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March 2, 2017

VIA OVERNIGHT COURIER

Hon. Herbert Hilliard, Chairman
Tennessee Regulatory Authority
502 Deaderick Street
Nashville, TN 37238

Re: *Approval of the Structure Access Agreement Negotiated by AT&T Tennessee and T-Mobile South LLC*
Docket No. 17-00021

Dear Chairman Hilliard:

Enclosed for filing in the referenced docket is the original *Petition for Approval of the Structure Access Agreement Negotiated by AT&T Tennessee and T-Mobile South LLC ("T-Mobile")*. As required, included with this filing is the \$50 filing fee made payable to the Tennessee Regulatory Authority. As required, included with this filing is the \$50 filing fee made payable to the Tennessee Regulatory Authority.

In accordance with Section 252(e) of the Telecommunications Act of 1996, the TRA is charged with approving or rejecting the negotiated Agreement between AT&T Tennessee and T-Mobile within 90 days of its submission. The Act provides that the TRA may only reject such an agreement if it finds that the agreement or any portion of the agreement discriminates against a telecommunications carrier not a party to the agreement or the implementation of the agreement or any portion of the agreement is not consistent with the public interest, convenience and necessity. T-Mobile and AT&T Tennessee aver that the Agreement is consistent with the standards for approval.

This Agreement is a result of T-Mobile and AT&T negotiating a Stand-Alone Structure Access Agreement.

AT&T Tennessee respectfully requests that the Authority approve the Agreement.

Sincerely yours,

A handwritten signature in blue ink that reads "Richard T. Howell /mr".

Richard T. Howell

RTH/mr
Enclosures

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In re: *Approval of the Structure Access Agreement Negotiated by AT&T Tennessee and T-Mobile South LLC*

Docket No. _____

**PETITION FOR APPROVAL OF THE AMENDMENT TO THE
STRUCTURE ACCESS AGREEMENT NEGOTIATED BETWEEN
AT&T TENNESSEE AND T-MOBILE SOUTH LLC**

AT&T Tennessee ("AT&T") and T-Mobile South LLC ("T-Mobile") file this request for approval of the Structure Access Agreement (the "Agreement") negotiated between the two companies pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act"). In support of their request, T-Mobile and AT&T state the following:

1. T-Mobile and AT&T have negotiated an agreement primarily to set forth the basic rates, terms, conditions, and procedures under which T-Mobile shall have access to AT&T's poles, ducts, conduits, and rights-of way.
2. The recently negotiated Agreement is attached hereto.
3. Pursuant to Section 252(e) of the Telecommunications Act of 1996, T-Mobile and AT&T are submitting their Agreement to the TRA for its consideration and approval.
4. In accordance with Section 252(e) of the Act, the TRA is charged with approving or rejecting the negotiated Agreement between AT&T and T-Mobile within 90 days of its submission. The Act provides that the TRA may only reject such an agreement if it finds that the agreement or any portion of the agreement discriminates against a telecommunications

carrier not a party to the agreement or the implementation of the agreement or any portion of the agreement is not consistent with the public interest, convenience and necessity.

5. T-Mobile and AT&T aver that the Agreement is consistent with the standards for approval.

6. Pursuant to 47 USC Section 252(i) and 47 C.F.R. Section 51.809, AT&T shall make available the entire Interconnection Agreement approved pursuant to 47 USC Section 252.

T-Mobile and AT&T respectfully request that the TRA approve the Agreement negotiated between the parties.

Respectfully submitted,

AT&T TENNESSEE

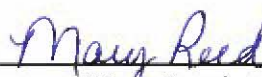
By: /s/ Richard T. Howell
Richard T. Howell
208 S Akard St, Room 2510.02
Dallas, Texas 75202
(214) 757-8099

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2017, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

T-Mobile South LLC
Lease Compliance
12920 SE 38th St.
Bellevue, WA 98006
Dave.Mayo@TMobile.com



Mary Reed

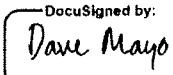
AGREEMENT

BETWEEN

BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T NORTH CAROLINA, AT&T SOUTH CAROLINA AND AT&T TENNESSEE, ILLINOIS BELL TELEPHONE COMPANY D/B/A AT&T ILLINOIS, INDIANA BELL TELEPHONE COMPANY INCORPORATED D/B/A AT&T INDIANA, MICHIGAN BELL TELEPHONE COMPANY D/B/A AT&T MICHIGAN, NEVADA BELL TELEPHONE COMPANY D/B/A AT&T NEVADA AND AT&T WHOLESALE, THE OHIO BELL TELEPHONE COMPANY D/B/A AT&T OHIO, PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA, SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI, AT&T OKLAHOMA AND AT&T TEXAS, WISCONSIN BELL, INC. D/B/A AT&T WISCONSIN

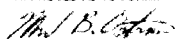
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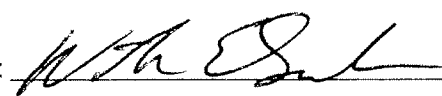
T-MOBILE CENTRAL LLC, T-MOBILE WEST LLC, T-MOBILE SOUTH LLC, POWERTEL/MEMPHIS, INC., VOICESTREAM PITTSBURGH, LP

DocuSigned by:

Signature: _____
70E1027AA1AB4CB...
Name: Dave Mayo
(Print or Type)
Title: SVP
(Print or Type)
Date: 10/24/2016

T-Mobile Central LLC, T-Mobile West LLC, T-Mobile South LLC, Powertel/Memphis, Inc., VoiceStream Pittsburgh, LP

APPROVED AS TO FORM:


Michael B. Ostrom
Managing Corporate Counsel

Signature: 
Name: William Greulaw
(Print or Type)
Title: Associate Director - Customer Contracts
(Print or Type)
Date: 11/4/16

BellSouth Telecommunications, LLC d/b/a AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T NORTH CAROLINA, AT&T SOUTH CAROLINA and AT&T TENNESSEE, Illinois Bell Telephone Company d/b/a AT&T ILLINOIS, Indiana Bell Telephone Company Incorporated d/b/a AT&T INDIANA, Michigan Bell Telephone Company d/b/a AT&T MICHIGAN, Nevada Bell Telephone Company d/b/a AT&T NEVADA and AT&T Wholesale, The Ohio Bell Telephone Company d/b/a AT&T OHIO, Pacific Bell Telephone Company d/b/a AT&T CALIFORNIA, Southwestern Bell Telephone Company d/b/a AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI, AT&T OKLAHOMA and AT&T TEXAS, Wisconsin Bell, Inc. d/b/a AT&T WISCONSIN by AT&T Services, Inc., its authorized agent

STAND-ALONE 20-STATE STRUCTURE ACCESS AGREEMENT FOR POLES, CONDUITS, AND RIGHTS-OF-WAY

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STAND-ALONE 20-STATE STRUCTURE ACCESS AGREEMENT FOR POLES, CONDUITS, AND RIGHTS-OF-WAY

This Agreement is made by and between the "Parties", identified as the AT&T Inc.-owned Incumbent Local Exchange Carriers (ILECs), as applicable: Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, Nevada Bell Telephone Company d/b/a AT&T Nevada, The Ohio Bell Telephone Company d/b/a AT&T Ohio, Pacific Bell Telephone Company d/b/a AT&T California, Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas, Wisconsin Bell, Inc. d/b/a AT&T Wisconsin, and BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T South Carolina, and AT&T Tennessee, hereinafter referred to as "AT&T" as defined below, (only to the extent that the agent for each such AT&T Inc.-owned ILEC executes this Agreement for such AT&T Inc.-owned ILEC and only to the extent that such AT&T Inc.-owned ILEC provides Telephone Exchange Services as an ILEC in each of the State(s) listed below) and T-Mobile Central LLC, T-Mobile West LLC, T-Mobile South LLC, PowerTel/Memphis, Inc., and VoiceStream Pittsburgh, LP (jointly and individually referred to herein as "Attaching Party"), that asserts it is a telecommunications carrier or cable television system, as defined in the Telecommunications Act of 1996 and applied in Section 224 of that Act.

This Agreement shall apply to the following State(s): Alabama, Georgia, Florida, Kentucky, Louisiana, Mississippi, South Carolina, Tennessee, Illinois, Michigan, Indiana, Ohio, Wisconsin, Nevada, California, Arkansas, Kansas, Missouri, Oklahoma, and Texas.

1. INTRODUCTION

- 1.1 As used in this Agreement, "AT&T" refers to the AT&T Inc. ILECs only; AT&T Inc. is not itself a party to this Agreement.
- 1.2 The primary purpose of this Agreement is to set forth the basic rates, terms, conditions, and procedures under which Attaching Party shall have access to AT&T's poles, ducts, conduits, and rights-of-way. AT&T shall provide Attaching Party with nondiscriminatory access to poles, ducts, conduits, or rights-of-way owned or controlled solely or in part by AT&T as required in the Telecommunications Act of 1996. This Agreement is intended by the parties to implement, rather than abridge or expand, their respective rights and remedies under federal and state law.
- 1.3 "AT&T Inc." means the holding company which directly or indirectly owns the following ILECs: BellSouth Telecommunications LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T South Carolina and AT&T Tennessee; Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, Nevada Bell Telephone Company d/b/a AT&T Nevada, The Ohio Bell Telephone Company d/b/a AT&T Ohio, Pacific Bell Telephone Company d/b/a AT&T California, Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas, and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin.

