors). Selection of the Big-4 Auditor shall be made by the Party requesting the audit and the selected Big-4 Auditor must be independent as determined by current accounting and auditing standards promulgated by the appropriate accounting governing body. Such audit shall be requested within six (6) months of having received the usage reports from the other Party and may not be requested more than twice per year, once per calendar year for each call detail type unless the audit finds there has been a five percent (5%) or higher net error or variance in calculations. Based upon the audit, previous compensation, billing and/or settlements will be adjusted for the past six (6) months. If, as a result of the audit, either Party has overstated the PLU or underreported the call detail usage by five percent (5%) or more, that Party shall reimburse the auditing Party for the cost of the audit.

6.12.3 AT&T SOUTHEAST REGION 9-STATE Jurisdictional Reporting Process:

6.12.3.1 Each Party shall report to the other the projected PIU factors, including but not limited to PIU associated with facilities (PIUE) and Terminating PIU (TPIU) factors. The

application of the PIU will determine the respective interstate traffic percentages to be billed at AT&T SOUTHEAST REGION 9-STATE's FCC No. 1 Tariff rates. All jurisdictional report requirements, rules and regulations for IXCs specified in AT&T SOUTHEAST REGION 9-STATE's interstate and/or intrastate access services tariff(s) will apply to CLEC. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU and PLF factors will be used for application and billing of local traffic and facilities. The intrastate toll traffic shall be billed at AT&T SOUTHEAST REGION 9-STATE's intrastate access services tariff rates. Each Party shall update its PIUs on the first of January, April, July and October of each year and shall send it to the other Party to be received no later than thirty (30) calendar days after the first of each such month to be effective the first bill period the following month, respectively, for all services showing the percentages of use for the past three (3) months ending the last day of December, March, June and September. Additional requirements associated with PIU calculations and reporting shall be as set forth in AT&T SOUTHEAST REGION 9-STATE's Jurisdictional Factors Reporting Guide.

- 6.12.3.2 Each Party shall report to the other a PLU factor. The application of the PLU will determine the amount of local or ISP-Bound minutes to be billed to the other Party. Each Party shall update its PLU on the first of January, April, July and October of each year and shall send it to the other Party to be received no later than thirty (30) calendar days after the first of each such month to be effective the first bill period the following month, respectively, based on local and ISP-Bound usage for the past three (3) months ending the last day of December, March, June and September, respectively. Requirements associated with PLU calculation and reporting shall be as set forth in AT&T SOUTHEAST REGION 9-STATE's Jurisdictional Factors Reporting Guide.
- 6.12.3.3 Each Party shall report to the other a PLF factor. The application of the PLF will determine the portion of switched dedicated transport to be billed per the local jurisdiction rates. The PLF shall be applied to multiplexing, local channel and interoffice channel switched dedicated transport utilized in the provision of Local Interconnection Trunks. Each Party shall update its PLF on the first of January, April, July and October of the year and shall send it to the other Party to be received no later than thirty (30) calendar days after the first of each such month to be effective the first bill period the following month, respectively. Requirements associated with PLF calculation and reporting shall be as set forth in AT&T SOUTHEAST REGION 9-STATE's Jurisdictional Factors Reporting Guide.
- 6.12.3.4 Notwithstanding the provisions in Section 6.12.3.1 above, Section 6.12.3.2 above and Section 6.12.3.3 above where AT&T SOUTHEAST REGION 9-STATE has message Recording technology that identifies the jurisdiction of traffic terminated to AT&T SOUTHEAST REGION 9-STATE, such information shall, at AT&T SOUTHEAST REGION 9-STATE's option, be utilized to determine the appropriate jurisdictional reporting factors (i.e., PLU, PIU, and/or PLF), in lieu of those provided by CLEC. In the event that AT&T SOUTHEAST REGION 9-STATE opts to utilize its own data to determine jurisdictional reporting factors, AT&T SOUTHEAST REGION 9-STATE shall notify CLEC at least fifteen (15) calendar days prior to the beginning of the calendar quarter in which AT&T SOUTHEAST REGION 9-STATE will begin to utilize its own data.

- 6.12.3.5 On thirty (30) calendar days written Notice, CLEC must provide AT&T SOUTHEAST REGION 9-STATE the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic. CLEC shall retain Records of call detail for a minimum of nine (9) months from which the PLU, PLF and/or PIU can be ascertained. The audit shall be conducted during normal business hours at an office designated by CLEC. Audit requests shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by an independent auditor chosen by AT&T SOUTHEAST REGION 9-STATE. The audited factor (PLF, PLU and/or PIU) shall be adjusted based upon the audit results and shall apply to the usage for the audited period through the time period when the audit is completed, to the usage for the quarter prior to the audit period, and to the usage for the two (2) quarters following the completion of the audit. If, as a result of an audit, CLEC is found to have overstated the PLF, PLU and/or PIU by five percentage points (5%) or more, CLEC shall reimburse AT&T SOUTHEAST REGION 9-STATE for the cost of the audit.
- 6.12.4 In states in which AT&T-22STATE has offered to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic pursuant to the FCC's interim ISP terminating compensation plan set forth in the FCC ISP Compensation Order, ISP-Bound Traffic will be calculated using the 3:1 Presumption as set forth in Section 6.3.5 above of this Attachment.
- 6.12.5 The measurement of MOUs 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.
- 6.12.6 All ISP-Bound Traffic for a given usage month shall be due and owing at the same time as payments for Section 251(b)(5) Traffic under this Attachment. The Parties agree that all terms and conditions regarding disputed MOUs, nonpayment, partial payment, late payment, interest on outstanding balances, or other billing and payment terms shall apply to ISP-Bound Traffic the same as for Section 251(b)(5) Traffic under this Attachment.
- 6.12.7 For billing disputes arising from Inter-carrier Compensation charges, the Party challenging the disputed amounts (the "Non-Paying Party") may withhold payment for the amounts in dispute (the "Disputed Amounts") from the Party rendering the bill (the "Billing Party") only for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Late payment charges and interest will continue to accrue on the Disputed Amounts while the dispute remains pending. The Non-Paying Party need not pay late payment charges or interest on the Disputed Amounts for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Upon resolution of the dispute pertaining to the Disputed Amounts in accordance with the dispute resolution provisions of the General Terms and Conditions: (1) the Non-Paying Party will remit the appropriate Disputed Amounts to the Billing Party, together with all related interest and late payment charges, to the Billing Party within ten (10) business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Billing Party; and/or (2) the Billing Party will render all appropriate credits and adjustments to the Non-Paying Party for the Disputed Amounts, together with all appropriate interest and late payment charges, within ten (10) business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Non-Paying Party.
- 6.12.8 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) calendar days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no less than three (3) and no more than twelve

(12) consecutive months of prior usage data.

6.13 Reservation of Rights and Specific Intervening Law Terms

6.13.1 In the event the pricing scheme in the FCC's Interim ISP Compensation Order (defined in Section 6.3 above of this Attachment) is modified, eliminated or replaced, then the Parties agree to negotiate an appropriate amendment to conform to such change in accordance with the Intervening Law provisions of this Agreement and such new or changed provisions will apply on a prospective basis, beginning with the effective date of the new order, unless a determination is made as to retroactive application in the decision rendering such modification, elimination or replacement, in which instance, the new or changed provisions will apply retroactively as set forth in the new order. Either Party may begin billing the other Party according to the terms of the new order, beginning sixty (60) calendar days after delivering a request to negotiate the change. True-up of any retroactive application, for either the amendment negotiation period and/or for the retroactive application period provided in the order, shall occur within one hundred and twenty (120) calendar days of the effective date of the order, or be subject to dispute under the General Terms and Conditions of this Agreement.

6.14 Switched Access Traffic

6.14.1 For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an End User physically located in one (1) local exchange and delivered for termination to an End User physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in AT&T-22STATE's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the End User's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology. Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges not to exceed AT&T's access tariff rates; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks:

6.14.1.1 IntraLATA Toll Traffic or Optional EAS Traffic from a CLEC End User that obtains local dial tone from CLEC where CLEC is both the Section 251(b)(5) Traffic provider and the IntraLATA toll provider,

6.14.1.2 IntraLATA Toll Traffic or Optional EAS Traffic from an AT&T-22STATE End User that obtains local dial tone from AT&T-22STATE where AT&T-22STATE is both the Section 251(b)(5) Traffic provider and the IntraLATA toll provider;

6.14.1.3 Switched Access Traffic delivered to AT&T-22STATE from an IXC where the terminating number is ported to another CLEC and the IXC fails to perform the LNP query; and/or

6.14.1.4 Switched Access Traffic delivered to either Party from a Third Party CLEC over Local Interconnection Trunk Groups destined to the other Party.

- 6.15 Notwithstanding anything to the contrary in this Agreement, each Party reserves its rights, remedies, and arguments relating to the application of switched access charges for traffic exchanged by the Parties prior to the Effective Date of this Agreement and described in the FCC's Order issued in the Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Exempt from Access Charges, WC Docket No. 01-361(Released April 21, 2004).
- 6.15.1 In the limited circumstances in which a Third Party CLEC delivers Switched Access Traffic as described in Section 6.14.1.4 above to either Party over Local Interconnection Trunk Groups, such Party may deliver such Switched Access Traffic to the terminating Party over Local Interconnection Trunk Groups. If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, and unless the traffic was delivered over Local Interconnection Trunk Groups pursuant to an agreement filed with, and approved by, the Commission, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the Notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify the traffic with the goal of removing such traffic from the Local Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 6.14.1.4 above from the Local Interconnection Trunk Groups within sixty (60) calendar days of receipt of Notice from the other Party, the Parties agree to jointly file a complaint or any other appropriate action with the applicable Commission to seek any necessary permission to remove the traffic from such interconnection trunks up to and including the right to block such traffic and to obtain compensation, if appropriate, from the Third Party CLEC delivering such traffic to the extent it is not blocked.
- 6.16 Alternate Tandem Provider
- 6.16.1 An Alternate Tandem Provider shall mean a Telecommunications Carrier, with no End Users, that provides Tandem Switching services to CLEC with whom it is directly interconnected for the purpose of delivering Third Party Originating Carrier traffic via direct interconnection arrangements with AT&T-22STATE to:
- 6.16.1.1 AT&T-22STATE's End User;
- 6.16.1.2 to an End User of a Third Party Terminating Carrier that utilizes local switching from AT&T-12STATE purchased on a wholesale basis to provide service to its End Users; and/or
- 6.16.1.3 a Third Party Terminating Carrier's End User.
- 6.16.2 Third Party Originating Carrier shall mean a CLEC, ILEC, CMRS provider and/or OE-LEC that sends traffic originated by its End Users to an Alternate Tandem Provider.
- 6.16.3 Third Party Terminating Carrier shall mean a CLEC, ILEC, CMRS provider, OE-LEC, AT&T-22STATE as the ILEC or a Carrier that utilizes local switching from AT&T-12STATE purchased on a wholesale basis to provide service to its End Users, to which traffic is terminated when CLEC uses an Alternate Tandem Provider.
- 6.16.4 When Alternate Tandem Provider sends Traffic originated by the End Users of CLEC functioning as the Third Party Originating Carrier to an End User of AT&T-22STATE who is functioning as the Third Party Terminating Carrier, CLEC is responsible for all MOUs billed by AT&T-22STATE for the termination of such traffic.



## 7.0 **Recording**

### 7.1 Responsibilities of the Parties

- 7.1.1 **AT&T-22STATE** will record all IXC transported messages for CLEC carried over all Feature Group Switched Access Services that are available to **AT&T-22STATE** provided Recording equipment or operators. Unavailable messages (i.e., certain operator messages that are not accessible by **AT&T-22STATE**-provided equipment or operators) will not be recorded. The Recording equipment will be provided at locations selected by **AT&T-22STATE**.
- 7.1.2 **AT&T-22STATE** will perform Assembly and Editing, Message Processing and provision of applicable AUR detail for IXC transported messages if the messages are recorded by **AT&T-22STATE**.
- 7.1.3 **AT&T-22STATE** will provide AURs that are generated by **AT&T-22STATE**.
- 7.1.4 Assembly and Editing will be performed on all IXC transported messages recorded by **AT&T-22STATE**.
- 7.1.5 Standard EMI Record formats for the provision of Billable Message detail and AUR detail will be established by **AT&T-22STATE** and provided to CLEC.
- 7.1.6 Recorded Billable Message detail and AUR detail will not be sorted to furnish detail by specific End Users, by specific groups of End Users, by office, by feature group or by location.
- 7.1.7 **AT&T-22STATE** will provide message detail to CLEC in data files, (a File Transfer Protocol or Connect:Direct "NDM"), or any other mutually agreed upon process to receive and deliver messages using software and hardware acceptable to both Parties. In order for the CLEC to receive End User billable Records, the CLEC may be required to obtain CMDS Hosting service from AT&T or another CMDS Hosting service provider.
- 7.1.8 CLEC will identify separately the location where the Data Transmissions should be sent (as applicable) and the number of times each month the information should be provided. **AT&T-22STATE** reserves the right to limit the frequency of transmission to existing **AT&T-22STATE** processing and work schedules, holidays, etc.

### 7.2 **AT&T-22STATE** will determine the number of data files required to provide the AUR detail to CLEC.

- 7.2.1 Recorded Billable Message detail and/or AUR detail previously provided CLEC and lost or destroyed through no fault of **AT&T-22STATE** will not be recovered and made available to CLEC except on an individual case basis at a cost determined by **AT&T-22STATE**.
- 7.2.2 When **AT&T-22STATE** receives rated Billable Messages from an IXC or another LEC that are to be billed by CLEC, **AT&T-22STATE** may forward those messages to CLEC.
- 7.2.3 **AT&T-22STATE** will record the applicable detail necessary to generate AURs and forward them to CLEC for its use in billing access to the IXC.
- 7.2.4 When CLEC is the Recording Company, the CLEC agrees to provide its recorded Billable Messages detail and AUR detail data to **AT&T-22STATE** under the same terms and conditions of this Section.