2. DEFINITIONS

- 2.1 Definitions in general. As used in this Agreement, the terms defined in this article shall have the meanings set forth below in Sections 2.2 to 2.17, whether capitalized or not, except as the context otherwise requires.
- 2.2 Authorized Contractor. The term "Authorized Contractor" is used when referring to any contractor which is included on a list of contractors provided by AT&T and who, subject to Attaching Party's direction, control and the requirements and policies in each state, performs facilities modification, Make-Ready Surveys or Make-Ready Work which would ordinarily be performed by AT&T or persons acting on AT&T's behalf. AT&T shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform Surveys and Make-Ready Work in the communications space on its utility poles or in its Conduit system.

- 2.2.1 A person or entity approved as an Authorized Contractor is only an Authorized Contractor with respect to those tasks for which such person or entity has been approved by AT&T and is an Authorized Contractor only in those AT&T construction districts specified by AT&T.
- 2.2.2 Designation of an Authorized Contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an Authorized Contractor for other purposes, nor shall approval of an Authorized Contractor by a single AT&T construction district constitute approval of such Authorized Contractor for the area served by a different AT&T construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an Authorized Contractor shall, for the purposes of that job, be deemed to have been approved by all AT&T construction districts in which the work is to be performed.
- 2.3 Conduit. The term "conduit" refers to tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. As used in this Agreement, the term "conduit" refers only to conduit structures (including ducts, manholes and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, and other AT&T structures (such as huts and cabinets) which branch off from or are connected to AT&T's conduit.
- 2.4 Conduit System. The term "Conduit System" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Agreement, the term "conduit system" does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, and other AT&T structures (such as huts and cabinets) which branch off from or are connected to AT&T's conduit.
- 2.5 Duct. The term "Duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, facilities and other equipment. As used in this Agreement, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels, but does not include cables and other telecommunications equipment located within such ducts.
- 2.6 Handhole. The term "Handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Agreement, the term "handhole" refers only to handholes, which are part of AT&T's conduit system, and does not refer to handholes, which provide access to buried cables not housed within AT&T ducts or conduits. As used in this Agreement, the term "handhole" refers only to handhole structures owned or controlled by AT&T and does not include cables and other telecommunications equipment located within handhole structures.
- 2.7 Maintenance Duct. The term "Maintenance Duct" generally refers to a full-sized duct (typically three inches in diameter or larger) for use, on a short-term basis, for maintenance, repair, or emergency restoration activities. The term "Maintenance Duct" does not include Ducts and Conduits extending from an AT&T Manhole to customer premises. When only one usable full-sized Duct remains in a Conduit section, that Duct shall be deemed to be the Maintenance Duct. AT&T may elect to designate an innerduct, in addition to the full-sized Duct, for restoration purposes, dependent on the specific circumstances in a Conduit run. Such designations shall be communicated, as necessary, when responding to applications for access.
- 2.8 Make-Ready Work. The term "Make-Ready Work" refers to all work performed or to be performed to prepare AT&T's Poles, Ducts, Conduits, Rights-of-Way, and related facilities for the requested occupancy or attachment of Attaching Party's facilities.
- 2.9 Manhole. The term "Manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in Ducts or Conduits, which are parts of AT&T's Conduit system. As used in this Agreement, the term "Manhole" does not include cables and equipment located within Manhole structures.
- 2.10 Occupancy Permit. The term "Occupancy Permit" refers to a written instrument confirming that AT&T has granted the Structure access request of Attaching Party or Other User for access to Pole, Duct, Conduit, or Rights-of-Way space.

- 2.11 Other User. The term "Other User" refers to entities, other than Attaching Party, with facilities on or in an AT&T Pole, Duct, Conduit or Rights-of-Way to which Attaching Party has obtained access. Other Users may include, but are not limited to, AT&T, other attaching parties, municipalities or other governmental entities, and electric utilities (which may own interests in AT&T's Poles, Ducts, Conduits or Rights-of-Ways).
- 2.12 Overlashing. The term "Overlashing" refers to the practice of placing an additional cable by lashing such cable with spinning wire over an existing cable and strand.
- 2.13 Pole. The term "Pole" refers to Poles (and associated anchors) which are owned or controlled by AT&T and does not include cables and other telecommunications equipment attached to Pole Structures.
- 2.14 Rights-of-Way. The term "Rights-of-Way" refers to AT&T-owned or controlled legal rights to pass over or through property owned by another party and used by AT&T for its telecommunications distribution system. For purposes of this Agreement, "Rights-of-Way" includes property owned or controlled by AT&T and used by AT&T for its telecommunications distribution facilities. Rights-of-Way (ROW) do not include:
- 2.14.1 cables and other telecommunications equipment buried or located on such ROW;
 - 2.14.2 public ROW (which are owned by and subject to the control of governmental entities and not subject to the control of AT&T); or
 - 2.14.3 any space which is owned and controlled by a third party property owner and occupied by AT&T with permission from such owner (e.g., a revocable license) rather than as a matter of legal right (e.g., certain easements).
- 2.15 Routine Inspections. The term "Routine Inspections" refers to inspections that are planned and scheduled by AT&T, for the purpose of inspecting the facilities of Attaching Party and others, including AT&T, on AT&T Structures (Poles, Conduits, and Rights-of-Way).
- 2.16 Spot Inspections. The term "Spot Inspections" refers to spontaneous inspections done by AT&T, which may be initiated, at AT&T's discretion for the purpose of ensuring safety and compliance with AT&T standards on specific Structures.
- 2.17 Structure. The term "Structure" refers collectively to Poles, Ducts, Conduits and Rights-of-Way.

3. SCOPE OF AGREEMENT

- 3.1 This Agreement establishes the rates, terms, conditions, and procedures by which AT&T shall provide non-discriminatory access to AT&T Structure for the purpose of providing telecommunications service as defined in the Telecommunications Act of 1996. Attaching Party shall use AT&T's Structure for the purpose of constructing, maintaining and operating a wireless communications facility which may consist of antennas, wires and related equipment. This Agreement does not pertain to the following items:
- 3.1.1 AT&T's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from AT&T's central offices;
 - 3.1.2 controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
 - 3.1.3 ducts and conduits located within buildings owned by AT&T; and
 - 3.1.4 ducts, conduits, equipment rooms, and similar spaces located in space leased by AT&T from third party property owners for purposes other than to house cables and other equipment in active service as part of AT&T's network distribution operations.
- 3.2 No Transfer of Property Rights to Attaching Party. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall create or vest (or be construed as creating or vesting) in either Party any right, title, or interest in or to any real or personal property owned by the other.
- 3.3 No Effect on AT&T's Right to Abandon, Convey or Transfer Structure. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall in any way affect AT&T's right to abandon, convey, or

transfer to any other person or entity AT&T's interest in any of AT&T's Structure. AT&T shall give Attaching Party at least sixty (60) days or more when practicable, written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or rights-of-way is to be conveyed or transferred.

4. EFFECTIVE DATE, TERM AND ELECTIVE TERMINATION

- 4.1 Effective Date. This Agreement shall be effective as of the date of execution by the last Party to sign.
- 4.2 Initial Term. Unless sooner terminated as herein provided, the initial term of this Agreement shall run from the Effective Date until the end of the following calendar year, which includes the Effective Date.
- 4.3 Automatic Renewal. Unless sooner terminated as herein provided, this Agreement shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year after the effective date.
- 4.4 Elective Termination. Either Party may terminate this Agreement by giving the other Party at least six (6) months prior written notice as provided in this section. The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current term of this Agreement or six (6) months after the date the notice is given.
- 4.5 Elective Termination by AT&T. In the event of elective termination by AT&T, AT&T shall, within sixty (60) days after the effective date of the elective termination, either initiate negotiations for a replacement agreement for continued access to AT&T's poles, ducts, conduits, and rights-of-way or, at Attaching Party's option, Attaching Party will remove its facilities in accordance with the provisions of Section 28 of this Agreement. Notwithstanding AT&T's elective termination, this Agreement will remain in full force and effect during good faith negotiations until the replacement agreement is in effect or until this Agreement is otherwise terminated pursuant to its terms and conditions, whichever occurs first.
- 4.6 Effect of Elective Termination. Elective termination of this Agreement by Attaching Party, as permitted under Section 4 of this Agreement, shall not affect Attaching Party's liabilities and obligations incurred under this Agreement prior to the effective date of termination and shall not entitle Attaching Party to the refund of any advance payment made to AT&T under this Agreement. Elective termination of this Agreement by AT&T shall not affect AT&T's obligations to afford access to AT&T's poles, ducts, conduits, and rights-of-way owned or controlled by AT&T as required by the Telecommunications Act of 1996 and other applicable laws.

5. GENERAL PROVISIONS

- 5.1 Entire Agreement. This Agreement sets forth the entire understanding and agreement of the Parties with respect to its subject matter.
- 5.2 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Attaching Party and AT&T relating to the placement and maintenance of Attaching Party's facilities on and within AT&T's poles, ducts, and conduits within the applicable State(s).
- 5.3 Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both Parties.
- 5.4 Survival of Obligations. Any liabilities or obligations of either Party for acts or omissions prior to the termination of this Agreement, any obligations of either Party under provisions of this Agreement relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, will survive the termination of this Agreement through any applicable statute of limitations period.
- 5.5 Effect on Licenses or Occupancy Permits Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy permits granted to Attaching Party by AT&T, including any site license agreements governing Attaching Party's use of AT&T Poles, shall, on the effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement, which shall replace and

supersede the terms and conditions of any other agreements between the Parties governing attachment of Attaching Party's facilities to AT&T Poles.