### 7.3 Basis of Compensation

7.3.1 AT&T-22STATE as the Recording Company, agrees to provide recording, Assembly and Editing, Message Processing and Provision of Message Detail for AURs ordered/required by the CLEC in accordance with this Section on a reciprocal, no-charge basis. CLEC, as the Recording Company, agrees to provide any and all AURs required by AT&T-22STATE on a reciprocal, no-charge basis. The Parties agree that this mutual exchange of Records at no charge to either Party shall otherwise be conducted according to the guidelines and specifications contained in the MECAB document.

#### 7.4 Limitation of Liability

7.4.1 Except as otherwise provided herein, Limitation of Liability will be governed by the General Terms and Conditions of this Agreement.

7.4.2 Except as otherwise provided herein, neither Party shall be liable to the other for any special, indirect, or consequential damage of any kind whatsoever. A Party shall not be liable for its inability to meet the terms of this Agreement where such inability is caused by failure of the first Party to comply with the obligations stated herein. Each Party is obliged to use its best efforts to mitigate damages.

7.4.3 When either Party is notified that, due to error or omission, incomplete data has been provided to the non-Recording Company, each Party will make reasonable efforts to locate and/or recover the data and provide it to the non-Recording Company at no additional charge. Such requests to recover the data must be made within sixty (60) calendar days from the date the details initially were made available to the non-Recording Company. If written notification is not received within sixty (60) calendar days, the Recording Company shall have no further obligation to recover the data and shall have no further liability to the non-Recording Company.

7.4.4 If, despite timely notification by the non-Recording Company, message detail is lost and unrecoverable as a direct result of the Recording Company having lost or damaged tapes or incurred system outages while performing recording, Assembly and Editing, rating, Message Processing, and/or transmission of message detail, both Parties will estimate the volume of lost messages and associated revenue based on information available to it concerning the average revenue per minute for the average interstate and/or intrastate call. In such events, the Recording Company's liability shall be limited to the granting of a credit adjusting amounts otherwise due from it equal to the estimated net lost revenue associated with the lost message detail.

7.4.5 Each Party will not be liable for any costs incurred by the other Party when transmitting data files via data lines and a transmission failure results in the non-receipt of data.



## **ATTACHMENT 03 - STRUCTURE ACCESS**



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## **1.0 Introduction**

- 1.1 This Attachment 03 - Structure Access (here-on referred to as "Appendix") sets forth the terms and conditions for Right(s) of Way (ROW), Conduits and Poles provided by AT&T-22STATE and CLEC.

## **2.0 Definitions**

- 2.1 "Anchor" means a device, structure, or assembly which stabilizes a Pole and holds it in place. An Anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or guy wire, which, in turn, is attached to the Pole. The term Anchor does not include the guy strand which connects the Anchor to the Pole and includes only those Anchors which are owned by AT&T-22STATE, as distinguished from Anchors which are owned and controlled by other persons or entities.
- 2.2 "Anchor/Guy Strand" means supporting 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. The term Anchor/Guy Strand includes, but is not limited to, strands sometimes referred to as Anchor strands, down guys, guy strands, and Pole-to-Pole guys.
- 2.3 "Application" means the process of requesting information related to records, Pole and/or Conduit availability, or make-ready requirements for AT&T-22STATE-owned or controlled Facilities. Each Application is limited in size to a maximum of 1) 100 consecutive Poles or 2) 10 consecutive Manhole sections or 5000 feet, whichever is greater. The Application includes (but is not limited to) request for records, records investigation and/or a field investigation, and Make-Ready Work.
- 2.4 "Assigned" when used with respect to Conduit or Duct space or Poles, means any space in such Conduit or Duct or on such Pole that is occupied by a Telecommunications Service provider or a municipal or other governmental authority. To ensure the judicious use of Poles and Conduits, space Assigned to a Telecommunications Service provider must be physically occupied by the service provider, be it AT&T-22STATE or a new entrant, within twelve (12) months of the space being Assigned.
- 2.5 "Attaching Party" means any Party wishing to make a physical Facility Attachment on or in any AT&T structure.
- 2.6 "Attachment" as used herein means the physical connection to AT&T-22STATE's ROW and all associated Structure Access connectivity.
- 2.7 "Available" when used with respect to Conduit or Duct space or Poles, means any usable space in such Conduit or Duct or on such Pole not assigned to a specific provider at the applicable time.
- 2.8 "Conduit" means a structure containing one or more Ducts, usually placed in the ground, in which cables or wires may be installed.
- 2.9 "Conduit Occupancy" means the presence of wire, cable, optical conductors, or other Facilities within any portion of AT&T-22STATE's Conduit System.
- 2.10 "Conduit System" means any combination of Ducts, Conduits, Manholes, and Handholes joined to form an integrated whole. In this Appendix, the term refers to Conduit Systems owned or controlled by AT&T-22STATE.
- 2.11 "Cost" means the charges made by AT&T-22STATE to CLEC for specific work performed, and shall be (a) the actual charges made by subcontractors to AT&T-22STATE for work and/or, (b) if the work was performed by AT&T-22STATE employees, it shall be calculated on an individual case basis, based on the estimated amount of work to be performed.
- 2.12 "Duct" means 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.

- 2.13 "Facilities" refer to any property or equipment used in the provision of Telecommunications Services.
- 2.14 "Handholes" means an enclosure, usually below ground level, used for the purpose of installing, operating, and maintaining facilities in a Conduit. A Handhole is too small to permit personnel to physically enter.
- 2.15 "Inner-Duct" means a pathway created by subdividing a Duct into smaller channels.
- 2.16 "Joint User" means a public utility (as a business organization, like an electric company, performing a public service and subject to special governmental regulation) which has entered into an Agreement with AT&T-22STATE providing reciprocal rights of attachment of Facilities owned by each Party to the Poles, Ducts, Conduits and ROW owned by the other Party.
- 2.17 "Joint Use Pole" means a pole not owned by AT&T-22STATE, but upon which AT&T-22STATE maintains its Facilities.
- 2.18 "Lashing" means an Attachment of a Sheath or Inner-Duct to a supporting strand.
- 2.19 "License" means any License issued pursuant to this Appendix and may, if the context requires, refer to Conduit Occupancy or Pole Attachment Licenses issued by AT&T-22STATE.
- 2.20 "Make-Ready Work" means all work performed or to be performed to prepare AT&T-22STATE's Conduit Systems, Poles or Anchors and related Facilities for the requested occupancy or attachment 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 solely to accommodate CLEC's Facilities and not to meet AT&T-22STATE's business needs or convenience. Make-Ready Work may require "dig ups" of existing Facilities and may include the repair, enlargement or modification of AT&T-22STATE's Facilities (including, but not limited to, Conduits, Ducts, Handholes and Manholes) or the performance of other work required to make a Pole, Anchor, Conduit or Duct usable for the initial placement of CLEC's Facilities.
- 2.21 "Manhole" means an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete Manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining Facilities in a Conduit.
- 2.22 "Occupancy" means the physical presence of Telecommunication Facilities in a Duct, on a Pole, or within a ROW.
- 2.23 "Overlashing" involves an attacher tying communication conductors to existing, supportive strands of cable on poles, which enables attachers to replace deteriorated cables or expand the capacity of existing facilities while reducing construction disruption and associated expense.
- 2.24 "Pole" means both utility Poles and Anchors but only to those utility Poles and Anchors owned or controlled by AT&T-22STATE, and does not include utility Poles or Anchors with respect to which AT&T-22STATE has no legal authority to permit attachments by other persons or entities.
- 2.25 "Pole Attachment Act" and "Pole Attachment Act of 1978" means those provisions of the Act, as amended, now codified as 47 U.S.C. § 224.
- 2.26 "Pre-License Survey" means all work and activities performed or to be performed to determine whether there is adequate capacity on a Pole or in a Conduit or Conduit System (including Manholes and Handholes) to accommodate CLEC's Facilities and to determine what Make-Ready Work, if any, is required to prepare the Pole, Conduit or Conduit System to accommodate CLEC's Facilities.
- 2.27 "Right(s) of Way (ROW)" means the right to use the land or other property of another party to place Poles, Conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. A ROW

may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes, or other locations.

- 2.28 "Sheath" or "Sheathing" means an outer covering containing communications wires, fibers, or other communications media.
- 2.29 "Spare Capacity" means any Poles, Conduit, Duct or Inner-Duct not currently assigned or subject to a pending Application for Attachment/Occupancy. Spare Capacity does not include an Inner-Duct (not to exceed one Inner-Duct per party) reserved by AT&T-22STATE, CLEC, or a Third Party for maintenance, repair, or emergency restoration.

### **3.0 General Provisions**

#### **3.1 Undertaking of AT&T-22STATE:**

- 3.1.1 AT&T-22STATE shall provide CLEC with equal and nondiscriminatory access to Pole space, Conduits, Ducts, and ROW on terms and conditions equal to those provided by AT&T-22STATE to itself or to any other Telecommunications Service provider. Further, AT&T-22STATE shall not withhold or delay assignment of such Facilities to CLEC because of the potential or forecasted needs of itself or Third Parties.

#### **3.2 Attachments and Occupancies Authorized by this Appendix:**

- 3.2.1 AT&T-22STATE shall issue one or more Licenses to CLEC authorizing CLEC to attach Facilities to AT&T-22STATE's owned or controlled Poles and to place Facilities within AT&T-22STATE's owned or controlled Conduits, Ducts or ROW under the terms and conditions set forth in this Appendix and the Act.
- 3.2.2 Unless otherwise provided herein, authority to attach Facilities to AT&T-22STATE's owned or controlled Poles, to place Facilities within AT&T-22STATE's owned or controlled Conduits, Ducts or ROW shall be granted only in individual Licenses granted under this Appendix and the placement or use of such Facilities shall be determined in accordance with such Licenses and procedures established in this Appendix.
- 3.2.3 CLEC agrees that its attachment of Facilities to AT&T-22STATE's owned or controlled Poles, occupancy of AT&T-22STATE's owned or controlled Conduits, Ducts or ROW shall take place pursuant to the licensing procedures set forth herein, and AT&T-22STATE agrees that it shall not unreasonably withhold or delay issuance of such Licenses.
- 3.2.4 CLEC may not sublease or otherwise authorize any Third Party to use any part of the AT&T-22STATE Facilities licensed to CLEC under this Appendix, except that CLEC may lease its own Facilities to Third Parties, or allow Affiliates to over lash cables to CLEC cables. Notwithstanding the above, upon Notice to AT&T-22STATE, CLEC may permit Third Parties who have an Agreement with AT&T-22STATE to over lash to existing CLEC attachments in accordance with the terms and conditions of such Third Party's Agreement with AT&T-22STATE.
- 3.2.5 Attaching Party warrants that any over lashing the Attaching Party conducts or permits (via a third party or contractor) shall meet the following requirements: (1) the over lashing complies with the NESC and any other industry standards; (2) the Attaching Party has computed the pole loading with the additional overlashed facility, and the pole will not be overloaded with the addition of the overlashed facility; (3) the Attaching Party has determined that no make ready is necessary to accommodate the overlashed facility, or will insure that any make-ready necessary will be conducted before the over lashing occurs. Attaching Party agrees to indemnify AT&T-22STATE should any of the warranties be breached.

#### **3.3 Licenses:**

- 3.3.1 Subject to the terms and conditions set forth in this Appendix, AT&T-22STATE shall issue to CLEC one or

more Licenses per state authorizing CLEC to place or attach Facilities in or to specified Poles, Conduits, Ducts or ROW owned or controlled by AT&T-22STATE located within the state on a "first-come, first-served" basis. AT&T-22STATE may deny a License Application if AT&T-22STATE determines that the Pole, Conduit or Duct space specifically requested by CLEC is necessary to meet AT&T-22STATE's present needs, or is Licensed by AT&T-22STATE to another CLEC, or is otherwise unavailable based on engineering concerns. AT&T-22STATE shall provide written Notice to CLEC within a reasonable time specifying in detail the reasons for denying CLEC's request. AT&T-22STATE shall have the right to designate the particular Duct(s) to be occupied, the location and manner in which CLEC's Facilities will enter and exit AT&T-22STATE's Conduit System and the specific location and manner of installation for any associated equipment which is permitted by AT&T-22STATE to occupy the Conduit System.

### 3.4 Access and Use of ROW:

- 3.4.1 AT&T-22STATE acknowledges that it is required by the Act to afford CLEC access to and use of all associated ROW to any sites where AT&T-22STATE's owned or controlled Poles, Manholes, Conduits, Ducts or other parts of AT&T-22STATE's owned or controlled Conduit Systems are located.
- 3.4.2 AT&T-22STATE shall provide CLEC with access to and use of such ROW to the same extent and for the same purposes that AT&T-22STATE may access or use such ROW, including but not limited to access for ingress, egress or other access and to construct, utilize, maintain, modify, and remove Facilities for which Pole attachment, Conduit Occupancy, or ROW use Licenses have been issued, provided that any Agreement with a Third Party under which AT&T-22STATE holds such rights expressly or impliedly grants AT&T-22STATE the right to provide such rights to others.
- 3.4.3 Where AT&T-22STATE notifies CLEC that AT&T-22STATE's Agreement with a Third Party does not expressly or impliedly grant AT&T-22STATE the ability to provide such access and use rights to others, upon CLEC's request, AT&T-22STATE will use its best efforts to obtain the owner's consent and to otherwise secure such rights for CLEC. CLEC agrees to reimburse AT&T-22STATE for the reasonable and demonstrable Costs incurred by AT&T-22STATE in obtaining such rights for CLEC.
- 3.4.4 In cases where a Third Party Agreement does not grant AT&T-22STATE the right to provide access and use rights to others as contemplated in Section 3.4.2 above and AT&T-22STATE, despite its best efforts, is unable to secure such access and use rights for CLEC in accordance with Section 3.4.3 above, or, in the case where CLEC elects not to invoke its rights under Section 3.4.2 above or Section 3.4.3 above, CLEC shall be responsible for obtaining such permission to access and use such ROW. AT&T-22STATE shall cooperate with CLEC in obtaining such permission and shall not prevent or delay any Third Party assignment of ROWs to CLEC.
- 3.4.5 Where AT&T-22STATE has any ownership or ROW to buildings or building complexes, or within buildings or building complexes, AT&T-22STATE shall offer to CLEC through a License or other attachment:
  - 3.4.5.1 The right to use any available space owned or controlled by AT&T-22STATE in the building or building complex to install CLEC equipment and Facilities; and
  - 3.4.5.2 Ingress and egress to such space.
- 3.4.6 Except to the extent necessary to meet the requirements of the Act, neither this Appendix nor any License granted hereunder shall constitute a conveyance or assignment of any of either Party's rights to use any public or private ROW, and nothing contained in this Appendix or in any License granted hereunder shall be construed as conferring on one Party any right to interfere with the other Party's access to any such public or private ROW.