- 5.6 Force Majeure. Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of nature or a public enemy, fires, floods, disputes, labor disruptions, freight embargoes, earthquakes, volcanic actions, abnormal weather conditions and preparations therefor, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform; provided, however, that Force Majeure will not include acts of any governmental authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs, the Party whose performance fails or is delayed because of such Force Majeure condition will give prompt notice to the other Party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.
- 5.7 Severability. If any article, section, subsection, or other provision or portion of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement as to either Party, the invalidity of such provision shall not render this entire Agreement unenforceable and this Agreement shall be administered as if it did not contain the invalid provision.
- 5.8 Choice of Law. Except to the extent that federal law controls any aspect of this Agreement, the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of the State in which the Structure access at issue exists, applied without regard to the provisions of the State's laws relating to conflicts-of-laws. Notwithstanding the foregoing, AT&T and Attaching Party reserve the right to bring any action before the Federal Communications Commission or state regulatory body having jurisdiction over attachment to or occupancy of AT&T Structure.
- 5.9 Changes in the Law. The Parties agree to negotiate in good faith changes to this Agreement to conform to applicable changes in law pertaining to access to poles, ducts, conduits and rights-of-way, including the Telecommunications Act of 1996. In the event, pursuant to any order of the FCC, court or other authority, the changes in law apply immediately upon their effective date, the parties agree the changes shall so apply, but agree to memorialize same in this Agreement as soon as practical.
- 5.10 Applicable Laws. The Parties shall at all times observe and comply with, and the provisions of this Agreement are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the Parties.
- 5.11 Dispute Resolution - Charges. Unless otherwise provided elsewhere in this Agreement, Attaching Party shall pay all undisputed rates and charges, as specified in the Agreement, within thirty (30) days from the dates of billing thereof. If Attaching Party wishes to dispute any amount invoiced by AT&T before payment, Attaching Party shall follow the steps described in Section 31.2 below.
- 5.11.1 Attaching Party may dispute any paid amount by sending written notification of such to AT&T within ninety (90) days after the date that payment has been made. Attaching Party shall include documentation supporting its position in such written notification.
- 5.11.2 In either event, the Parties shall work together to resolve the dispute in an expeditious manner. In the event the dispute is resolved in the favor of the Attaching Party, then AT&T shall include interest calculated at the rate set forth in the Rates, Fees, Charges and Billing section of this Agreement.
- 5.12 No Third Party Beneficiaries; Disclaimer of Agency. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third party beneficiary rights hereunder. This Agreement shall not provide any person, not a Party hereto, with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.
- 5.13 Subcontracting. If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in

accordance with its terms, including any obligations either Party performs through subcontractors. Each Party will be solely responsible for payments due that Party's subcontractors. No subcontractor will be deemed a third party beneficiary for any purposes under this Agreement. No contract, subcontract or other agreement entered into by either Party with any third party in connection with the provision of services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party. Any subcontractor that gains access to Customer Proprietary Network Information (CPNI) or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

- 5.14 Authority. Each Person whose signature (including e.g., an electronic signature) appears on the signature page represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.
- 5.15 Counterparts. This Agreement may be executed by original, facsimile or electronic signatures (complying with the U.S. Federal ESIGN Act of 2000, 15 U.S.C. § 96) and in any number of counterparts which shall be considered one instrument. Counterparts, signed facsimile and electronic copies of this Agreement shall legally bind the Parties to the same extent as original documents.
- 5.16 Responsibilities of Attaching Party. Attaching Party is responsible for the Authorized Contractors or contractors it selects. Subject to governing law, including state-specific requirements, Authorized Contractors must be utilized to perform any of the following tasks within a specified AT&T construction district, as applicable:
- 5.16.1 installation of those sections of Attaching Party's Conduits, Ducts, or inner ducts, which connect to AT&T's Conduit system;
 - 5.16.2 the engineering analysis required for the Survey when Attaching Party elects, with proper notification to AT&T, and/or when the terms and conditions of Section 18, with definitions in Section 2, apply;
 - 5.16.3 excavation work in connection with the removal of retired or inactive (dead) cables; or
 - 5.16.4 Make-Ready Work, when Attaching Party elects, with proper notification to AT&T, and/or when the terms of Section 18 apply.
- 5.17 Worker Safety. Attaching Party shall be responsible for ensuring that any employee of Attaching Party, or contractor working on Attaching Party's behalf, has received the training necessary to safely perform any assigned work on, in or near any AT&T Structure. Attaching Party agrees that its facilities attached to AT&T's Structure shall be constructed, placed, maintained, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction over work practices, including, but not limited to, OSHA.

6. DISCLAIMER OF WARRANTIES

AT&T MAKES NO REPRESENTATIONS AND DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, THAT AT&T's POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY ARE SUITABLE FOR ATTACHING PARTY'S INTENDED USES OR ARE FREE FROM DEFECTS. ATTACHING PARTY SHALL IN EVERY INSTANCE BE RESPONSIBLE TO DETERMINE THE ADEQUACY OF AT&T's POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY FOR ATTACHING PARTY'S INTENDED USE.

7. INTENTIONALLY LEFT BLANK

8. INDEMNIFICATION

- 8.1 Definitions. The term "Claims" as used in Section 8 shall mean any third party suit, claim, demand, loss, damage, liability, fee, fine, penalty, or expense, of every kind and character.
- 8.2 Indemnities Excluded. Except as otherwise specifically provided in this article 8, neither Party (as an "Indemnifying Party") shall be required to indemnify or defend the other Party (as an "Indemnified Party") against, or hold the Indemnified Party harmless, to the extent any Claims arise out of:
- 8.2.1 any breach by the Indemnified Party of any provision of this Agreement;

- 8.2.2 the violation of any law by any employee of the Indemnified Party or other person acting on the Indemnified Party's behalf; or
- 8.2.3 willful or intentional misconduct, gross negligence, or negligence committed by any employee of the Indemnified Party or by any other person acting on the Indemnified Party's behalf.
- 8.3 Workplace Injuries. Except as expressly provided in this Agreement to the contrary, each Party shall indemnify, on request defend, and hold the other Party harmless from any and all Claims, on account of or in connection with any injury, loss, or damage suffered by any person, which arises out of or in connection with the personal injury or death of any employee of the Indemnifying Party (or other person acting on the Indemnifying Party's behalf) if such injury or death results, in whole or in part, from any occurrence or condition on, within, or in the vicinity of AT&T's Structure.
- 8.4 Other Claims Brought Against Either Party by Employees and Other Persons Acting on the Other Party's Behalf. Each Party shall indemnify, on request defend, and hold the other Party harmless from any and all Claims (other than workplace injury claims subject to Section 8.3 above) made, brought, or sought against the Indemnified Party by any employee, contractor, or subcontractor of the Indemnifying Party or by any other person acting on the Indemnifying Party's behalf.
- 8.5 THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 8.3-8.4 SHALL ARISE EVEN IF THE INJURY, SICKNESS, DISEASE, OR DEATH WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.
- 8.6 Claims Brought Against Either Party by Vendors, Suppliers and Customers of the Other Party. Each Party shall indemnify, on request defend, and hold the other Party harmless from any and all Claims (other than workplace injury claims subject to Section 8.3, or other claims subject to Section 8.4) made, brought, or sought against the Indemnified Party by any vendor, supplier, or customer of the Indemnifying Party for claims attributable to acts of the Indemnifying Party, or its employees, agents or contractors acting on its behalf, except to the extent caused by the negligent acts or omissions of the Indemnified Party.
- 8.7 Injuries to Third Parties and Third Party Property Owners Resulting from the Parties' Conduct. Each Party shall indemnify, on request defend, and hold the other Party harmless from any and all Claims, on account of or in connection with the personal injury or death of any third party or physical damage to real or personal property owned by a third party, arising, in whole or in part, out of or in connection with the conduct of employees of the Indemnifying Party, or its employees, agents or contractors acting on its behalf, except to the extent caused by the negligent acts or omissions of the Indemnified Party.
- 8.8 Indemnification for Environmental Claims.
- 8.8.1 Each Party shall indemnify, on request defend, and hold the other Party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the violation or breach, by any employee of the Indemnifying Party or other person acting on the Indemnifying Party's behalf, of:
- 8.8.1.1 any federal, state, or local environmental statute, rule, regulation, ordinance, or other law; or
- 8.8.1.2 any provision or requirement of this Agreement dealing with hazardous substances or protection of the environment.
- 8.8.2 Each Party shall indemnify, on request defend, and hold the other Party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of the Indemnifying Party, or by any person acting on the Indemnifying Party's behalf, while present on, within, or in the vicinity of any AT&T pole, duct, conduit, or rights-of-way.
- 8.8.3 Each Party shall indemnify, on request defend, and hold the other Party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person

or property, or to the environment, arising out of or in connection with the removal or disposal of any hazardous substances by the Indemnifying Party or by any person acting on the Indemnifying Party's behalf, or arising out of or in connection with the subsequent storage, processing or other handling of such hazardous substances by any person or entity after they have been removed by the Indemnifying Party or persons acting on the Indemnifying Party's behalf from the site of any AT&T pole, duct, conduit, or rights-of-way.