### 3.5 No Effect on AT&T-22STATE's Right to Convey Property:



- 3.5.1 Nothing contained in this Appendix or in any License issued hereunder shall in any way affect the right of AT&T-22STATE to convey to any other person or entity any interest in real or personal property, including any Poles, Conduit or Ducts to or in which CLEC has attached or placed Facilities pursuant to Licenses issued under this Appendix provided however that AT&T-22STATE shall give CLEC reasonable advance written Notice of such intent to convey.
- 3.5.2 Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to CLEC. AT&T-22STATE shall have the right to grant, renew and extend rights and privileges to others not Parties to this Agreement, by contract or otherwise, to use any Pole, Anchor, or Conduit System covered by this Appendix and CLEC's rights hereunder.
- 3.6 No Effect on AT&T-22STATE's Rights to Manage its Own Facilities:
- 3.6.1 This Appendix shall not be construed as limiting or interfering with AT&T-22STATE's rights set forth below, except to the extent expressly provided by the provisions of this Appendix or Licenses issued hereunder or by the Act or other applicable laws, rules or regulations:
- 3.6.1.1 To locate, relocate, move, replace, modify, maintain, and operate AT&T-22STATE's own Facilities within AT&T-22STATE's Conduits, Ducts or ROW or any of AT&T-22STATE's Facilities attached to AT&T-22STATE's Poles at any time and in any reasonable manner which AT&T-22STATE deems appropriate to serve its End Users, avail itself of new business opportunities, or otherwise meet its business needs; or
- 3.6.1.2 enter into new agreements or arrangements with other persons or entities permitting them to attach or place their Facilities to or in AT&T-22STATE's Poles, Conduits or Ducts; provided, however, that such relocations, moves, replacements, modifications, maintenance and operations or new Attachments or arrangements shall not substantially interfere with CLEC's Pole Attachment, Conduit Occupancy or ROW use rights provided by Licenses issued pursuant to this Appendix.
- 3.7 No Effect on CLEC's Rights to Manage its Own Facilities:
- 3.7.1 This Appendix shall not be construed as limiting or interfering with CLEC's rights set forth below, except to the extent expressly provided by the provisions of this Appendix or Licenses issued hereunder or by the Act or other applicable laws, rules or regulations:
- 3.7.1.1 To locate, relocate, move, replace, modify, maintain, and operate its own Facilities within AT&T-22STATE's Conduits, Ducts or ROW or its Facilities attached to AT&T-22STATE's Poles at any time and in any reasonable manner which CLEC deems appropriate to serve its End Users, avail itself of new business opportunities, or otherwise meet its business needs; or
- 3.7.1.2 To enter into new agreements or arrangements with other persons or entities permitting CLEC to attach or place its Facilities to or in such other persons' or entities' Poles, Conduits or Ducts, or ROW; provided, however, that such relocations, moves, replacements, modifications, maintenance and operations or new Attachments or arrangements shall not conflict with CLEC's obligations under Licenses issued pursuant to this Appendix.
- 3.8 No Right to Interfere with Facilities of Others:
- 3.8.1 The provisions of this Appendix or any License issued hereunder shall not be construed as authorizing either Party to this Appendix to rearrange or interfere in any way with any of the other Party's Facilities, with the Facilities of other persons or entities, or with the use of or access to such Facilities by such other party or such other persons or entities, except to the extent expressly provided by the provisions of this Appendix

or any License issued hereunder or by the Act or other applicable laws, rules or regulations.

3.8.2 CLEC acknowledges that the Facilities of persons or entities other than AT&T-22STATE and CLEC may be attached to or occupy AT&T-22STATE's Poles, Conduits, Ducts and ROW.

3.8.3 AT&T-22STATE shall not attach, or give permission to any Third Parties to attach Facilities to, existing CLEC Facilities without CLEC's prior written consent. If AT&T-22STATE becomes aware of any such unauthorized attachment to CLEC Facilities, AT&T-22STATE shall use its best efforts to rectify the situation as soon as practicable.

3.8.4 With respect to Facilities occupied by CLEC or the subject of an Application for attachment by CLEC, AT&T-22STATE will give to CLEC sixty (60) calendar days written Notice for Conduit extensions or reinforcements, sixty (60) calendar days written Notice for Pole line extensions, sixty (60) calendar days written Notice for Pole replacements, and sixty (60) calendar days written Notice of AT&T-22STATE's intention to construct, reconstruct, expand or place such Facilities or of AT&T-22STATE's intention not to maintain or use any existing Facility.

3.8.4.1 Where AT&T-22STATE elects to abandon or remove AT&T-22STATE Facilities, the Facilities will be offered to existing occupants on a first-in, first-right to maintain basis. The first existing occupant electing to exercise this option will be required to execute the appropriate Agreement with AT&T-22STATE to transfer (purchase Attachment) ownership from AT&T-22STATE to that existing occupant, subject to then-existing licenses pertaining to such Facilities. If none of the existing occupants elect to maintain such Facilities, all occupants will be required to remove their existing Facilities within ninety (90) calendar days of written Notice from AT&T-22STATE.

3.8.4.2 If an emergency or provisions of an applicable joint use Agreement require AT&T-22STATE to construct, reconstruct, expand or replace Poles, Conduits or Ducts occupied by CLEC or the subject of an Application for Attachment by CLEC, AT&T-22STATE will notify CLEC as soon as reasonably practicable of such proposed construction, reconstruction, expansion or replacement to enable CLEC, if it so desires, to request that a Pole, Conduit or Duct of greater height or capacity be utilized to accommodate an anticipated Facility need of CLEC.

3.8.5 Upon request and at CLEC's expense, AT&T-22STATE shall remove any retired cable from Conduit Systems to allow for the efficient use of Conduit space within a reasonable period of time. AT&T-22STATE retains salvage rights on any cable removed. In order to safeguard its structures and Facilities, AT&T-22STATE reserves the right to remove retired cables and is under no obligation to allow CLEC the right to remove such cables. Based on sound engineering judgment, there may be situations where it would neither be feasible nor practical to remove retired cables.

### 3.9 Assignment of Space:

3.9.1 Assignment of space on Poles, in Conduits or Ducts and within ROW's will be made pursuant to Licenses granted by AT&T-22STATE on an equal basis to AT&T-22STATE, CLEC and other Telecommunication Service providers.

## 4.0 Requirements and Specifications

4.1 Industry recognized standards are incorporated below by reference. CLEC agrees that its 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:

4.1.1 The Blue Book Manual of Construction Procedures, Special Report SR TAP 001421, published by Telcordia Technologies, f/k/a Bell Communications Research, Inc. ("BellCore"), and sometimes referred to as the

"Blue Book";

4.1.2 The National Electrical Code (NEC); and

4.1.3 The current version of The National Electrical Safety Code (NESC).

4.2 Changes in Industry Recognized Standards:

4.2.1 CLEC agrees to rearrange its Facilities in accordance with changes in the standards published in the publications specified in Section 4.1 above of this Appendix if required by law to do so or upon the mutual Agreement of the Parties.

4.3 Additional Electrical Design Specifications:

4.3.1 CLEC agrees that, in addition to specifications and requirements referred to in Section 4.1 above, CLEC's Facilities placed in **AT&T-22STATE**'s Conduit System shall meet all of the following electrical design specifications:

4.3.1.1 No Facility shall be placed in **AT&T-22STATE**'s Conduit System in violation of FCC regulations.

4.3.1.2 CLEC's Facilities placed in **AT&T-22STATE**'s Conduit System shall not be designed to use the earth as the sole conductor for any part of CLEC's circuits.

4.3.1.3 CLEC's Facilities carrying more than 50 volts AC rms (root mean square) to ground or 135 volts DC to ground shall be enclosed in an effectively grounded Sheath or shield.

4.3.1.4 No coaxial cable of CLEC shall occupy a Conduit System containing **AT&T-22STATE**'s cable unless such cable of CLEC meets the voltage limitations of Article 820 of the National Electrical Code referred to in Section 4.1.2 above.

4.3.1.5 CLEC's coaxial cable may carry continuous DC voltages up to 1800 volts to ground where the conductor current will not exceed one-half (1/2) amperes and where such cable has two (2) 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 micro-amperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.

4.3.1.6 Neither Party shall circumvent the other Party's corrosion mitigation measures. Each Party's new Facilities shall be compatible with the other Party's Facilities so as not to damage any Facilities of the other Party by corrosion or other chemical reaction.

4.4 Additional Physical Design Specifications:

4.4.1 CLEC's Facilities placed in **AT&T-22STATE**'s Conduit System must meet all of the following physical design specifications:

4.4.1.1 Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in **AT&T-22STATE**'s Conduit or Ducts.

4.4.1.2 The integrity of **AT&T-22STATE**'s Conduit System and overall safety of **AT&T-22STATE**'s personnel and other personnel working in **AT&T-22STATE**'s Conduit System requires that "dielectric cable" be placed when CLEC's cable Facility utilizes an alternative Duct or route that is shared in the same trench by any current carrying Facility of a power utility.

4.4.1.3 New construction splices in CLEC's fiber optic and twisted pair cables shall be located in Manholes, pull boxes or Handholes.

#### 4.5 Additional Specifications Applicable to Connections:

4.5.1 The following specifications apply to connections of CLEC's Conduit to AT&T-22STATE's Conduit System:

- 4.5.1.1 CLEC will be permitted to connect its Conduit or Duct only at an AT&T-22STATE Manhole. No attachment will be made by entering or breaking into Conduit between Manholes. All necessary work to install CLEC Facilities will be performed by CLEC or its contractor at CLEC's expense. In no event shall CLEC or its contractor "core bore" or make any other modification to AT&T-22STATE Manhole(s) without the prior written approval of AT&T-22STATE, which approval will not be unreasonably delayed or withheld.
- 4.5.1.2 If CLEC constructs or utilizes a Duct connected to AT&T-22STATE's Manhole, the Duct and all connections between that Duct and AT&T-22STATE's Manhole shall be sealed, to the extent practicable, to prevent the entry of gases or liquids into AT&T-22STATE's 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 AT&T-22STATE's Conduit System.

#### 4.6 Requirements Relating to Personnel, Equipment, Material, and Construction Procedures Generally:

- 4.6.1 Duct clearing, rodding or modifications required to grant CLEC access to AT&T-22STATE's Conduit Systems may be performed by AT&T-22STATE at CLEC's expense at charges which represent AT&T-22STATE's actual Costs. Alternatively (at CLEC's option) such work may be performed by a contractor who demonstrates compliance with AT&T-22STATE certification requirements, which certification requirements shall be consistent with F.C.C. rules. The Parties acknowledge that CLEC, its contractors, and other persons acting on CLEC's behalf will perform work for CLEC (e.g., splicing CLEC's Facilities) within AT&T-22STATE's Conduit System. CLEC represents and warrants that neither CLEC nor any Person Acting on CLEC's behalf shall permit any person to climb or work on or in any of AT&T-22STATE's Poles or to enter AT&T-22STATE's Manholes or work within AT&T-22STATE's Conduit System unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to Pole or the Conduit Systems and to perform the work safely.
- 4.6.2 CLEC's Facilities within AT&T-22STATE's Conduit System shall be constructed, placed, rearranged, modified, and removed upon receipt of License specified in Section 6.1. However, no such License will be required for the inspection, maintenance, repair or non-physical modifications of CLEC's Facilities.
- 4.6.3 Rodding or clearing of Ducts in AT&T-22STATE's Conduit System shall be done only when specific authorization for such work has been obtained in advance from AT&T-22STATE, which authorization shall not be unreasonably delayed or withheld by AT&T-22STATE. The Parties agree that such rodding or clearing shall be performed according to existing industry standards and practices. CLEC may contract with AT&T-22STATE for performance of such work or (at CLEC's option) with a contractor who demonstrates compliance with AT&T-22STATE certification requirements.
- 4.6.4 Personnel performing work on AT&T-22STATE's or CLEC's behalf in AT&T-22STATE's Conduit System shall not climb on, step on, or otherwise disturb the other Party's or any Third Party's cables, air pipes, equipment, or other Facilities located in any Manhole or other part of AT&T-22STATE's Conduit System.
- 4.6.5 Personnel performing work on AT&T-22STATE's or CLEC's behalf within AT&T-22STATE's Conduit System (including any Manhole) 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.
- 4.6.6 All of CLEC's Facilities shall be firmly secured and supported in accordance with Telcordia and industry

standards as referred to in Section 4.1 above.

4.6.7 Identification of Facilities in Conduit/Manholes:

4.6.7.1 CLEC's Facilities shall be plainly identified with CLEC's name in each Manhole with a firmly affixed permanent tag that meets standards set by AT&T-22STATE for its own Facilities.

4.6.8 Identification of Pole Attachments.

4.6.8.1 CLEC's Facilities attached to AT&T-22STATE Poles shall be plainly identified with CLEC's name firmly affixed at each Pole by a permanent tag that meets industry standards as referred to in Section 4.1 above.

4.6.9 Manhole pumping and purging required in order to allow CLEC's work operations to proceed shall be performed by a vendor approved by AT&T-22STATE in compliance with AT&T-22STATE Practice Sec. 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures", and any amendments, revisions or supplements thereto and in compliance with all regulations and standards established by the United States Environmental Protection Agency and by any applicable state or local environmental regulators.

4.6.10 Planks or other types of platforms shall not be installed using cables, pipes or other equipment as a means of support. Platforms shall be supported only by cable racks.

4.6.11 Any leak detection liquid or device used by CLEC or personnel performing work on CLEC's Facilities within AT&T-22STATE's Conduit System shall be of a type approved by AT&T-22STATE or Telcordia as referenced in Section 4.1 above.

4.6.12 When CLEC or personnel performing work on CLEC's behalf are working within or in the vicinity of any part of AT&T-22STATE's Poles or Conduit System which is located within, under, over, or adjacent to streets, highways, alleys or other traveled ROW, 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 shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. CLEC will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers and property from danger. AT&T-22STATE shall have no responsibility for the safety of 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. AT&T-22STATE reserves the right to suspend CLEC's activities on, in or in the vicinity of AT&T-22STATE's Poles or Conduit System if, in AT&T-22STATE's reasonable judgment, any hazardous condition arises due to the activity (including both acts and omissions) of CLEC or any personnel performing work on CLEC's behalf, which suspension shall cease when the condition has been rectified.

4.6.13 Except for protective screens, no temporary cover shall be placed by CLEC or personnel performing work on CLEC's behalf over an open Manhole unless it is at least four (4) feet above the surface level of the Manhole opening.

4.6.14 Smoking or the use of any open flame is prohibited in AT&T-22STATE's Manholes, in any other portion of AT&T-22STATE's Conduit System, or within ten (10) feet of any open Manhole entrance; provided that this provision will not prohibit the use of spark producing tools such as electric drills, fusion splicers, etc.

4.6.15 Artificial lighting, when required, will be provided by CLEC. Only explosion proof lighting fixtures shall be used.

4.6.16 Neither CLEC nor personnel performing work on CLEC's behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in AT&T-22STATE's Conduit System (including any Manhole) during work

operations performed within or in the vicinity of AT&T-22STATE's Conduit System.

- 4.6.17 CLEC will abide by any laws, regulations or ordinances regarding the use of spark producing tools, equipment or devices in AT&T-22STATE's Manholes, in any other portions of AT&T-22STATE's Conduit System, or within ten (10) feet of any open Manhole opening. This includes, but is not limited to, such tools as electric drills and hammers, meggers, breakdown sets, induction sets, and the like.

4.7 Opening of Manholes:

- 4.7.1 The following requirements apply to the opening of AT&T-22STATE's Manholes and the authority of AT&T-22STATE personnel present when work on CLEC's behalf is being performed within or in the vicinity of AT&T-22STATE's Conduit System.

- 4.7.1.1 AT&T-22STATE's Manholes shall be opened only as permitted by AT&T-22STATE's authorized employees or agents, which permission shall not be unreasonably denied or delayed.
- 4.7.1.2 CLEC shall notify AT&T-22STATE forty-eight (48) hours in advance of any routine work operation requiring entry into any of AT&T-22STATE's Manholes.
- 4.7.1.3 CLEC shall be responsible for obtaining any necessary authorization from appropriate authorities to open Manholes for Conduit work operations therein.
- 4.7.1.4 AT&T-22STATE's authorized employee or agent shall not direct or control the conduct of CLEC's work at the work site. The presence of AT&T-22STATE's authorized employee or agent at the work site shall not relieve CLEC or personnel performing work on CLEC's behalf of their responsibility to conduct all work operations within AT&T-22STATE's Conduit System in a safe and workmanlike manner.
- 4.7.1.5 Although AT&T-22STATE's authorized employee or agent shall not direct or control the conduct of CLEC's work at the work site, AT&T-22STATE's employee or agent shall have the authority to suspend CLEC's work operations within AT&T-22STATE's Conduit System if, in the reasonable discretion of such AT&T-22STATE employee or agent, it appears that any hazardous conditions arise or any unsafe practices are being followed by CLEC or personnel performing work on CLEC's behalf.

4.8 Occupational Safety and Health Administration (OSHA) Compliance: Notice to AT&T-22STATE of Unsafe Conditions:

4.8.1 CLEC agrees that:

- 4.8.1.1 Its Facilities shall be constructed, placed, maintained, repaired, and removed in accordance with OSHA's rules and regulations promulgated thereunder.
- 4.8.1.2 All persons acting on CLEC's behalf, including but not limited to CLEC's employees, agents, contractors, and subcontractors shall, when working on or within AT&T-22STATE's Poles or Conduit System, comply with OSHA and all rules and regulations thereunder.
- 4.8.1.3 CLEC shall establish appropriate procedures and controls to assure compliance with all requirements of this Section.
- 4.8.1.4 CLEC (and any Person Acting on CLEC's Behalf) may report unsafe conditions on, in or in the vicinity of AT&T-22STATE's Poles or Conduit System to AT&T-22STATE.

4.9 Compliance with Environmental Laws and Regulations:

- 4.9.1 CLEC acknowledges that, from time to time, environmental contaminants may enter AT&T-22STATE's Conduit System and accumulate in Manholes or other Conduit Facilities and that certain Conduits (Transite type) are constructed with asbestos-containing materials. If AT&T-22STATE has knowledge of the presence of such contaminants in a Conduit for which CLEC has applied for or holds a License, AT&T-22STATE will promptly notify CLEC of such fact.
- 4.10 Notwithstanding any of AT&T-22STATE's notification requirements in this Appendix, CLEC acknowledges that some of AT&T-22STATE's Conduit is fabricated from asbestos-containing materials. Such Conduit is generally marked with a designation of "C Fiber Cement Conduit", "Transite", or "Johns-Manville". Until proven otherwise, CLEC will presume that all Conduit not fabricated of plastic, tile, or wood is asbestos-containing and will handle it pursuant to all applicable regulations relating to worker safety and protection of the environment.
- 4.11 AT&T-22STATE makes no representations to CLEC or personnel performing work on CLEC's behalf that AT&T-22STATE's Conduit System or any specific portions thereof will be free from environmental contaminants at any particular time. CLEC agrees to comply with the following provisions relating to compliance with environmental laws and regulations:
- 4.11.1 CLEC's Facilities shall be constructed, placed, maintained, repaired, and removed in accordance with all applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws, including but not limited to the Resource Conservation and Recovery Act (42 U.S.C. §§ 9601 et. seq.), the Toxic Substance Control Act (15 U.S.C. §§ 2601 2629), the Clean Water Act (33 U.S.C. §§ 1251 et. seq.), and the Safe Drinking Water Act (42 U.S.C. §§ 300f 300j).
- 4.11.2 All persons acting on CLEC's behalf, including but not limited to CLEC's employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of AT&T-22STATE's Poles or Conduit System, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.
- 4.11.3 CLEC shall establish appropriate procedures and controls to assure compliance with all requirements of this section. AT&T-22STATE will be afforded a reasonable opportunity to review such procedures and controls and provide comments that will be reasonably considered in advance of their implementation. Review and comment by AT&T-22STATE pursuant to this section will be provided in a timely manner.
- 4.11.4 CLEC and all personnel performing work on CLEC's behalf shall comply with such standards and practices as AT&T-22STATE and CLEC may from time to time mutually agree to adopt to comply with environmental laws and regulations including, without limitation, AT&T-22STATE Practice Sec. 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures". Pursuant to this practice, neither CLEC nor AT&T-22STATE nor personnel performing work on either Party's behalf shall discharge water or any other substance from any AT&T-22STATE Manhole or other Conduit Facility onto public or private property, including any storm water drainage system, without first testing such water or substance for contaminants in accordance with mutually agreed standards and practices and determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person. No such waste material shall be deposited on AT&T-22STATE premises for storage or disposal.
- 4.12 Compliance with Other Governmental Requirements:
- 4.12.1 CLEC agrees that its Facilities attached to AT&T-22STATE's Facilities shall be constructed, placed, maintained, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter. CLEC 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. CLEC shall establish

appropriate procedures and controls to assure such compliance by all persons acting on CLEC's behalf, including but not limited to, CLEC's employees, agents, contractors, and subcontractors.

4.13 Differences in Standards or Specifications:

4.13.1 To the extent that there may be differences in any applicable standards or specifications referred to in Section 4.0 above, the most stringent standard or specification shall apply.

4.14 CLEC Solely Responsible for the Condition of Its Facilities:

4.14.1 CLEC shall be responsible at all times for the condition of its Facilities and its compliance with the requirements, specifications, rules, regulations, ordinances, and laws specified above. In this regard, AT&T-22STATE shall have no duty to CLEC to inspect or monitor the condition of CLEC's Facilities (including but not limited to splices and other Facilities connections) located within AT&T-22STATE's Conduit and Ducts or any attachment of CLEC's Facilities to AT&T-22STATE's Poles, Anchors, Anchor/Guy Strands or other Pole Facilities. AT&T-22STATE may, however, conduct such inspections and audits of its Poles and Conduit System as AT&T-22STATE determines reasonable or necessary. Such inspection and audits shall be conducted at AT&T-22STATE's expense with the exception of (1) follow-up inspection to confirm remedial action after an observed CLEC violation of the requirements of this Appendix; and (2) inspection of CLEC Facilities in compliance with a specific mandate of appropriate governmental authority for which inspections the Cost shall be borne by CLEC.

4.14.2 Either Party may audit the other Party's compliance with the terms of this Section.

4.14.3 Observed safety hazards or imminent Facility failure conditions of another Party shall be reported to the affected Party where such Party can be readily identified.

4.15 Efficient use of Conduit:

4.15.1 AT&T-22STATE will install Inner-Ducts to increase Duct space in existing Conduit as Facilities permit. The full complement of Inner-Ducts will be installed which can be accommodated under sound engineering principles. The number of Inner-Ducts which can reasonably be installed will be determined by AT&T-22STATE.

**5.0 Additional CLEC Responsibilities**

5.1 Third Party Property Owners:

5.1.1 Licenses granted under this Section authorize CLEC to place Facilities in, or attach Facilities to, Poles, Conduits and Ducts owned or controlled by AT&T-22STATE but do not affect the rights of landowners to control terms and conditions of access to their property.

5.1.1.1 CLEC agrees that neither CLEC nor any persons acting on CLEC's behalf, including but not limited to CLEC's employees, agents, contractors, and subcontractors, shall engage in any conduct which damages public or private property in the vicinity of AT&T-22STATE's Poles or Conduit System, interferes in any way with the use or enjoyment of public or private property except as expressly permitted by the owner of such property, or creates a hazard or nuisance on such property (including, but not limited to, a hazard or nuisance resulting from any abandonment or failure to remove CLEC's 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 CLEC's behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).

5.2 Required Permits, Certificates and Licenses:



- 5.2.1 CLEC shall be responsible for obtaining any building permits or certificates from governmental authorities necessary to construct, operate, maintain and remove its Facilities on public or private property.
- 5.2.2 CLEC shall not attach or place its Facilities to or in AT&T-22STATE's Poles, Conduit or Duct located on any property for which it or AT&T-22STATE has not first obtained all required authorizations.
- 5.2.3 AT&T-22STATE shall have the right to request evidence that all appropriate authorizations have been obtained. However, such request shall not delay AT&T-22STATE's Pre-License Survey work.

5.3 Lawful Purposes:

- 5.3.1 All Facilities placed by CLEC in AT&T-22STATE's Conduit and Ducts or on AT&T-22STATE's Poles, Anchors or Anchor/Guy Strands must serve a lawful purpose and the uses made of CLEC's Facilities must comply with all applicable federal, state, and local laws and with all federal, state, and local regulatory rules, regulations, and requirements. In this regard, CLEC shall not utilize any Facilities occupying or attached to AT&T-22STATE's Conduits, Ducts or Poles for the purpose of providing any services which it is not authorized by law to provide or for the purpose of enabling any other person or entity to provide any such services.

**6.0 Facilities and Licenses**

6.1 Licenses Required:

- 6.1.1 Before placing any Facilities in AT&T-22STATE's Conduits or Ducts or attaching any Facilities to AT&T-22STATE's Poles, Anchors or Anchor/Guy Strands, CLEC must first apply for and receive a written License from AT&T-22STATE.

6.2 Provision of Records and Information to CLEC:

- 6.2.1 In order to obtain information regarding Facilities, CLEC shall make a written request to AT&T-22STATE, identifying with reasonable specificity the geographic area for which Facilities are required, the types and quantities of the required Facilities and the required in-service date. In response to such request, AT&T-22STATE shall provide CLEC with information regarding the types, quantity and location (which may be provided by provision of route maps) and availability of AT&T-22STATE Poles, Conduit and ROW located within the geographic area specified by CLEC. Provision of information under the terms of this section shall include the right of CLEC employees or agents to obtain copies of engineering records or drawings which pertain to those Facilities within the geographic area identified in CLEC's request. Such copies of records shall be provided to CLEC via courier at the expense of CLEC or otherwise available at the records location center. For AT&T-22STATE requests, the contact information can be found on the AT&T CLEC Online website under Structure Access. The Costs of producing and mailing copies of records, which are to be paid by CLEC, are on an individual case basis. The components which make up the total Costs are the sum of:

- 6.2.1.1 AT&T-22STATE employee Costs based on the time spent researching, reviewing and copying records
- 6.2.1.2 Copying costs
- 6.2.1.3 Shipping costs

6.3 No Warranty of Record Information:

- 6.3.1 CLEC acknowledges that records and information provided by AT&T-22STATE pursuant to Section 6.2 above may not reflect field conditions and that physical inspection is necessary to verify presence and

condition of outside plant Facilities and ROW. In providing such records and information, AT&T-22STATE assumes no liability to CLEC or any Third Party for errors/omissions contained therein.