- 8.8.4 Except as otherwise specifically provided in this section, neither Party shall be required to indemnify or defend the other Party against, or hold the other Party harmless from any Claims for which the other Party may be liable under any federal, state, or local environmental statute, rule, regulation, ordinance, or other law.
- 8.9 Miscellaneous Claims. Attaching Party shall indemnify, on request defend, and hold AT&T harmless from any and all Claims, of every kind and character, made, brought, or sought against AT&T by any person or entity, arising out of or in connection with the subject matter of this Agreement and based on either:
- 8.9.1 claims for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on AT&T due to the placement or presence of Attaching Party's facilities on or within AT&T's poles, ducts, conduits, or rights-of-way; or
- 8.9.2 claims based on the violation by Attaching Party of any third party's intellectual property rights, including but not limited to claims for copyright infringement, patent infringement, or unauthorized use or transmission of television or radio broadcast programs or other program material.
- 8.10 Attaching Party's General Indemnity Obligations to AT&T. This section applies only in those situations not expressly covered by Sections 8.3-8.9 and does not apply to any Claims resulting from Attaching Party's enforcement of its rights against AT&T pursuant to this Agreement. Except as otherwise expressly provided in this Agreement to the contrary, and subject to the exclusions set forth in Section 8.2, Attaching Party shall indemnify, on request defend, and hold AT&T harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with Attaching Party's access to or use of AT&T's poles, ducts, conduits, or rights-of-way, Attaching Party's performance of any acts authorized under this Agreement, or the presence or activities of Attaching Party's employees or other personnel acting on Attaching Party's behalf on, within, or in the vicinity of AT&T's poles, ducts, conduits, or rights-of-way, except to the extent caused by the willful or intentional misconduct, gross negligence or negligent acts or omissions of AT&T.
- 8.11 AT&T's General Indemnity Obligations to Attaching Party. This section applies only in those situations not expressly covered by Sections 8.3-8.9 and does not apply to any Claims resulting from AT&T's enforcement of its rights against Attaching Party pursuant to this Agreement. Except as otherwise expressly provided in this Agreement to the contrary, AT&T shall indemnify, on request defend, and hold Attaching Party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with AT&T's access to or use of AT&T's poles, ducts, conduits, or rights-of-way, AT&T's performance of any acts authorized under this Agreement, or the presence or activities of AT&T's employees or other personnel acting on AT&T's behalf on, within, or in the vicinity of AT&T's poles, ducts, conduits, or rights-of-way under this Agreement, except to the extent caused by the willful or intentional misconduct, gross negligence or negligent acts or omissions of Attaching Party.

9. LIABILITIES AND LIMITATIONS OF LIABILITY

- 9.1 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2 Neither Party Liable to the Other Party for Acts of Third Parties or Acts of Nature. By affording Attaching Party access to AT&T Structure, AT&T does not warrant, guarantee, or insure the uninterrupted use of such facilities

by Attaching Party. Except as specifically provided in Section 9.4 of this Agreement, Attaching Party assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to Attaching Party's facilities attached to AT&T's poles or placed in AT&T's Structure and AT&T shall not be liable to Attaching Party for any damages to Attaching Party's facilities other than as provided in Section 9.4. In no event shall AT&T be liable to Attaching Party under this Agreement for any death of person or injury, loss, or damage resulting from the acts or omissions of (1) any Other User or any person acting on behalf of an Other User, (2) any governmental body or governmental employee, (3) any third party property owner or persons acting on behalf of such property owner, or (4) any permittee, invitee, trespasser, or other person present at the site or in the vicinity of any AT&T pole, duct, conduit, or right-of-way in any capacity other than as an AT&T employee or person acting on AT&T's behalf. In no event shall AT&T be liable to Attaching Party under this Agreement for injuries, losses, or damages resulting from acts of nature (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on AT&T's behalf, cable cuts by persons other than AT&T's employees or persons acting on AT&T's behalf, or other causes beyond AT&T's control which occur at sites subject to this Agreement. In no event shall Attaching Party be liable to AT&T under this Agreement for any death of person or injury, loss, or damage resulting from the acts or omissions of (1) any Other User or any person acting on behalf of any Other User, (2) any governmental body or governmental employee, (3) any third-party property owner or persons acting on behalf of such property owner, or (4) any permittee, invitee, trespasser, or other person present at the site or in the vicinity of any AT&T pole, duct, conduit, or right-of-way in any capacity other than as an employee or person acting on its behalf. In no event shall Attaching Party be liable to AT&T under this Agreement for injuries, losses, or damages resulting from acts of nature (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on Attaching Party's behalf, including damage to facilities by persons other than Attaching Party's employees or persons acting on Attaching Party's behalf (which include contractors or sub-contractors), or other causes beyond Attaching Party's control which occur at sites subject to this Agreement.

- 9.3 Damage to Facilities. Each Party shall exercise due care to avoid damaging the facilities of the other or of Other Users and hereby assumes all responsibility for any and all loss from damage caused by the Party and persons acting on the Party's behalf. A Party shall make an immediate report to the other of the occurrence of any damage and hereby agrees to reimburse the other Party, and/or Other Users for any property damage caused by the Party or persons acting on the Party's behalf.
- 9.4 No Limitations of Liability in Contravention of Federal or State Law. Nothing contained in this article shall be construed as exempting either Party from any liability, or limiting such Party's liability, in contravention of federal law or in contravention of the laws of the applicable State(s).

10. INSURANCE

- 10.1 At all times in which the Attaching Party has attachments to AT&T poles, or is occupying AT&T conduits or rights-of-way, Attaching Party shall keep and maintain in force, at its own expense, the minimum insurance coverage and limits set forth below. Such insurance and coverage shall not only cover the Attaching Party, but either: (i) it must cover all contractors, subcontractors and/or any other person acting on Attaching Party's behalf, that are providing services under this Agreement, or (ii) Attaching Party shall cause such contractors, subcontractors and/or any other person acting on Attaching Party's behalf, that are providing services under this Agreement, to keep and maintain such insurance and coverage.
- 10.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employer's Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee. To the fullest extent allowable by law, the policy must include a waiver of subrogation in favor of AT&T, its affiliates, and their directors, officers and employees.
- 10.1.2 Commercial General Liability insurance with minimum limits of: \$2,000,000 General Aggregate limit; \$1,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for

Products/Completed Operations; Fire Legal Liability sub-limits a minimum of \$1,000,000 are also required. AT&T, its affiliates, officers, agents and employees shall be listed as additional insured on the Commercial General Liability policy. A waiver of subrogation shall be in favor of AT&T. The liability policies shall be primary and non-contributory from any insurance that is maintained by AT&T. The limits of insurance required in this section may be satisfied with the combination of primary and Umbrella/Excess Liability insurance policies.

- 10.1.3 Umbrella/Excess Liability insurance with limits of at least \$5,000,000 each occurrence with terms and conditions at least as broad as the underlying Commercial General Liability, Business Automobile Liability and Employer's Liability policies. Umbrella/Excess Liability limits will be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T.
- 10.1.4 Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired and non-owned vehicles.
- 10.2 Attaching Party agrees to name AT&T as an Additional Insured on the Commercial General Liability policy and Commercial Automobile Liability Policy solely as it respects Attaching Party's activities under this Agreement.
- 10.3 AT&T agrees to accept the Attaching Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
 - 10.3.1 Workers' Compensation and Employer's Liability: Attaching Party submit to AT&T its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each State covered by this Agreement or the employer's state of hire; and
 - 10.3.2 Automobile liability: Attaching Party shall submit to AT&T a copy of the state-issued letter approving self-ins
 - 10.3.3 General liability: Attaching Party must provide evidence acceptable to AT&T that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 10.4 All insurance required in accordance with this section must be in effect, as evidenced by a certificate of insurance (COI) delivered by Attaching Party to AT&T, before AT&T will issue pole attachment or conduit occupancy permits under this Agreement.
- 10.5 Attaching Party agrees to provide AT&T with at least thirty (30) calendar days' advance written notice of cancellation or non-renewal, if the policy is not replaced with another policy by a different insurer, of any of the insurance policies required herein. In the event the policy is replaced with another policy by a different insurer, Attaching Party shall provide AT&T with the name of the new insurer

11. ASSIGNMENT OF RIGHTS

- 11.1 Assignment Permitted. Neither Party may assign, or otherwise transfer its rights or obligations, under this Agreement except as provided in this section.
 - 11.1.1 AT&T may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with AT&T or which acquires or succeeds to ownership of substantially all of AT&T's assets.
 - 11.1.2 Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without AT&T's consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Agreement, subject to the express terms of this Agreement. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire Attaching Party's assets through public or private sale or through an agreement with Attaching Party, Attaching Party's lender or the third party acquiring Attaching Party's rights under this Agreement shall assume all outstanding obligations of Attaching Party under the Agreement and provide proof

satisfactory to AT&T that such lender or third party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Attaching Party under the Agreement, including liability to AT&T for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third party succeeds to the rights of Attaching Party under the Agreement, as applicable.

- 11.1.3 Except as provided herein, no assignment or transfer by Attaching Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this article, secured AT&T's prior written consent to the assignment or transfer, if necessary, and given AT&T notice of the assignment or transfer pursuant to Section 11.2, and secured AT&T's prior written consent to the assignment or transfer, unless such consent is not necessary pursuant to Section 11.1.2 of this Agreement, which consent shall not be unreasonably withheld, conditioned or delayed.
- 11.2 Notice of Assignment. Attaching Party shall provide AT&T sixty (60) days' advance notice in writing of its intent to assign, when required to obtain consent pursuant to Section 11.1.3, and notice in writing within thirty (30) days following any permitted or consented-to assignment.
- 11.3 Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article. However, if Attaching Party provides sixty (60) days' written notice to AT&T of its intent to assign its rights, delegate its benefits and delegate its duties and obligations under this Agreement to any entity controlling, controlled by, or under common control with Attaching Party, or to any entity which acquires or succeeds to ownership of substantially all of Attaching Party's assets, such assignment and delegations shall be deemed approved if AT&T has not indicated otherwise by the end of this sixty (60) day notice period. AT&T shall not unreasonably withhold or deny consent.
- 11.4 Assignment Shall Not Relieve Attaching Party of Prior Obligations. Except as otherwise expressly agreed by AT&T in writing, no assignment permitted by AT&T under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 8 of this Agreement.
- 11.5 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. AT&T may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Attaching Party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement.
- 11.6 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting Attaching Party the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or occupancy permits subject to this Agreement to any third party. Except as otherwise expressly permitted in this Agreement, Attaching Party shall not allow a third party to attach or place facilities not owned by attaching party to or in pole or conduit space occupied by or assigned to Attaching Party or to utilize such space.
- 11.7 Overlashing by a Third Party. Attaching Party will notify AT&T of any required, or the absence of a requirement for, Make-Ready work at least sixty (60) days prior to installation of the overlashed attachment and pay for any Make-Ready Work necessitated as a result of the Overlashing in accordance with the terms of this Agreement.

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

- 12.1 Termination Due to Non-Use of Facilities or Loss of Required Authority. Subject to notice and the opportunity to cure as provided in Sections 12.4, 12.5 and 12.6 below, impacted occupancy permits subject to this Agreement shall terminate if Attaching Party ceases to have authority to do business or ceases to do business in the applicable State(s), ceases to have authority to provide or ceases to provide telecommunications services in this State(if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in the applicable State(s)), or ceases to make any use of AT&T's poles, ducts, conduits, and rights-of-way within twelve (12) months from the issuance of a permit or cessation of use by attaching entity.
- 12.2 Subject to notice and the opportunity to cure as provided in Sections 12.4, 12.5 and 12.6 below, individual occupancy permits subject to this Agreement shall terminate if (a) Attaching Party ceases to utilize the pole attachment or conduit or right-of-way space subject to such occupancy permit or (b) Attaching Party's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated by a local governmental authority in a final order or decision or third party property owner having authority to revoke, deny, or terminate such use or access in a manner consistent with law.
- 12.3 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Attaching Party's access to AT&T's Structure shall not materially interfere with or impair service over any facilities of AT&T or any Other User, cause material damage to AT&T's plant or the plant of any Other User, impair the privacy of communications carried over the facilities of AT&T or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of AT&T's poles, ducts, rights-of-way or to the public. AT&T shall not materially interfere with or impair service over Attaching Party's Wireless Facilities except as otherwise allowed in this Agreement. Upon reasonable notice and opportunity to cure, AT&T may limit, terminate or refuse access if Attaching Party violates this provision.
- 12.4 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either Party, the aggrieved Party may give written notice of such claimed breach.
- 12.5 Cure Periods. The complaining Party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given; and
- 12.5.1 the breaching Party fails to cure the breach within thirty (30) days of such notice, if the breach is one which can be cured within thirty (30) days; or
- 12.5.2 the breaching Party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than thirty (30) days will be required to effect such cure.
- 12.6 Remedies for Breach. Subject to the provisions of this article, either Party may terminate this Agreement in the event of a material breach by the other Party or exercise any other legal or equitable right, which such Party may have to enforce the provisions of this Agreement. In any action based on an alleged breach of this Agreement, the prevailing Party shall be entitled to recover all costs and expenses incurred by such Party. For purposes of this paragraph, the prevailing Party shall be determined only by a court or regulatory body of competent jurisdiction after all appeals have been exhausted or the time for appeals has run.

13. FAILURE TO ENFORCE

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

14. CONFIDENTIALITY OF INFORMATION

- 14.1 Information Provided by Attaching Party to AT&T and by AT&T to Attaching Party. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Attaching Party ("Disclosing Party") to AT&T ("Receiving Party") and by AT&T ("Disclosing Party") to Attaching Party ("Receiving Party") in connection with this Agreement (including but not limited to information submitted in

connection with Attaching Party's Applications for occupancy permit and AT&T's responses) shall be deemed to be "confidential" or "proprietary" information of Disclosing Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for review of records or its inquiry about AT&T facilities and AT&T's responses. This article does not limit the use by AT&T of aggregate information relating to the occupancy and use of AT&T's Structure by firms other than AT&T (that is, information submitted by Attaching Party and aggregated by AT&T in a manner that does not directly or indirectly identify Attaching Party).

- 14.2 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Attaching Party to AT&T in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons other than those who have a need to know such information for the limited purposes set forth in Sections 14.3-14.6.
- 14.3 Permitted Uses of Attaching Party's Confidential Information. Notwithstanding the provisions of Sections 14.1 and 14.2 above, AT&T and persons acting on AT&T's behalf who have responsibilities relating to the administration of, or to work to be performed under, this Agreement may utilize Attaching Party's confidential or proprietary information only to the extent necessary for the following limited purposes, provided said employees treat such information as AT&T treats its own confidential information of similar type and value:
- 14.3.1 posting information, as necessary, to AT&T's outside plant records;
 - 14.3.2 placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing AT&T's Structure and any AT&T facilities located on, within, or in the vicinity of such Structure;
 - 14.3.3 performing AT&T's obligations under this Agreement and similar agreements with third parties;
 - 14.3.4 determining which of AT&T's Structure are (or may in the future be) available for AT&T's own use, and making planning, engineering, construction, and budgeting decisions relating to AT&T's Structure;
 - 14.3.5 preparing cost studies related to the Structures covered by this Agreement;
 - 14.3.6 responding to regulatory requests for information;
 - 14.3.7 maintaining AT&T's financial accounting records; and
 - 14.3.8 complying with other legal requirements relating to Structure.
- 14.4 Defense of Claims. In the event of a dispute between AT&T and any person or entity, including Attaching Party, concerning AT&T's performance of this Agreement, satisfaction of obligations under similar agreements with third parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, AT&T may utilize confidential or proprietary information submitted by Attaching Party in connection with this Agreement as may be reasonable or necessary to demonstrate compliance with this Agreement or governing law, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that AT&T shall limit disclosure to the extent practicable and shall not disclose Attaching Party's proprietary or confidential information without first, at AT&T's option:
- 14.4.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
 - 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
 - 14.4.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.
- 14.5 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding AT&T or Attaching Party from complying with any subpoena, civil or criminal investigative demand,

or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that AT&T or Attaching Party shall limit disclosure to the extent practicable and shall not disclose AT&T's or Attaching Party's proprietary or confidential information without first, at AT&T's or Attaching Party's option:

- 14.5.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's or AT&T's information;
 - 14.5.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
 - 14.5.3 providing Attaching Party or AT&T notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.
- 14.6 Remedies. It is understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement by the Receiving Party and that the Disclosing Party shall be entitled to specific performance as a remedy for any such breach, including, but not limited to injunctive relief. Such remedy shall not be deemed to be the exclusive remedy for any such breach but shall be in addition to all other remedies available at law or equity to the Disclosing Party.
- 14.7 Publicity. Neither Party to this Agreement or any Occupancy Permit shall use the other Party's name, insignia or any language, pictures or symbols which could, in such other Party's reasonable judgment, imply its identity in, including but not limited to, any: (a) written or oral advertising or presentation; or (b) brochure, press release, newsletter, book or other written material or whatever nature, without such other Party's express prior written consent.

15 ACCESS TO RIGHTS-OF-WAY

- 15.1 To the extent, AT&T has the authority to do so, AT&T grants Attaching Party a right to use any rights-of-way for AT&T poles, ducts, or conduits to which Attaching Party may attach its facilities for the purposes of constructing, operating and maintaining such Attaching Party's facilities on AT&T's poles, ducts or conduits. Notwithstanding the foregoing, Attaching Party shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, rights-of-way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the AT&T pole, duct or conduit to which Attaching Party seeks to attach its facilities. Attaching Party shall furnish proof of any such easement, rights-of-way, license, permit, permission, certification, or franchise within thirty (30) days of written request by AT&T in accordance with the notice provisions in this Agreement, unless otherwise agreed to by both parties. AT&T does not warrant the validity or apportionability of any rights it may hold to place facilities on private property.
- 15.2 Private Rights-of-Way Not Owned or Controlled by Either Party. Neither Party shall restrict or interfere with the other Party's access to or right to occupy property, owned by third parties, which is not subject to the other Party's control, including property as to which either Party has access subject to non-exclusive rights-of-way. Each Party shall make its own, independent legal assessment of its right to enter upon or use the property of third-party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.
- 15.3 Access to Rights-of-Way Generally. At locations where AT&T has access to third-party property pursuant to non-exclusive rights-of-way, AT&T shall not interfere with Attaching Party's negotiations with third-party property owners for similar access; nor with Attaching Party's access to such property pursuant to easements or other rights-of-ways obtained by Attaching Party from the property owner. At locations where AT&T has obtained exclusive rights-of-way from third-party property owners or otherwise controls the rights-of-way, AT&T shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Attaching Party on a nondiscriminatory basis, provided that the underlying agreement with the property owner permits AT&T to provide such access, and provided further that if AT&T has available space that it shares with Attaching Party in AT&T non-aerial rights-of-way or easements (e.g., for cabinets placed on or under ground), which have not been accounted for in rates determined in accordance with the Pole Attachment Act (i.e., aerial, linear rights-of-way for pole lines are so accounted for), AT&T shall include Attaching Party's pro rata portion of the charges, if any, paid by AT&T to obtain such non-aerial rights-of-way or easements, plus any

other reasonable documented legal, administrative, and engineering costs incurred by AT&T in obtaining such rights-of-way or easements and processing Attaching Party's requests for such access.