6.4 Determination of Availability:

6.4.1 AT&T-22STATE shall provide Pole, Conduit and ROW availability information in response to a request from CLEC which identifies with reasonable specificity the Facilities for which such information is desired. If such request includes Joint Use Pole(s), AT&T-22STATE shall respond with respect to such Joint Use Pole(s) as to what Make-Ready Work is required for AT&T-22STATE's Facilities only. Notwithstanding any other provision, AT&T-22STATE shall not determine space availability upon any Joint Use Pole(s). CLEC may elect to be present at any field based survey of Facilities identified pursuant to this paragraph and AT&T-22STATE shall provide CLEC at least forty-eight (48) hours notice prior to initiating such field survey. CLEC employees or agents shall be permitted to enter AT&T-22STATE Manholes and inspect such structures to confirm usability and/or evaluate condition of the structure(s) with at least forty-eight (48) hours notice to AT&T-22STATE, with a AT&T-22STATE representative present and at CLEC's expense.

6.5 Assignment of Conduit, Duct and Pole Space:

6.5.1 AT&T-22STATE shall not unreasonably deny or delay issuance of any License and, in any event, AT&T-22STATE shall issue such License as follows: (a) after the determination has been made that Make-Ready Work is not required, or (b) completion of Make-Ready Work.

6.5.1.1 No Make-Ready Work Required:

6.5.1.1.1 If AT&T-22STATE determines that no Make-Ready Work is required, AT&T-22STATE shall approve Applications for Pole attachment and Conduit Occupancy Licenses and issue such Licenses within twenty (20) Business Days after the determination has been made that no Make-Ready Work is required, but in no event later than forty-five (45) calendar days after AT&T-22STATE receives CLEC's Application, which period shall exclude any time AT&T-22STATE is awaiting a response from CLEC.

6.5.1.2 Make-Ready Work Required:

6.5.1.2.1 If Make-Ready Work is to be performed by AT&T-22STATE, such available space shall remain in effect until Make-Ready Costs are presented to CLEC and approval by CLEC pursuant to the time frames herein. If CLEC approves AT&T-22STATE's Make-Ready Work Costs, CLEC shall have twelve (12) months from the date of Application approval to install its Facilities.

6.5.1.2.2 If CLEC rejects AT&T-22STATE's Costs for Make-Ready Work, but then elects to perform the Make-Ready Work itself or through a contractor or if CLEC elects from the time of Application to perform the Make-Ready Work itself or through a contractor, CLEC shall install its Facilities within twelve (12) months from the date that CLEC informs AT&T-22STATE that CLEC will perform Make-Ready Work. In the event CLEC does not install its Facilities within the time frames set out in this Section, the assignment shall be void and such space shall become available.

7.0 Make-Ready Work

7.1 Work Performed by AT&T-22STATE:

7.1.1 If performed by AT&T-22STATE, Make-Ready Work to accommodate CLEC's Facilities on Poles, Joint Use Pole(s) or in Conduit System shall be included in the normal work load schedule of AT&T-22STATE with construction responsibilities in the geographic areas where the relevant Poles or Conduit Systems are

located and shall not be entitled to priority, advancement, or preference over other work to be performed by AT&T-22STATE in the ordinary course of AT&T-22STATE's business.

- 7.1.2 If CLEC desires Make-Ready Work to be performed on an expedited basis and AT&T-22STATE agrees to perform the work on such a basis, AT&T-22STATE shall recalculate the estimated Make-Ready Work charges to include any expedite charges. If CLEC accepts AT&T-22STATE's revised estimate of charges, CLEC shall pay such additional charges.
- 7.2 All charges for Make-Ready Work, including work on Joint Use Pole(s), performed by AT&T-22STATE are payable in advance, with the amount of any such advance payment to be due within sixty (60) calendar days after receipt of an invoice from AT&T-22STATE. AT&T-22STATE will begin Make-Ready Work required to accommodate CLEC after receipt of CLEC's Make-Ready Work payment. After receipt of payment, AT&T-22STATE will schedule the work for completion.
- 7.3 Work Performed by Certified Contractor:
- 7.3.1 In lieu of obtaining performance of Make-Ready Work by AT&T-22STATE, CLEC at its option may arrange for the performance of such work by a contractor certified by AT&T-22STATE to work on or in its Facilities. Certification shall be granted based upon reasonable and customary criteria employed by AT&T-22STATE in the selection of its own contract labor. Notwithstanding any other provisions of this Section, CLEC may not employ a contractor to accomplish Make-Ready Work if AT&T-22STATE is likewise precluded from contractor selection under the terms of an applicable joint use Agreement or collective bargaining Agreement. In accordance with Section 4.6.9 above, all Manhole pumping and purging shall be performed by a vendor approved by AT&T-22STATE.
- 7.4 Completion of Make-Ready Work:
- 7.4.1 AT&T-22STATE will issue a License to CLEC once all Make-Ready Work necessary to CLEC's attachment or occupancy has been completed.

## **8.0 Application Form and Fees**

### **8.1 Application Process:**

- 8.1.1 To apply for a License under this Appendix, CLEC shall submit the appropriate AT&T-22STATE administrative form(s), which can be found on the AT&T CLEC On-Line website, (two (2) sets of each and either a route map specifically indicating CLEC desired route or engineered drawings are to be included). CLEC has the option of (1) requesting copies of AT&T-22STATE records only, (2) requesting a records and/or field survey to determine availability, and/or (3) requesting a Make-Ready Work estimate. Any Joint Use Pole(s) included in such a request shall be included in the records/field survey and Make-Ready Work estimate. Before the Application and Conduit Occupancy License or Application and Pole Attachment License form is approved for attachment, Make-Ready Work must be complete or a records or field survey conducted by AT&T-22STATE has determined that Make-Ready Work is not required. CLEC shall submit with CLEC's License Application a proposed or estimated construction schedule as set forth below in Section 11.0 below.
- 8.2 AT&T-22STATE will process License Applications in the order in which they are received; provided, however, that when CLEC has multiple Applications on file with AT&T-22STATE, CLEC may designate its desired priority of completion of pre-licenses and Make-Ready Work with respect to all such Applications.
- 8.2.1 Each Application for a License under this Section shall specify the proposed route of CLEC's Facilities and identify the Conduits and Ducts or Poles, Joint Use Pole(s) and Pole Facilities along the proposed route in which CLEC desires to place or attach its Facilities, and describe the physical size, weight and jacket

material of the cable which CLEC desires to place in each Conduit or Duct or the number and type of cables, apparatus enclosures and other Facilities which CLEC desires to attach to each Pole or Joint Use Pole.

- 8.2.2 Each Application for a License under this Section shall be accompanied by a proposed (or estimated) construction schedule containing the information specified in Section 11.1 below of this Appendix, and an indication of whether CLEC will, at its option, perform its own Make-Ready Work.
- 8.3 Multiple Cables, Multiple Services, Lashing or Placing Additional Cables, and Replacement of Facilities:
- 8.3.1 CLEC may include multiple cables in a single License Application and multiple services (e.g., CATV and non CATV services) may be provided by CLEC in the same cable Sheath. CLEC's Lashing additional cable to existing Facilities and placing additional cables in Conduits or Ducts already occupied by CLEC's Facilities shall be permitted, and no additional fees will be applied; provided, however, that if CLEC desires to lash additional cable to existing Facilities of a Third Party, CLEC shall provide AT&T-22STATE with reasonable Notice, and shall obtain written permission from the owner of the existing Facilities. If AT&T-22STATE determines that the requested Lashing would violate safety or engineering requirements, AT&T-22STATE shall provide written Notice to CLEC within a reasonable time specifying in detail AT&T-22STATE's findings. If CLEC desires to place additional cables in Conduits or Ducts which are already occupied, or to replace existing Facilities with new Facilities substantially different from those described in Licenses in effect, CLEC must apply for and acquire a new License specifically describing the physical size, weight and jacket material of the cable to be placed in AT&T-22STATE's Conduits and Ducts or the physical size, weight, and jacket type of cables and the size and weight of apparatus enclosures and other Facilities to be attached to AT&T-22STATE Poles.
- 8.4 Each Application shall designate an employee as CLEC's single point of contact for any and all purposes of that Application under this Section, including, but not limited to, processing Licenses and providing records and information. CLEC may at any time designate a new point of contact by giving written Notice of such change while the Application is open.

## **9.0 Processing of Applications (Including Pre-License Surveys and Field Inspections)**

### **9.1 CLEC's Priorities:**

- 9.1.1 When CLEC has multiple Applications on file with AT&T-22STATE, CLEC shall designate its desired priority of completion of Pre-License Surveys and Make-Ready Work with respect to all such Applications.

### **9.2 Pre-License Survey:**

- 9.2.1 After CLEC has submitted its written Application for a License, a Pre-License Survey (including a field inspection) will be performed by either Party, in the company of a representative of the other Party as mutually agreed, to determine whether AT&T-22STATE's Poles, Anchors and Anchor/Guy Strands, or Conduit System, in their present condition, can accommodate CLEC's Facilities, without substantially interfering with the ability of AT&T-22STATE or any other authorized person or entity to use or access the Pole, Anchor or Anchor/Guy Strand or any portion of AT&T-22STATE's Conduit System or Facilities attached to AT&T-22STATE's Pole or placed within or connected to AT&T-22STATE's Conduit System. If a Pre-License Survey is to be conducted by AT&T-22STATE, AT&T-22STATE will provide CLEC the Costs to perform the Pre-License Survey. After receipt of CLEC's payment of Pre-License Survey Costs, AT&T-22STATE will schedule the survey. If CLEC gives its prior written consent in writing, the determination of Duct availability may include the rodding of Ducts at CLEC's expense.

- 9.2.1.1 The purpose of the Pre-License Survey is to determine whether CLEC's proposed attachments to AT&T-22STATE's Poles or occupancy of AT&T-22STATE's Conduit and Ducts will

substantially interfere with use of AT&T-22STATE's Facilities by AT&T-22STATE and others with Facilities occupying, connected or attached to AT&T-22STATE's Pole or Conduit System and to determine what Make-Ready Work is required to accommodate CLEC's Facilities on AT&T-22STATE's Poles, Joint Use Pole(s), or Conduit, Duct, or ROW and the cost associated with AT&T-22STATE performing such Make-Ready Work and to provide information to CLEC for its determination of whether the Pole, Anchor, Anchor/Guy Strand, Conduit, Duct, or ROW is suitable for its use.

9.2.1.2 Based on information provided by AT&T-22STATE, CLEC shall determine whether AT&T-22STATE's Pole, Anchor, Anchor/Guy Strand, Conduit and Duct Facilities are suitable to meet CLEC's needs.

9.2.1.3 AT&T-22STATE may not unreasonably refuse to continue to process an Application based on AT&T-22STATE's determination that CLEC's proposed use of AT&T-22STATE's Facilities will not be in compliance with applicable requirements, specifications, rules, regulations, ordinances, and laws. CLEC shall be responsible for making its own, independent determination that its use of such Facilities will be in compliance with such requirements, specifications, rules, regulations, ordinances and laws. CLEC acknowledges that AT&T-22STATE is not explicitly or implicitly warranting to CLEC that CLEC's proposed use of AT&T-22STATE's Facilities will be in compliance with applicable requirements, specifications, rules, regulations, ordinances, and laws.

### 9.3 Administrative Processing:

9.3.1 The administrative processing portion of the Pre-License Survey (which includes without limitation processing the Application, preparing Make-Ready Work orders, notifying Joint Users and other persons and entities of work requirements and schedules, coordinating the relocation/rearrangement of AT&T-22STATE and/or other Licensed Facilities) will be performed by AT&T-22STATE at CLEC's expense. Anything to the contrary herein notwithstanding, AT&T-22STATE shall bear no responsibility for the relocation, rearrangement or removal of Facilities used for the transmission or distribution of electric power.

## 10.0 Issuance of Licenses

### 10.1 Obligation to Issue Licenses:

10.1.1 AT&T-22STATE shall issue a License to CLEC pursuant to this Section. AT&T-22STATE and CLEC acknowledge that each Application for a License shall be evaluated on an individual basis. Nothing contained in this section shall be construed as abridging any independent Pole attachment rights or Conduit or Duct access rights which CLEC may have under the provisions of any applicable federal or state laws or regulations governing access to AT&T-22STATE's Poles, Conduits and Ducts, to the extent the same are not inconsistent with the Act. Each License issued hereunder shall be for an indefinite term, subject to CLEC's compliance with the provisions applicable to such License and further subject to CLEC's right to terminate such License at any time for any reason upon at least thirty (30) calendar days prior written Notice.

### 10.2 Multiple Applications:

10.2.1 CLEC acknowledges the following:

10.2.1.1 That multiple parties including AT&T-22STATE may seek to place their Facilities in AT&T-22STATE's Conduit and Ducts or make attachments to Poles at or about the same time.

10.2.1.2 That the Make-Ready Work required to prepare AT&T-22STATE's Facilities to accommodate

multiple applicants may differ from the Make-Ready Work required to accommodate a single applicant.

10.2.1.3 That issues relating to the proper apportionment of Costs arise in multi-applicant situations that do not arise in single applicant situations.

10.2.1.4 That cooperation and negotiations between all applicants and AT&T-22STATE may be necessary to resolve disputes involving multiple Applications for permission to place Facilities in/on the same Pole, Conduit, Duct, or ROW.

10.2.2 All Applications will be processed on a first-come, first-served basis.

10.3 Agreement to Pay for All Make-Ready Work Completed:

10.3.1 CLEC's submission of written authorization for Make-Ready Work shall also constitute CLEC's agreement to pay additional Cost-based charges, if any, for completed Make-Ready Work.

10.4 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities:

10.4.1 CLEC shall make arrangements with the owners of other Facilities located in or connected to AT&T-22STATE's Conduit System or attached to AT&T-22STATE's Poles, Anchors or Anchor/Guy Strands regarding reimbursement for any expenses incurred by them in transferring or rearranging their Facilities to accommodate the placement or attachment of CLEC's Facilities in or to AT&T-22STATE's structures.

10.5 License:

10.5.1 When CLEC's Application for a Pole attachment or Conduit Occupancy License is approved, and all required Make-Ready Work completed, AT&T-22STATE will execute and return a signed authorization to CLEC, as appropriate, authorizing CLEC to attach or place the specified Facilities on AT&T-22STATE's Poles or in AT&T-22STATE's Conduit or Ducts.

10.5.2 Each License issued under this Section shall authorize CLEC to attach to AT&T-22STATE's Poles or place or maintain in AT&T-22STATE's Conduit or Ducts only those Facilities specifically described in the License, and no others.

10.5.3 Except as expressly stated to the contrary in individual Licenses issued hereunder, each License issued pursuant to this Section shall incorporate all terms and conditions of this Section whether or not such terms or conditions are expressly incorporated by reference on the face of the License itself.

## **11.0 Construction of CLEC's Facilities**

11.1 Construction Schedule:

11.1.1 CLEC shall submit with CLEC's License Application a proposed or estimated construction schedule. Promptly after the issuance of a License permitting CLEC to attach Facilities to AT&T-22STATE's Poles or place Facilities in AT&T-22STATE's Conduit or Ducts, CLEC shall provide AT&T-22STATE with an updated construction schedule and shall thereafter keep AT&T-22STATE informed of significant anticipated changes in the construction schedule.

11.1.2 Construction schedules required by this Section shall include, at a minimum, the following information:

11.1.2.1 The name, title, business address, and business telephone number of the manager responsible for construction of the Facilities;

11.1.2.2 The names of each contractor and subcontractor which will be involved in the construction activities;

11.1.2.3 The estimated dates when construction will begin and end; and

11.1.2.4 The approximate dates when CLEC or persons acting on CLEC's behalf will be performing construction work in connection with the placement of CLEC's Facilities in AT&T-22STATE's Conduit or Ducts.

11.2 Additional Pre- construction Procedures for Facilities Placed in Conduit System:

11.2.1 The following procedures shall apply before CLEC places Facilities in AT&T-22STATE's Conduit System:

11.2.1.1 CLEC shall give written notice of the type of Facilities which are to be placed; and

11.2.1.2 AT&T-22STATE shall designate the particular Duct or Ducts or inner Ducts (if Available) to be occupied by CLEC's Facilities, the location and manner in which CLEC's Facilities will enter and exit AT&T-22STATE's Conduit System, and the specific location and manner of installation of any associated equipment which is permitted by AT&T-22STATE to occupy the Conduit System. CLEC may not occupy a Duct other than the specified Duct without the express written consent of AT&T-22STATE. AT&T-22STATE shall provide to CLEC space in Manholes for racking and storage of up to fifty (50) feet of cable, provided space is available.

11.3 Responsibility for Constructing or Placing Facilities:

11.3.1 AT&T-22STATE shall have no obligation to construct any Facilities for CLEC or to attach CLEC's Facilities to, or place CLEC's Facilities in, AT&T-22STATE's Poles or Conduit System, except as may be necessary to facilitate the interconnection of unbundled network elements or except to the extent expressly provided in this Section, any License issued hereunder, or by the Telecommunications Act or any other applicable law.

11.4 CLEC Responsible for Constructing, Attaching and Placing Facilities:

11.4.1 Except where otherwise mutually agreed by CLEC and AT&T-22STATE, CLEC shall be responsible for constructing its own Facilities and attaching those Facilities to, or placing them in AT&T-22STATE's Poles, Conduit or Ducts at CLEC's sole Cost and expense. CLEC 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 the construction and placement of CLEC's Facilities and for directing the activities of all persons acting on CLEC's behalf while they are physically present on AT&T-22STATE's Pole, in any part of AT&T-22STATE's Conduit System or in the vicinity of AT&T-22STATE's Poles or Conduit System.

11.5 Compliance with Applicable Standards, Health and Safety Requirements, and Other Legal Requirements:

11.5.1 CLEC shall construct its Facilities in accordance with the provisions of this section and all Licenses issued hereunder.

11.5.2 CLEC shall construct, attach and place its Facilities in compliance with all Requirements and Specifications set forth above in this Appendix.

11.5.3 CLEC shall satisfy all Legal Requirements set forth above in the Appendix.

11.5.4 CLEC shall not permit any person acting on CLEC's behalf to perform any work on AT&T-22STATE's Poles or within AT&T-22STATE's Conduit System without first verifying, to the extent practicable, on each date when such work is to be performed, that the condition of the Pole or Conduit System is suitable for the work to be performed. If CLEC or any person working on CLEC's behalf determines that the condition of the Pole or Conduit System is not suitable for the work to be performed, CLEC shall notify AT&T-22STATE of the condition of the Pole or Conduit System in question and shall not proceed with construction activities until

CLEC is satisfied that the work can be safely performed.

11.6 Construction Notices:

11.6.1 If requested to do so, CLEC shall provide **AT&T-22STATE** with information to reasonably assure **AT&T-22STATE** that construction has been performed in accordance with all applicable standards and requirements.

11.7 Points for Attachment:

11.7.1 **AT&T-22STATE** shall specify the point of attachment of each Pole or Anchor to be occupied by CLEC's Facilities, and such CLEC's Facilities shall be attached above **AT&T-22STATE**'s Facilities. When the Facilities of more than one applicant are involved, **AT&T-22STATE** will attempt, to the extent practicable, to designate the same relative position on each Pole or Anchor for each applicant's Facilities.

11.8 CLEC power supply units shall be located in accordance with the National Electrical Safety Code and the Telcordia Blue Book, Manual of Constructions Procedures as referenced in Section 4.0 above.

11.9 **AT&T-22STATE** will evaluate and approve in its sole discretion, on an individual case basis, the location of certain pole mounted equipment, such as cabinets, amplifiers and wireless equipment including but not limited to antennas. The approval and location of such attachments are dependent upon factors including but not limited to climbing space requirements and the types of existing attachments.

11.10 CLEC shall hold **AT&T-22STATE** harmless and indemnify **AT&T-22STATE** for damages to itself or Third Parties in accordance with the General Terms and Conditions of this Agreement, that result from the operation or maintenance of CLEC's attachments, including but not limited to power supplies, antennas, cabinets and wireless equipment.

11.11 Manhole and Conduit Break-Outs:

11.11.1 CLEC shall be permitted to add Conduit ports to **AT&T-22STATE** Manholes when existing Conduits do not provide the pathway connectivity needed by CLEC; provided the structural integrity of the Manhole is maintained, and sound engineering judgment is employed.

11.12 Completion of CLEC Construction:

11.12.1 For each CLEC Attachment to or occupancy within **AT&T-22STATE** Facilities, CLEC will provide to **AT&T-22STATE**'s single-point of contact (within twenty (20) calendar days of CLEC construction-complete date) a complete set of actual placement drawings for posting to **AT&T-22STATE** records.

## 12.0 Use and Routine Maintenance of CLEC's Facilities

12.1 Use of CLEC's Facilities:

12.1.1 Each License granted under this Section authorizes CLEC to have access to CLEC's Facilities on or in **AT&T-22STATE**'s Poles, Conduits and Ducts as needed for the purpose of serving CLEC's End Users, including, but not limited to, powering electronics, monitoring Facilities, or transporting signaling.

12.2 Routine Maintenance of CLEC's Facilities:

12.2.1 Each License granted under this section authorizes CLEC to engage in routine maintenance of CLEC's Facilities located on or in **AT&T-22STATE**'s Poles, Conduits, Ducts and ROW pursuant to such License. CLEC shall give reasonable written notice to the affected public authority or private landowner as appropriate before commencing the construction or installation of its attachments or making any material alterations thereto. CLEC shall give reasonable Notice to **AT&T-22STATE** before performing any work, whether or not of a routine nature, in **AT&T-22STATE**'s Conduit System.



**12.3 CLEC Responsible for Maintenance of CLEC's Facilities:**

12.3.1 CLEC shall maintain its Facilities in accordance with the provisions of this Section (including but not limited to all requirements set forth in this Appendix) and all Licenses issued hereunder. CLEC 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 the maintenance of CLEC's Facilities and for directing the activities of all persons acting on CLEC's behalf while they are physically present on AT&T-22STATE's Poles, within AT&T-22STATE's Conduit System or in the immediate vicinity of such Poles or Conduit System.

**12.4 AT&T-22STATE Is Not Responsible for Maintaining CLEC's Facilities:**

12.4.1 AT&T-22STATE shall have no obligation to maintain any Facilities which CLEC has attached or connected to, or placed in, AT&T-22STATE's Poles, Conduits, Ducts or any portion of AT&T-22STATE's Conduit System, except to the extent expressly provided by the provisions of this section or any License issued hereunder, or by the Act or other applicable laws, rules or regulations.

**12.5 Information Concerning the Maintenance of CLEC's Facilities:**

12.5.1 Promptly after the issuance of a License permitting CLEC to attach Facilities to, or place Facilities in AT&T-22STATE's Poles, Conduits or Ducts, CLEC shall provide AT&T-22STATE 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 AT&T-22STATE of changes to such information. The manager responsible for routine maintenance of CLEC's Facilities shall, on AT&T-22STATE's request, identify any contractor, subcontractor, or other person performing maintenance activities on CLEC's behalf at a specified site and shall, on AT&T-22STATE's request, provide such additional documentation relating to the maintenance of CLEC's Facilities as reasonably necessary to demonstrate that CLEC and all persons acting on CLEC's behalf are complying with the requirements of this section and Licenses issued hereunder.

**12.6 Identification of Personnel Authorized to Have Access to CLEC's Facilities:**

12.6.1 All personnel authorized to have access to CLEC's Facilities shall, while working on AT&T-22STATE's Poles, in its Conduit System or Ducts or in the vicinity of such Poles, Ducts or Conduit Systems, carry with them suitable identification and shall, upon the request of any AT&T-22STATE employee, produce such identification.

**13.0 Modification and Replacement of CLEC's Facilities****13.1 Notification of Planned Modification or Replacement of Facilities:**

13.1.1 CLEC shall, when practicable, notify AT&T-22STATE in writing at least sixty (60) calendar days before adding to, relocating, replacing or otherwise modifying its Facilities attached to a AT&T-22STATE Pole, Anchor or Anchor/Guy Strand or located in any AT&T-22STATE Conduit or Duct. The Notice shall contain sufficient information to enable AT&T-22STATE to determine whether the proposed addition, relocation, replacement, or modification is permitted under CLEC's present License or requires a new or amended License.

**13.2 New or Amended License Required:**

13.2.1 A new or amended License will be required if the proposed addition, relocation, replacement, or modification:

13.2.1.1 Requires that CLEC use additional space on AT&T-22STATE's Poles or in its Conduits or Ducts (including but not limited to any additional Ducts, inner Ducts, or substantial space in any

Handhole or Manhole) on either a temporary or permanent basis; or

- 13.2.1.2 Results in the size or location of CLEC's Facilities on AT&T-22STATE's Poles or in its Conduit or Ducts being appreciably different from those described and authorized in CLEC's present License (e.g. different Duct or size increase causing a need to re-calculate storm loadings, guying, or Pole class).

#### **14.0 Rearrangement of Facilities at the Request of Another**

##### **14.1 Make-Ready Work:**

- 14.1.1 If it is determined that Make-Ready Work will be necessary to accommodate Attaching Party's Facilities, Attaching Party shall have forty-five (45) calendar days (the "acceptance period") to either:
- 14.1.1.1 submit payment for the estimate authorizing AT&T-22STATE or its contractor to complete the Make-Ready Work; or
  - 14.1.1.2 advise AT&T-22STATE of its willingness to perform the proposed Make-Ready Work itself if permissible in the application area.
- 14.1.2 Make-Ready Work performed by Attaching Party, or by an Authorized Contractor selected by Attaching Party, shall be performed in accordance with AT&T-22STATE's specifications and in accordance with the same standards and practices which would be followed if such work were being performed by AT&T-22STATE or AT&T-22STATE's contractors. Neither Attaching Party nor Authorized Contractors selected by Attaching Party shall conduct such work in any manner which degrades the integrity of AT&T-22STATE's Structures or interferes with any existing use of AT&T-22STATE's Facilities or the Facilities of any other user.
- 14.1.3 AT&T-22STATE shall determine, in the exercise of sound engineering judgment, whether or not Make-Ready Work is necessary or possible. In determining whether Make-Ready Work is necessary or what Make-Ready Work is necessary, AT&T-22STATE shall endeavor to minimize its Costs to CLEC. If it is determined that such Make-Ready Work is required, AT&T-22STATE shall provide CLEC with the estimated Costs for Make-Ready Work and a Make Ready-Work Due Date.
- 14.1.4 CLEC shall be solely responsible for negotiating with persons or entities other than AT&T-22STATE for the rearrangement of such persons' or entities' Facilities or structures and, except where such rearrangement is for the benefit of AT&T-22STATE and/or other CLECs as well as CLEC, shall be solely responsible for paying all charges attributable to the rearrangement of such Facilities; provided, however, that if Facilities rearrangements require new Licenses from AT&T-22STATE, AT&T-22STATE shall issue such Licenses in conjunction with the issuance of the applied-for License to CLEC.