- 15.4 Third Party Property Owners. Occupancy permits granted under this Agreement authorize Attaching Party to place facilities in, or attach facilities to Structure owned or controlled by AT&T but do not affect the rights of landowners to control terms and conditions of access to their property.

15.4.1. Attaching Party agrees that neither Attaching Party nor any persons acting on Attaching Party's behalf, including but not limited to Attaching Party's employees, agents, contractors, and subcontractors, shall engage in any conduct which damages public or private property in the vicinity of AT&T's Structure, 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 Attaching Party'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 Attaching Party's behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).

16 SPECIFICATIONS

- 16.1. Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities attached to AT&T's poles or occupying space in AT&T's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified or referenced in this Agreement.

- 16.2. Published Standards. Attaching Party's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:

- 16.2.1. the Blue Book Manual of Construction Procedures, Special Report SR- 1421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book";
- 16.2.2. the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE");
- 16.2.3. the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA");
- 16.2.4. California Public Utility Commission's General Orders 95 and 128 for attachments to AT&T poles, ducts, conduits and rights-of-way that exist in the State of California; and
- 16.2.5. the AT&T Structure Access Guidelines.

- 16.3. Requirements Relating to Personnel and Construction Procedures Generally:

16.3.1. Duct clearing, rodding or modifications required to grant Attaching Party access to AT&T's conduit system may be performed by AT&T at Attaching Party's expense at charges which represent AT&T's actual costs. Alternatively (at Attaching Party's option), such work may be performed by an Authorized Contractor. The Parties acknowledge that Attaching Party, its contractors, and other persons acting on Attaching Party's behalf will perform work for Attaching Party (e.g., splicing Attaching Party's facilities) within AT&T's conduit system. Attaching Party represents and warrants that neither Attaching Party nor any person acting on Attaching Party's behalf shall permit any person to climb or work on any of AT&T's poles or to enter AT&T's manholes or work within AT&T's conduit system unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to poles or the conduit system and to perform the work safely.

16.3.2. Rodding or clearing of ducts in AT&T's conduit system shall be done only when specific authorization for such work has been obtained in advance from AT&T. The Parties agree that such rodding or clearing shall be performed according to existing industry standards and practices. Attaching Party may contract with AT&T for performance of such work or, at Attaching Party's option, with an Authorized Contractor.

- 16.3.3. Personnel performing work on AT&T's or Attaching Party's behalf in AT&T'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's conduit system.
- 16.3.4. All of Attaching Party's facilities shall be firmly secured and supported in accordance with industry standards as referred to in Section 16.2 above.
- 16.3.5. Artificial lighting, when required, will be provided by Attaching Party. Only explosion-proof lighting fixtures shall be used.
- 16.3.6. Upon request and at Attaching Party's expense, AT&T 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 retains salvage rights on any cable removed. In order to safeguard its structure and facilities, AT&T reserves the right to remove retired cables and is under no obligation to allow Attaching Party the right to remove such cables. Notwithstanding anything to the contrary in this Agreement or in any other agreement, based on sound engineering judgment and at AT&T's sole discretion, there may be situations where it would neither be feasible nor practical to remove retired cables, in which case they shall not be removed.
- 16.4. Additional Electrical Design Specifications. Attaching Party agrees that, in addition to specifications and requirements referred to in Section 16.2 above, Attaching Party's facilities placed in AT&T's conduit system shall meet all of the following electrical design specifications:
 - 16.4.1. No facility shall be placed in AT&T's conduit system in violation of FCC regulations.
 - 16.4.2. Attaching Party'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.
 - 16.4.3. No coaxial cable of Attaching Party shall occupy a conduit system containing AT&T's cable unless such cable meets the voltage limitations of Article 820 of the National Electrical Code.
 - 16.4.4. Attaching Party'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) ampere 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.
 - 16.4.5. 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.
- 16.5. Additional Physical Design Specifications. Attaching Party's facilities placed in AT&T's conduit system must meet all of the following physical design specifications:
 - 16.5.1. 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's conduit or ducts.
 - 16.5.2. The integrity of AT&T's conduit system and overall safety of AT&T's personnel and other personnel working in AT&T's conduit system requires that "dielectric cable" be placed when Attaching Party's cable utilizes an alternative duct or route that is shared in the same trench by any current-carrying facility of a power utility.
 - 16.5.3. New construction splices in Attaching Party's fiber optic and twisted pair cables shall be located in manholes, pull boxes or handholes.
 - 16.5.4. Attaching Party will be permitted to connect its conduit or duct only at an AT&T manhole. No attachment will be made by entering or breaking into conduit between manholes. All necessary work to install Attaching Party facilities will be performed by Attaching Party or its contractor at Attaching

Party's expense. In no event shall Attaching Party or its contractor "core bore" or make any other modification to AT&T manhole(s) without the prior written approval of AT&T.

- 16.5.5. If Attaching Party constructs or utilizes a duct connected to AT&T's manhole, the duct and all connections between that duct and AT&T's manhole shall be sealed, to the extent practicable, to prevent the entry of gases or liquids into AT&T's conduit system. If Attaching Party'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's conduit system.
- 16.6. Opening of Manholes and Access to Conduit. The following requirements apply to the opening of AT&T's manholes and access to AT&T's conduit system. The opening of AT&T's manholes shall only be permitted after notification by Attaching Party and the subsequent approval by AT&T's authorized employee or agent, which approval shall not be unreasonably delayed or withheld.
- 16.6.1. Attaching Party will notify AT&T not less than five (5) business days in advance before entering AT&T's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the Parties. The notice shall state the general nature of the work to be performed.
- 16.6.2. An authorized employee or representative of AT&T may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within AT&T's conduit system. Attaching Party must notify AT&T when Attaching Party has completed such work in the conduit system. If AT&T has not had the opportunity to complete the review, AT&T will attempt to meet with Attaching Party's contractors to finalize the review. If AT&T is not available when Attaching Party notifies AT&T of their notice of completion then AT&T will perform a post-construction inspection as described in Section 26.1. Attaching Party shall reimburse AT&T for costs associated with the presence of AT&T's authorized employee or representative.
- 16.6.3. Each Party, when desiring to enter manholes, must obtain any necessary authorization from the appropriate authorities prior to opening manholes. Additionally, each Party is responsible, as the Party desiring entry, to comply with all applicable laws, regulations, and safety requirements including, but not limited to, traffic control, warning devices, and manhole purging and venting.
- 16.7. Compliance with Environmental Laws and Regulations. AT&T makes no representations to Attaching Party or personnel performing work on Attaching Party's behalf that AT&T's Structure or any specific portions thereof will be free from environmental contaminants at any particular time. Attaching Party agrees to establish appropriate procedures and controls to assure compliance with all applicable environmental laws and regulations including, but not limited to:
- 16.7.1. Attaching Party acknowledges that some of AT&T's conduit was 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, Attaching Party will presume that all conduits not fabricated of plastic, tile, or wood are asbestos-containing and will handle pursuant to all applicable regulations relating to worker safety and protection of the environment.
- 16.7.2. Attaching Party'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. §§ 6901 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).
- 16.7.3. All persons acting on Attaching Party's behalf, including but not limited to Attaching Party's employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of AT&T's Structure, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.
- 16.7.4. Neither Attaching Party nor personnel performing work on Attaching Party's behalf shall discharge water or any other substance from any AT&T 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 industry 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 premises for storage or disposal.

- 16.8. Compliance with Other Governmental Requirements. Attaching Party agrees that its facilities attached to AT&T's Structure 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. Attaching Party 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. Attaching Party shall establish appropriate procedures and controls to assure such compliance by all persons acting on Attaching Party's behalf, including but not limited to, Attaching Party's employees, agents, contractors, and subcontractors.

17 ACCESS TO RECORDS

- 17.1. AT&T will, upon request and at the expense of the Attaching Party, provide Attaching Party access, in AT&T engineering offices for viewing only, to copies of redacted maps, records and additional information relating to the location, capacity and utilization of AT&T's Structure. Upon request, AT&T will meet with the Attaching Party to clarify matters relating to maps, records or additional information. AT&T does not warrant the accuracy or completeness of information on any maps or records.
- 17.2. Maps, records or information are and remain the proprietary property of AT&T, are provided for the Attaching Party's review solely for enabling the Attaching Party to obtain access to AT&T's Structure, and may not be resold, reproduced or disseminated by the Attaching Party.
- 17.3. AT&T may provide for viewing only, if available, information currently on AT&T's maps and/or records regarding:
- 17.3.1. the location of Structure and street addresses for manholes and poles as shown on AT&T's records;
 - 17.3.2. the footage between manholes or lateral ducts lengths, as shown on AT&T's records;
 - 17.3.3. the footage between poles, if shown on AT&T's records;
 - 17.3.4. the total capacity of the Structure; and/or
 - 17.3.5. the existing utilization of the Structure.
- 17.4. AT&T will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by AT&T.
- 17.5. Charges associated with map preparation, viewing and assistance will be on a time, including all applicable overheads, and material basis. The charges estimated by AT&T shall be payable prior to Attaching Party viewing the records. If such records review is not in conjunction with a specific Application, subsequent to Attaching Party viewing records, AT&T shall true up the estimate, as compared to actual costs, and issue either a refund or additional invoice to Attaching Party.