##### **14.2 Rearrangement of CLEC's Facilities at AT&T-22STATE's Request:**

- 14.2.1 CLEC acknowledges that, from time to time, it may be necessary or desirable for AT&T-22STATE to change out Poles, relocate, reconstruct, or modify portions of its Conduit System or rearrange Facilities contained therein or connected thereto and that such changes may be necessitated by AT&T-22STATE's business needs or authorized Application of another entity seeking access to AT&T-22STATE's Poles or Conduit Systems. CLEC agrees that CLEC will, upon AT&T-22STATE's request, and at AT&T-22STATE's expense, but at no Cost to CLEC, participate with AT&T-22STATE (and other CLECs) in the relocation, reconstruction, or modification of AT&T-22STATE's Conduit System or Facilities rearrangement. CLEC acknowledges that, from time to time, it may be necessary or desirable for AT&T-22STATE to change out Poles, relocate, reconstruct, or modify portions of its Conduit System or rearrange Facilities contained therein or connected thereto as a result of an order by a municipality or other governmental authority. CLEC

shall, upon AT&T-22STATE's request, participate with AT&T-22STATE (and other CLECs) in the relocation, reconstruction, or modification of AT&T-22STATE's Conduit System or Facilities rearrangement and pay its proportionate share of any costs of such relocation, reconstruction, or modification that are not reimbursed by such municipality or governmental authority.

- 14.2.2 CLEC shall make all rearrangements of its Facilities within such period of time as is jointly deemed reasonable by the parties based on the amount of rearrangements necessary and a desire to minimize chances for service interruption or Facility-based service denial to a CLEC End User.
- 14.2.3 If CLEC fails to make the required rearrangements within the time prescribed or within such extended periods of time as may be granted by AT&T-22STATE in writing, AT&T-22STATE may perform such rearrangements with written Notice to CLEC, and CLEC shall reimburse AT&T-22STATE for actual costs and expenses incurred by AT&T-22STATE in connection with the rearrangement of CLEC's Facilities; provided, however, that nothing contained in this Section or any License issued hereunder shall be construed as requiring CLEC to bear any expenses which, under the Act or other applicable federal or state laws or regulations, are to be allocated to persons or entities other than CLEC; and provided further, however, that CLEC shall have no responsibility for rearrangement costs and expenses relating to rearrangements performed for the purpose of meeting AT&T-22STATE's business needs.

## **15.0 Emergency Repairs and Pole Replacements**

### **15.1 Responsibility for Emergency Repairs; Access to Maintenance Duct:**

- 15.1.1 In general, each Party shall be responsible for making emergency repairs to its own Facilities and for formulating appropriate plans and practices enabling such Party to make such repairs.
- 15.1.2 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.
- 15.1.3 Maintenance Ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with Facilities in the Conduit section in which the maintenance Duct is located; provided, however, that an entity using the maintenance Duct for emergency repair activities will notify AT&T-22STATE within twelve (12) hours of the current Business Day (or first Business Day following a non-business day) that such entity is entering the AT&T-22STATE Conduit system and using the maintenance Duct for emergency restoral purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance Ducts will be used to restore the highest priority services, first. Existing spare Ducts may be used for restoration purposes providing the spare Ducts are restored after restoration work is complete. Any spare Ducts not returned will be included to be assigned to the user of the Duct and an occupancy permit issued.
- 15.1.4 The Attaching Party shall either vacate the maintenance Duct within thirty (30) calendar days or, with AT&T-22STATE's consent, rearrange its Facilities to ensure that at least one full-sized replacement maintenance Duct (or, if the designated maintenance Duct was an inner-Duct, a suitable replacement inner-Duct) is available for use by all occupants in the Conduit section within thirty (30) calendar days after such Attaching Party occupies the maintenance Ducts. If Attaching Party fails to vacate the maintenance Duct as described above, AT&T-22STATE may install a maintenance conduit at the Attaching Party's expense.

### **15.2 Designation of Emergency Repair Coordinators and Other Information:**

- 15.2.1 For each AT&T-22STATE construction district, Attaching Party shall provide AT&T-22STATE with the emergency contact number of Attaching Party's designated point of contact for coordinating the handling of emergency repairs of Attaching Party's Facilities and shall thereafter notify AT&T-22STATE of changes to such information.

- 15.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations:
- 15.3.1 When notice and coordination are practicable, AT&T-22STATE, Attaching Party, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties present in accordance with the following principles.
- 15.3.2 Emergency service restoration work requirements shall take precedence over other work operations.
- 15.3.3 Except as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, national security and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance Duct (and, if necessary, other unoccupied Ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.
- 15.3.4 AT&T-22STATE shall determine the order of precedence of work operations and assignment of Duct space in the maintenance Duct (and other unoccupied Ducts) only if the affected parties present are unable to reach consensus provided, however, that these decisions shall be made by AT&T-22STATE on a nondiscriminatory basis in accordance with the principles set forth in this section.
- 15.4 Emergency Pole Replacements
- 15.4.1 When emergency pole replacements are required, AT&T-22STATE shall promptly make a good faith effort to contact Attaching Party to notify Attaching Party of the emergency and to determine whether Attaching Party will respond to the emergency in a timely manner.
- 15.4.2 If notified by AT&T-22STATE that an emergency exists which will require the replacement of a pole, Attaching Party shall transfer its Facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to an AT&T-22STATE replacement pole, the transfer shall be in accordance with AT&T-22STATE's placement instructions.
- 15.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise AT&T-22STATE and thereby authorize AT&T-22STATE (or any Other User sharing the pole with AT&T-22STATE) to perform such emergency-necessitated transfers (and associated Facilities rearrangements) on Attaching Party's behalf at the Attaching Party's expense.
- 15.5 Expenses Associated with Emergency Repairs:
- 15.5.1 Each Party shall bear all reasonable expenses arising out of or in connection with emergency repairs of its own Facilities and transfers or rearrangements of such Facilities associated with emergency pole replacements made in accordance with the provisions of this article.
- 15.5.2 Each Party shall be solely responsible for paying all persons and entities that 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.
- 15.5.3 Attaching Party shall reimburse AT&T-22STATE for the Costs incurred by AT&T-22STATE for work performed by AT&T-22STATE on Attaching Party's behalf in accordance with the provisions of this article.

**16.0 Inspection by AT&T-22STATE of CLEC's Facilities**

- 16.1 AT&T-22STATE may monitor, at CLEC's expense, the entrance and exit of CLEC's Facilities into AT&T-22STATE's Manholes and the placement of CLEC's Facilities in AT&T-22STATE's Manholes.
- 16.2 Post-Construction Inspections:
- 16.2.1 AT&T-22STATE will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of Facilities to AT&T-22STATE's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. AT&T-22STATE will provide the Attaching Party advance written Notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany AT&T-22STATE on the post-construction inspection.
- 16.3 Periodic or Spot Inspections:
- 16.3.1 AT&T-22STATE shall have the right, but not the obligation, to make Periodic or Spot Inspections of all Facilities attached to AT&T-22STATE's Structure. Periodic Inspections will not be made more often than once every two (2) years, unless in AT&T-22STATE's judgment, such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Appendix.
- 16.3.2 AT&T-22STATE will give CLEC advance written Notice of such inspections, and CLEC shall have the right to have a representative attend such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written Notice has been forwarded to CLEC.
- 16.3.3 Such inspections shall be conducted at AT&T-22STATE's expense; provided, however, that CLEC shall bear the Costs of inspections as delineated in Sections 16.1 above and 16.2.1 above.
- 16.3.4 If Attaching Party's Facilities are in compliance with this Appendix, there will be no charges incurred by the Attaching Party for the periodic or spot inspection. If Attaching Party's Facilities are not in compliance with this Appendix, AT&T-22STATE may charge Attaching Party for the inspection. The Costs of Periodic Inspections will be paid by those Attaching Parties with 2% or greater of their Attachments in violation. The amount paid by the Attaching Party shall be the percentage that their violations bear to the total violations of all Attaching Parties found during the inspection.
- 16.3.5 If the inspection reflects that Attaching Party's Facilities are not in compliance with the terms of this Appendix, Attaching Party shall bring its Facilities into compliance within thirty (30) calendar days after being notified of such noncompliance. If any make ready or modification work to AT&T-22STATE's Structures is required to bring Attaching Party's Facilities into compliance, the Attaching Party shall provide Notice to AT&T-22STATE and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment. If the violation creates a hazardous condition, Facilities must be brought into compliance upon notification.
- 16.4 Neither the act of inspection by AT&T-22STATE of CLEC's Facilities nor any failure to inspect such Facilities shall operate to impose on AT&T-22STATE any liability of any kind whatsoever or to relieve CLEC of any responsibility, obligations or liability under this Section or otherwise existing.
- 16.5 Notice of Noncompliance:
- 16.5.1 If, at any time, AT&T-22STATE determines that Attaching Party's Facilities or any part thereof have not been placed or maintained or are not being used in accordance with the requirements of this Appendix, AT&T-22STATE may send written Notice to Attaching Party specifying the alleged noncompliance. Attaching Party agrees to acknowledge receipt of the Notice as soon as practicable. If Attaching Party does not dispute AT&T-22STATE's assertion that such Facilities are not in compliance, Attaching Party agrees to

provide AT&T-22STATE with a schedule for bringing such Facilities into compliance, to bring the Facilities into compliance within a reasonable time, and to notify AT&T-22STATE in writing when the Facilities have been brought into compliance.

16.6 Disputes over Alleged Noncompliance:

16.6.1 If Attaching Party disputes AT&T-22STATE's assertion that Attaching Party's Facilities are not in compliance, Attaching Party shall notify AT&T-22STATE in writing of the basis for Attaching Party's assertion that its Facilities are in compliance.

16.7 Failure to Bring Facilities into Compliance:

16.7.1 If Attaching Party has not brought the Facilities into compliance within a reasonable time or provided AT&T-22STATE with proof sufficient to persuade AT&T-22STATE that AT&T-22STATE erred in asserting that the Facilities were not in compliance, and if AT&T-22STATE determines in good faith that the alleged noncompliance causes or is likely to cause material damage to AT&T-22STATE's Facilities or those of other users, AT&T-22STATE may, at its option and Attaching Party's expense, take such non-service affecting steps as may be required to bring Attaching Party's Facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this Appendix.

16.8 Correction of Conditions by AT&T-22STATE:

16.8.1 If AT&T-22STATE elects to bring Attaching Party's Facilities into compliance, the provisions of this section shall apply.

16.8.2 AT&T-22STATE will, whenever practicable, notify CLEC in writing before performing such work. The written Notice shall describe the nature of the work to be performed and AT&T-22STATE's schedule for performing the work.

16.8.3 If Attaching Party's Facilities have become detached or partially detached from supporting racks or wall supports located within an AT&T-22STATE Manhole, AT&T-22STATE may, at Attaching Party's expense, reattach them but shall not be obligated to do so. If AT&T-22STATE does not reattach Attaching Party's Facilities, AT&T-22STATE shall endeavor to arrange with Attaching Party for the reattachment of any Facilities affected.

16.8.4 AT&T-22STATE shall, as soon as practicable after performing the work, advise Attaching Party in writing of the work performed or action taken. Upon receiving such Notice, Attaching Party shall inspect the Facilities and take such steps as Attaching Party may deem necessary to insure that the Facilities meet Attaching Party's performance requirements.

16.8.5 Attaching Party to Bear Expenses:

16.8.5.1 Attaching Party shall bear all expenses arising out of or in connection with any work performed to bring Attaching Party's Facilities into compliance with this Section; provided, however that nothing contained in this Section or any License issued hereunder shall be construed as requiring Attaching Party to bear any expenses which, under applicable federal or state laws or regulations, must be borne by persons or entities other than Attaching Party.

17.0 **Notice of Noncompliance**

17.1 Disputes over Alleged Noncompliance:

17.1.1 If CLEC disputes AT&T-22STATE's assertion that CLEC's Facilities are not in compliance, CLEC shall notify AT&T-22STATE in writing of the basis for CLEC's assertion that its Facilities are in compliance.

**18.0 Unauthorized Occupancy or Utilization of AT&T-22STATE's Facilities****18.1 Tagging of Facilities and Unauthorized Attachments:****18.1.1 Facilities to Be Marked:**

18.1.1.1 Attaching Party shall tag or otherwise mark all of Attaching Party's Facilities placed on or in AT&T-22STATE's Structure in a manner sufficient to identify the Facilities as those belonging to the Attaching Party.

**18.1.2 Removal of Untagged Facilities:**

18.1.2.1 AT&T-22STATE may, without notice to any person or entity, remove from AT&T-22STATE's poles or any part of AT&T-22STATE's Conduit System the Attaching Party's Facilities, if AT&T-22STATE determines that such Facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on AT&T-22STATE's poles or in AT&T-22STATE's Conduit System.

**18.2 Notice to Attaching Party:**

18.2.1 If any of Attaching Party's Facilities for which no occupancy permit is presently in effect are found attached to AT&T-22STATE's Poles or Anchors or within any part of AT&T-22STATE's Conduit System, AT&T-22STATE, without prejudice to other rights or remedies available to AT&T-22STATE under this Appendix, and without prejudice to any rights or remedies which may exist independent of this Appendix, shall send a written Notice to Attaching Party advising Attaching Party that no occupancy permit is presently in effect with respect to the Facilities. Within thirty (30) calendar days after receiving a Notice, Attaching Party shall acknowledge receipt of the Notice by submitting to AT&T-22STATE, in writing, an Application for a new or amended Occupancy permit with respect to such Facilities.