18 APPLICATIONS, SURVEYS, ESTIMATES, AND MAKE-READY

- 18.1. Occupancy Permits Required. Attaching Party shall apply in writing for, and receive, an Occupancy Permit before attaching facilities to specified AT&T poles or placing facilities within specified AT&T ducts, conduits, or rights-of-way.
- 18.2. Structure Access Request Form ("Application"). To apply for an Occupancy Permit under this Agreement, Attaching Party shall submit to AT&T the appropriate AT&T Application. Attaching Party shall provide sufficient information to locate the proposed Structure and identify/describe the physical characteristics (size, dimensions, and weight) of its facilities to be attached to AT&T's poles or placed in AT&T's conduit system, so that AT&T can perform the Make-Ready Survey. Attaching Party shall promptly withdraw or amend its Application if, at any time prior to the forty-fifth (45th) day after submission, it has determined that it no longer

seeks access to specific AT&T Structure, provided that Attaching Party shall still be responsible for all expenses incurred by AT&T relative to the specific Application.

- 18.3. Cooperation in the Application Process. The orderly processing of Applications submitted by Attaching Party and other parties seeking access to AT&T's poles, ducts, conduits, and rights-of-way requires good faith cooperation and coordination between AT&T's personnel and personnel acting on behalf of Attaching Party and other parties seeking access. The Parties therefore agree to the following procedures which shall remain in effect during the term of this Agreement unless earlier modified by mutual agreement of the Parties.
- 18.3.1. Before submitting a formal written Application for access to AT&T's poles, ducts, conduits, and rights-of-way, Attaching Party shall make a good faith determination that it actually plans to attach facilities to or place facilities within the poles, ducts, conduits, or rights-of-way specified in the Application. Applications shall not be submitted for the purpose of holding or reserving space which Attaching Party does not plan to use or for the purpose of precluding AT&T or any other provider of telecommunications services from using such poles, ducts, conduits, or rights-of-way.
- 18.3.2. No more than twenty (20) manholes shall be the subject of any single conduit occupancy license Application, and although timelines in this Section 18 shall not apply to conduit access requests, AT&T shall endeavor to process all conduit occupancy requests, up to and including any associated Make-Ready Work, as quickly as practical.
- 18.3.3. Each Application shall designate an employee as Attaching Party's single point of contact for any and all purposes of that Application under this Section, including, but not limited to, processing occupancy permits and providing records and information. Attaching Party may at any time designate a new point of contact by giving written notice of such change while the Application is open.
- 18.3.4. AT&T shall notify Attaching Party promptly upon discovering that an Application is incomplete or includes inaccuracies.
- 18.3.5. All Applications, including those submitted by third parties, will be processed on a first-come, first-served basis.
- 18.3.6. When Attaching Party has multiple Applications on file with AT&T, Attaching Party may designate, if desired, its priority of completion of Surveys and Make-Ready Work with respect to all such Applications.
- 18.4. Make-Ready Survey ("Survey"). An inaccurate or incomplete Application will stop the Survey clock effective upon written notice by AT&T. Surveys, which shall be completed by AT&T with a response to Attaching Party within forty-five (45) days, are subject to the requirements and policies in each state. In the case of large requests, as defined in Section 18, AT&T shall respond within sixty (60) days. The primary purposes of the Survey will be to enable AT&T to:
- 18.4.1. Determine whether and where attachment is feasible based on capacity, safety, reliability, and generally applicable engineering purposes;
- 18.4.2. confirm or determine the modifications, capacity expansion (*i.e.*, taller or stronger pole), and Make-Ready Work, if any, necessary to accommodate Attaching Party's attachment of facilities to AT&T Structure; and
- 18.4.3. plan and engineer the facilities modification, capacity expansion (*i.e.*, taller or stronger pole), and Make-Ready Work, if any, required to prepare AT&T's poles, ducts, conduits, rights-of-way, and associated facilities for Attaching Party's proposed attachments or occupancy; and
- 18.4.4. if applicable, identify the owner of the pole; and
- 18.4.5. respond to Attaching Party within the required timeframe with the preceding information.
- 18.5. Estimate and Acceptance of Estimate. AT&T shall present to Attaching Party, within fourteen (14) days of providing the response required by Section 18.4, an estimate of charges directly associated with performing all

necessary Make-Ready Work involving AT&T-owned facilities (i.e., pole replacements and subsequent transfer of AT&T-owned cable or AT&T cable rearrangements) identified during the Survey, or in the case where Attaching Party's contractor has performed a Survey, within fourteen (14) days of receipt by AT&T of such Survey result.

- 18.5.1. In addition, AT&T shall provide a description of make-ready work required of Other Users to accommodate Attaching Party's proposed Attachment(s). Attaching Party shall be responsible for negotiating with Other Users the cost for such Make-Ready Work and subsequent payment by Attaching Party, as identified in Section 18.6.4 below.
 - 18.5.2. AT&T may withdraw an outstanding estimate of charges to perform Make-Ready Work beginning fourteen (14) days after the estimate is presented.
 - 18.5.3. Attaching Party may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.
 - 18.5.4. Survey Billing no Make-Ready: Immediately following completion of the Survey, AT&T shall true up the billing, by comparing estimated to actual costs, associated with an Application and issue either an invoice for the additional costs or refund for the overpayment. Upon request, AT&T shall provide documentary evidence supporting any additional costs. Attaching Party may dispute such additional charges in good faith meeting the requirements of section 5.11 above. Within fourteen (14) days of such good faith dispute and placement in escrow or receipt of payment of such an invoice or issuance of a refund, AT&T shall issue the associated occupancy permit.
 - 18.5.5. Survey Billing with Make-Ready: The true up of estimated to actual Survey costs shall occur upon completion of make-ready by AT&T and shall be incorporated with the true up of estimated to actual Make-Ready costs.
- 18.6. Make-Ready. Upon receipt of payment specified in Section 18.5, AT&T shall notify immediately and in writing Attaching Party and all known Other Users that may be affected by the Make-Ready Work required for Attaching Party's attachments.
- 18.6.1. For attachments in the communications space, the notice shall:
 - 18.6.1.1. Specify the location and type of Make-Ready Work to be performed;
 - 18.6.1.2. Set a date for completion of Make-Ready Work no later than sixty (60) days after notification is sent (or one hundred five (105) days in the case of larger orders as specified in Section 18.7), which may later be extended by fifteen (15) days if Make-Ready Work required by other parties is not complete and AT&T elects to exercise its right of control;
 - 18.6.1.3. State that any entity with an existing attachment must modify the attachment consistent with the specified Make-Ready Work before the date set for completion
 - 18.6.1.4. State that AT&T may assert its right to fifteen (15) additional days to complete Make-Ready Work required of Other Users, should those parties fail to complete within the prescribed timeframe;
 - 18.6.1.5. State that if Make-Ready Work is not completed by the completion date set by AT&T (or, if AT&T has asserted its fifteen (15) day right of control, fifteen (15) days later), Attaching Party may utilize an Authorized Contractor to complete the specified Make-Ready Work; and
 - 18.6.1.6. State the name, telephone number, and e-mail address of a person to contact for more information about the Make-Ready Work procedure.
 - 18.6.2. For wireless attachments above the communications space, the notice shall:
 - 18.6.2.1. Specify the location and type of Make-Ready Work to be performed;

- 18.6.2.2. Set a date for completion of Make-Ready Work no later than ninety (90) days after notification is sent (or one hundred thirty five (135) days in the case of larger orders as specified in Section 18.7), which may later be extended by fifteen (15) days if Make-Ready Work required by other parties is not complete and AT&T elects to exercise its right of control;
- 18.6.2.3. State that any entity with an existing attachment must modify the attachment consistent with the specified Make-Ready Work before the date set for completion
- 18.6.2.4. State that AT&T may assert its right to fifteen (15) additional days to complete Make-Ready Work required of Other Users, should those parties fail to complete within the prescribed timeframe;
- 18.6.2.5. State the name, telephone number, and e-mail address of a person to contact for more information about the Make-Ready Work procedure.
- 18.6.3. Make-Ready Construction. Make-Ready Work performed by Attaching Party, or by an Authorized Contractor selected by Attaching Party, shall be performed in accordance with AT&T's specifications and in accordance with the same standards and practices followed by AT&T or AT&T's contractors. Any proposed deviations from the make-ready design provided by AT&T must be approved and authorized in writing by AT&T prior to implementation. Neither Attaching Party nor Authorized Contractors selected by Attaching Party shall conduct such work in any manner which degrades the integrity of AT&T's Structures or interferes with any existing use of AT&T's facilities or the facilities of any Other User.
 - 18.6.3.1. In the event that Make-Ready Work is completed by Attaching Party or its Authorized Contractor, Attaching Party shall notify AT&T upon completion.
- 18.6.4. Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. While AT&T shall be responsible for notifying Other Users pursuant to this section, Attaching Party shall make arrangements with Other Users regarding reimbursement for any expenses incurred by Other Users in transferring or rearranging Other Users' facilities to accommodate the attachment or placement of Attaching Party's facilities to or in AT&T's poles, ducts, conduits and rights-of-ways.
- 18.7. Timelines. The following timelines shall apply:
 - 18.7.1. AT&T shall apply the timeline described in Sections 18.4, 18.5, and 18.6 to all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of AT&T's poles in a state within the current thirty (30) day period.
 - 18.7.2. AT&T may add fifteen (15) days to the Survey period described in Section 18.4 and forty-five (45) days to the Make-Ready Work period described in Section 18.6 for orders larger than the limits described in Section 18.7.1 and smaller than the lesser of 3,000 poles or five (5) percent of AT&T's poles in a state.
 - 18.7.3. AT&T shall negotiate in good faith the timing when the requests for pole attachment exceed the lesser of 3,000 poles or five (5) percent of AT&T's poles in a state.
 - 18.7.4. AT&T may aggregate the number of Poles on multiple requests from Attaching Party as if all are part of a single request for the purposes of establishing the proper timeline for all active requests within a thirty (30) day window.
 - 18.7.5. In the State of California only: Make-Ready Work performed by AT&T must be completed within thirty (30) business days of receipt of advanced payment from the Attaching Party, provided that such a timeframe is not inconsistent with applicable state legal, safety and reliability requirements. For all requests with more than 500 Poles or 5 miles of Conduit, the timeline for requests for information, as well as Surveys and Make-Ready Work completed by AT&T, shall be negotiated by the Parties in order to establish a mutually satisfactory timeframe.