**18.3 Approval of Request and Retroactive Charges:**

18.3.1 If AT&T-22STATE approves Attaching Party's Application for a new or amended Occupancy permit, Attaching Party shall be liable to AT&T-22STATE for all fees and charges associated with the unauthorized attachments as specified in the Pricing Schedule to this Agreement. The issuance of a new or amended occupancy permit as provided by this article shall not operate retroactively or constitute a waiver by AT&T-22STATE of any of its rights or privileges under this Appendix or otherwise.

18.3.2 Attachment and Occupancy fees and charges shall continue to accrue until the unauthorized Facilities are removed from AT&T-22STATE's Poles, Conduit System or ROW or until a new or amended Occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party and its predecessors had continuously complied with all applicable AT&T-22STATE licensing requirements. Such fees and charges shall be due and payable thirty (30) calendar days after the date of the bill or invoice stating such fees and charges. In addition, the Attaching Party shall be liable for an unauthorized Attachment and/or Occupancy fee as specified in the Pricing Schedule to this Agreement. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Attaching Party shall rearrange or remove its unauthorized Facilities at AT&T-22STATE's request to comply with applicable placement standards, shall remove its Facilities from any space occupied by or assigned to AT&T-22STATE or another Other User, and shall pay AT&T-22STATE for all Costs incurred by AT&T-22STATE in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized Facilities.

**18.4 Removal of Unauthorized Attachments:**

18.4.1 If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized

Facilities within the specified period of time, AT&T-22STATE shall by written Notice advise Attaching Party to remove its unauthorized Facilities not less than thirty (30) calendar days from the date of Notice and Attaching Party shall remove the Facilities within the time specified in the Notice. If the Facilities have not been removed within the time specified in the Notice, AT&T-22STATE may, at AT&T-22STATE's option, remove Attaching Party's Facilities at Attaching Party's expense.

18.5 No Ratification of Unpermitted Attachments or Unauthorized Use of AT&T-22STATE's Facilities:

18.5.1 No act or failure to act by AT&T-22STATE with regard to any unauthorized Attachment or Occupancy or unauthorized use of AT&T-22STATE's Structure shall be deemed to constitute a ratification by AT&T-22STATE of the unauthorized Attachment or Occupancy or use, nor shall the payment by Attaching Party of fees and charges for unauthorized Pole attachments or Conduit Occupancy exonerate Attaching Party from liability for any trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized Facilities.

18.5.2 Nothing contained in the Appendix or any License issued hereunder shall be construed as requiring CLEC to bear any expenses which, under applicable federal or state laws or regulations, must be borne by persons or entities other than CLEC.

18.6 Prompt Payment of Applicable Fees and Charges:

18.6.1 Fees and charges for Pole Attachments and Conduit System Occupancies, as specified herein and as modified from time to time, shall be due and payable immediately whether or not CLEC is permitted to continue the Pole Attachment or Conduit Occupancy. See the Pricing Schedule for applicable annual rental fees.

18.7 No Implied Waiver or Ratification of Unauthorized Use:

18.7.1 No act or failure to act by AT&T-22STATE with regard to said unlicensed use shall be deemed as a ratification of the unlicensed use; and if any License should be subsequently issued, said License shall not operate retroactively or constitute a waiver by AT&T-22STATE of any of its rights or privileges under this Appendix or otherwise; provided, however, that CLEC shall be subject to all liabilities, obligations and responsibilities of this Appendix in regard to said unauthorized use from its inception.

**19.0 Removal of CLEC's Facilities**

19.1 When Applicant no longer intends to occupy space on an AT&T-22STATE Pole or in a AT&T-22STATE Duct or Conduit, Applicant will provide written notification to AT&T-22STATE that it wishes to terminate the Occupancy permit with respect to such space and will remove its Facilities from the space described in the Notice. Upon removal of Applicant's Facilities, the Occupancy permit shall terminate and the space shall be available for reassignment.

19.1.1 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its Facilities from AT&T-22STATE's Structure.

19.1.2 Except as otherwise agreed upon in writing by the Parties, Applicant must, after removing its Facilities, plug all previously occupied Ducts at the entrances to AT&T-22STATE's Manholes.

19.1.3 Applicant shall be solely responsible for the removal of its own Facilities from AT&T-22STATE's Structure.

19.2 At AT&T-22STATE's request, Attaching Party shall remove from AT&T-22STATE's Structure any of Attaching Party's Facilities which are no longer in active use. Upon request, the Attaching Party will provide proof satisfactory to AT&T-22STATE that an Attaching Party's Facility is in active service. Attaching Party shall not abandon any of its Facilities by leaving such Facilities on or in AT&T-22STATE's Structure.



19.3 Removal Following Termination of Occupancy Permit:

19.3.1 Attaching Party shall remove its Facilities from AT&T-22STATE's Poles, Ducts, Conduits, or ROW within thirty (30) calendar days after termination of the Occupancy permit.

19.4 Removal Following Replacement of Facilities:

19.4.1 Attaching Party shall remove Facilities no longer in service from AT&T-22STATE's Structures within thirty (30) calendar days after the date Attaching Party replaces existing Facilities on a Pole or in a Conduit with substitute Facilities on the same Pole or in the same Conduit.

19.5 Removal to Avoid Forfeiture:

19.5.1 If the presence of Attaching Party's Facilities on or in AT&T-22STATE's Structure would cause a forfeiture of the rights of AT&T-22STATE to occupy the property where such Structure is located, AT&T-22STATE will promptly notify Attaching Party in writing and Attaching Party shall not, without due cause and justification, refuse to remove its Facilities within such time as may be required to prevent such forfeiture. AT&T-22STATE will give Attaching Party not less than thirty (30) calendar days from the date of Notice to remove Attaching Party's Facilities unless prior removal is required to prevent the forfeiture of AT&T-22STATE's rights. At Attaching Party's request, the Parties will engage in good faith negotiations with each other, with Other Users, and with Third Party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of Attaching Party's Facilities.

19.6 Removal of Facilities by AT&T-22STATE; Notice of Intent to Remove:

19.6.1 If Attaching Party fails to remove its Facilities from AT&T-22STATE's Structure in accordance with the provisions of Sections 19.1-19.5 of this Appendix, AT&T-22STATE may remove such Facilities and store them at Attaching Party's expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to Attaching Party for any injury, loss, or damage resulting from such actions. AT&T-22STATE shall give Attaching Party not less than thirty (30) calendar days prior written Notice of its intent to remove Attaching Party's Facilities pursuant to this Section.

19.7 Removal of Facilities by AT&T-22STATE:

19.7.1 If AT&T-22STATE removes any of Attaching Party's Facilities pursuant to this article, Attaching Party shall reimburse AT&T-22STATE for AT&T-22STATE's Costs in connection with the removal, storage, delivery, or other disposition of the removed Facilities.

## **20.0 Rates, Fees, Charges and Billing**

20.1 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders:

20.1.1 All rates, charges and fees outlined in this Appendix will be set forth in the Pricing Schedule. All rates, charges and fees shall be subject to all applicable federal and state laws, rules, regulations, and Commission orders.

20.2 Changes to Rates, Charges and Fees:

20.2.1 Subject to applicable federal and state laws, rules, regulations and orders, AT&T-22STATE shall have the right to change the rates, charges and fees outlined in this Appendix. AT&T-22STATE will provide the Attaching Party sixty (60) calendar days written Notice, advising the Attaching Party of the specific changes being made and the effective date of the change. If the changes outlined in the Notice are not acceptable to the Attaching Party, Attaching Party may either (1) seek renegotiation of this Appendix, (2) terminate this Appendix, or (3) seek relief through the Dispute Resolution Process in the General Terms and Conditions of

this Agreement.

**20.3 Notice of Rate and Computation of Charges:**

20.3.1 On or about November 1 of each year, AT&T-22STATE will notify CLEC by certified mail, return receipt requested, of the rental rate and Pole transfer rate to be applied in the subsequent calendar year. The letter of notification shall be incorporated in, and governed by, the terms and conditions of this Appendix. Attachment and Occupancy rates shall be applied to the number of Pole(s) and Duct feet of Conduit for which Licenses have been issued before December 1 of each calendar year. Charges for Attachment(s) and Occupancy which commenced during the preceding twelve (12) month period will be prorated accordingly.

**20.4 Rate "True-Up":**

20.4.1 The Parties agree that the fees reflected as interim herein shall be "trued-up" (up or down) based on final fees either determined by further agreement or by an effective order, in a proceeding involving AT&T-22STATE before the Commission, in the state which CLEC has either attached to or occupied AT&T-22STATE structures (ROW, Conduits, Ducts, and/or Poles).

20.4.2 Under the "True-Up" process, the interim fees for each structure shall be multiplied by the volume of that structure either attached to or occupied by CLEC to arrive at the total interim amount paid ("Total Interim Price"). The final fees for that structure shall be multiplied by the volume of that structure either attached to or occupied by CLEC to arrive at the total final amount due ("Total Final Price"). The Total Interim Price shall be compared with the Total Final Price. If the Total Final Price is more than the Total Interim Price, CLEC shall pay the difference to AT&T-22STATE. If the Total Final Price is less than the Total Interim Price, AT&T-22STATE shall pay the difference to CLEC.

20.4.3 Each Party shall keep its own records upon which a "True-Up" can be based and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such "True-Up," the Parties agree to follow the Dispute Resolution Process in the General Terms & Conditions to this Agreement.

**21.0 Advance Payment**

**21.1 Attachment and Occupancy Fees:**

21.2 Fees for Pole Attachment and Conduit Occupancy shall be based on the Facilities for which Licenses have been issued as of the date of billing by AT&T-22STATE and shall be computed as set forth herein.

21.2.1 Charges associated with newly Licensed Attachments or Occupancies and other Attachments or Occupancies of less than the entire annual billing period shall be prorated.

21.2.2 Charges shall be prorated retroactively in the event of the removal of CLEC's Facilities.

21.2.3 The amount of any advance payment required shall be due within sixty (60) calendar days after receipt of an invoice from AT&T-22STATE.

**22.0 Indemnification**

22.1 In addition to the Indemnification clauses in the General Terms & Conditions to this Agreement, the following shall apply to this Attachment:

22.1.1 AT&T-22STATE shall exercise precaution to avoid damaging the Facilities of CLEC and shall make an immediate report to CLEC of the occurrence of any such damage caused by its employees, agents or contractors. AT&T-22STATE agrees to reimburse CLEC for all reasonable Costs incurred by CLEC for the

physical repair of such Facilities damaged by the negligence of AT&T-22STATE, its employees, agents, contractors, subcontractors or invitees. However, AT&T-22STATE shall not be liable to CLEC for any interruption of CLEC's service or for interference with the operation of CLEC's Facilities, or for any special, indirect, or consequential damages arising in any manner, including AT&T-22STATE's negligence, out of the use of Pole(s), Anchor(s), or Conduit Systems or AT&T-22STATE's actions or omissions in regard thereto and CLEC shall indemnify and save harmless AT&T-22STATE from and against any and all claims, demands, causes of action, costs and reasonable attorneys' fees with respect to such special, indirect or consequential damages.

- 22.1.2 CLEC shall exercise precaution to avoid damaging the Facilities of AT&T-22STATE and of others attached to Pole(s), Anchor(s), or occupying a Conduit System and shall make an immediate report to the Owner of the occurrence of any such damage caused by CLEC's employees, agents or contractors. CLEC agrees to reimburse AT&T-22STATE for all reasonable Costs incurred by AT&T-22STATE for the physical repair of such Facilities damaged by the negligence of CLEC.
- 22.1.3 CLEC shall indemnify, protect and save harmless AT&T-22STATE, its directors, officers, employees and agents, AT&T-22STATE's other CLECs, and Joint User(s) from and against any and all claims, demands, causes of action, damages and Costs, including reasonable attorney's fees through appeals incurred by AT&T-22STATE, AT&T-22STATE's other CLECs and Joint User(s) as a result of acts by the CLEC, its employees, agents or contractors, including but not limited to the Costs of relocating Pole(s), Anchor(s), Guy(s), or Conduit System resulting from a loss of ROW or property owner consents and/or the Costs of defending those rights and/or consents.
- 22.1.4 The CLEC shall indemnify, protect and save harmless AT&T-22STATE, its directors, officers, employees and agents, AT&T-22STATE's other CLECs, and Joint User(s) from and against any and all claims, demands, causes of actions and Costs, including reasonable attorney's fees, through appeals for damages to property and injury or death to persons, including but not limited to payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, caused by, arising from, incident to, connected with or growing out of the erection, rearrangement, maintenance, presence, use or removal of CLEC's Facilities, or by their proximity to the Facilities of all parties attached to a Pole, Anchor and/or Guy, or placed in a Conduit System, or by any act or omission of the CLEC's employees, agents or contractors in the vicinity of AT&T-22STATE's Pole(s), Anchor(s), Guy(s), or Conduit System.
- 22.1.5 The CLEC shall indemnify, protect and save harmless AT&T-22STATE, its directors, officers, employees, and agents, AT&T-22STATE's other CLECs, and Joint User(s) from any and all claims, demands, causes of action and Costs, including attorneys' fees through appeals, which arise directly or indirectly from the construction and operation of CLEC's Facilities, including but not limited to taxes, special charges by others, claims and demands for damages or loss from infringement of copyrights, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from and against all claims, demands and Costs, including attorney's fees through appeals for infringement of patents with respect to the construction, maintenance, use and operation of CLEC's Facilities in combination with Pole(s), Anchor(s), Conduit Systems or otherwise.
- 22.1.6 CLEC shall promptly advise AT&T-22STATE of all claims relating to damage of property or injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, by the erection, maintenance, repair, replacement, presence, use or removal of the CLEC's Facilities. CLEC shall promptly notify AT&T-22STATE in writing of any suits or causes of action which may involve AT&T-22STATE and, upon the request of AT&T-22STATE copies of all relevant accident reports and statements made to CLEC's insurer by CLEC or others shall be furnished promptly to AT&T-22STATE.