18.8. Deviation by AT&T. AT&T may deviate from the time limits specified in this Section 18:

- 18.8.1. Before offering an estimate of charges, if the Parties have no Agreement specifying the rates, terms, and conditions of attachment.
- 18.8.2. During performance of Make-Ready Work for good and sufficient cause that renders it infeasible for AT&T to complete the Make-Ready Work within the prescribed time frame. If so, AT&T shall immediately notify, in writing, Attaching Party and other affected entities with existing attachments on the affected poles, and shall include the reason for and date and duration of the deviation. AT&T shall deviate from the time limits specified in this Section 18 for a period no longer than necessary and shall resume Make-Ready Work performance without discrimination when it returns to routine operations.

18.9. Deviation by Attaching Party. Allowable deviations by Attaching Party with respect to this Section 18:

- 18.9.1. If AT&T fails to respond as specified in Section 18.4, an Attaching Party requesting attachment in the communications space may hire an Authorized Contractor to complete the Survey.
- 18.9.2. When Make-Ready Work is not complete by the date specified by Section 18.6.1.2 and is not excluded from the Authorized Contractor process under Section 18.9.5, Attaching Party requesting attachment in the communications space may hire an Authorized Contractor to complete such Make-Ready Work.
- 18.9.3. When Make-Ready Work is not complete by the date specified by Section 18.6.1.2 and is excluded from the Authorized Contractor process under Section 18.9.5, AT&T and Attaching Party will work together to reach an equitable solution for both Parties.
- 18.9.4. If Attaching Party hires an Authorized Contractor for purposes specified in this section, it shall choose from among AT&T's list of Authorized Contractors. If Attaching Party hires an Authorized Contractor for Survey or Make-Ready Work, it shall provide AT&T with a reasonable opportunity for an AT&T representative to accompany and consult with the Authorized Contractor and Attaching Party.
- 18.9.5. Exclusion from Authorized Contractor Process. Any Make-Ready Work involving the rearrangement or transfer of AT&T facilities on Poles in AT&T wire center areas where AT&T employs members of the International Brotherhood of Electrical Workers System Council T-9 ("IBEW T-9") or Communication Workers of America District 3 ("CWA-3") shall be excluded from the Authorized Contractor Make-Ready provision in section 18. IBEW T-9 workers are employed by AT&T in portions of northern Illinois and northern Indiana. CWA-3 workers are employed by AT&T in all AT&T wire centers in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. This exclusion applies only to the extent the applicable collective bargaining agreement prohibits such make ready work being done by non-union members. The applicable collective bargaining agreement shall be made available to Attaching Party, upon request.

19 POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

- 19.1 Selection of Space. AT&T will select, or approve the Attaching Party's selection of, the space Attaching Party will occupy on AT&T's poles or in AT&T's conduit systems. Maintenance ducts shall not be considered available for Attaching Party's use except as specifically provided elsewhere in this Agreement. Where required by law or franchise agreement, ducts and attachment space on poles reserved for municipal use shall not be considered available for the Attaching Party's use. All other ducts, inner ducts, space on poles or space in rights-of-ways, which are not assigned or occupied, shall be deemed available for use by AT&T, Attaching Party, and other parties entitled to access under applicable law.
- 19.2 After Attaching Party's Application for a pole attachment or conduit occupancy permit has been approved by AT&T, the pole, duct, or conduit space selected and/or approved by AT&T in such Application will be assigned to Attaching Party for a pre-occupancy period not to exceed twelve (12) months, with the following exception:

- 19.2.1. State of California. The pole, duct, or conduit space selected and/or approved by AT&T in such Application will be assigned to Attaching Party for a pre-occupancy period not to exceed nine (9) months as detailed by the California Public Utility Commission.
- 19.3 If the Attaching Party does not occupy the assigned space within the twelve (12) or nine (9) month period, the assignment will lapse and the space will be considered available for use by AT&T or Other User. Notwithstanding anything to the contrary, prior to the expiration of the twelve (12) or nine (9) month period, the Attaching Party may submit a request for an extension of time based on delays outside the Attaching Party's control. AT&T shall carefully consider the circumstances of any specific request and will not unreasonably withhold or deny an extension.
- 19.4 AT&T may assign space to itself by making appropriate entries in the same records used to log assignments to Attaching Party and third parties. If AT&T assigns pole, duct, or conduit space to itself, such assignment will automatically lapse twelve (12) months (nine (9) months in California) after the date the assignment has been entered into the appropriate AT&T record, if AT&T has not occupied such assigned space within such twelve (12) or nine (9) month period. Notwithstanding anything to the contrary, prior to the expiration of the twelve (12) or nine (9) month period, AT&T may apply an extension when delays outside of its control preclude its ability to occupy the assigned space within such timeframe.
- 19.5 The Attaching Party's obligation to pay semiannual pole attachment or conduit occupancy fees will commence on the date the assignment is made by AT&T to the Attaching Party.
- 19.6 Notices and Applications, including assignment requests, will be date and time stamped on receipt.

20 ADDITIONAL CAPACITY AND ISSUANCE OF OCCUPANCY PERMITS

- 20.1 Reimbursement for the Creation of Additional Capacity. If Attaching Party utilizes space or capacity on any AT&T Structure that was created by a modification paid for by AT&T or Other User(s) after February of 1996 and such modification rendered possible Attaching Party's attachment, Attaching Party shall pay its pro-rata share of the modification to the party or parties that paid for the modification, at the depreciated value of the Structure that was modified, provided that AT&T or the Other User(s) that shared in the cost of such modification has records detailing the cost of the modification and the current depreciated value of the Structure created by the modification so that Attaching Party may be charged its appropriate pro rata share.
- 20.2 Reimbursement for the Creation or Use of Additional Capacity. If any additional capacity is created as a result of Make-Ready Work performed to accommodate Attaching Party's facilities, Attaching Party shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to AT&T for the use of such additional capacity. If AT&T utilizes additional space or capacity created at Attaching Party's expense, AT&T will reimburse Attaching Party on a pro-rata basis for AT&T's share, if any, of Attaching Party's capacity expansion at the depreciated value of the Structure that was modified, to the extent reimbursement is required by applicable rules, regulations, and commission orders. In order to potentially qualify for such reimbursement, Attaching Party must provide records detailing the costs of the additional capacity, calculated in a way that is reasonable in light of the full costs of the Make-Ready Work. AT&T will reasonably attempt to notify the Attaching Party if AT&T attaches facilities to such additional capacity on AT&T's Structure created at the Attaching Party's expense, if Attaching Party has sufficiently identified and marked such additional capacity. AT&T shall not be required to collect or remit any such amounts to Attaching Party, to resolve or adjudicate disputes over reimbursement between Attaching Party and Other Users. .
- 20.3 Occupancy Permit and Attachment. After all required Make-Ready Work has been completed by AT&T, or AT&T has received notification that such work was completed by Attaching Party or their authorized contractor as required under Section 18.6.3.1, and (i) AT&T has received payment of any outstanding charges described in section 18.5.5; or (ii) where such charges are subject to a good faith dispute, AT&T has received payment of any undisputed outstanding charges and Attaching Party has placed the disputed charges in escrow; AT&T will issue an occupancy permit confirming that Attaching Party may attach specified facilities to AT&T's Structure. Alternatively, in the absence of any Make-Ready Work requirements, the occupancy permit shall be issued upon approval of the Application and Attaching Party's (i) payment to AT&T of any outstanding charges, as

described in Sections 17.5 and 18.5.4, or (ii) in the case of a good faith dispute, payment of undisputed outstanding charges and placement in escrow of disputed charges.

- 20.4 Except as expressly stated to the contrary in individual occupancy permits issued hereunder, each occupancy permit issued pursuant to this Agreement shall incorporate all terms and conditions of this Agreement, whether or not such terms or conditions are expressly incorporated by reference on the face of the occupancy permit itself.

21 CONSTRUCTION OF ATTACHING PARTY'S FACILITIES

- 21.1 Responsibility for Attaching and Placing Facilities. The Attaching Party shall be responsible for the actual attachment of its facilities to AT&T's poles and/or the placement of such facilities in AT&T's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities.
- 21.2 Construction Schedule. After the issuance of an occupancy permit, Attaching Party shall provide AT&T with a construction schedule and thereafter keep AT&T informed of anticipated changes in the construction schedule.
- 21.3 Attachment Position. AT&T shall specify the point of attachment at each pole to be occupied by Attaching Party's facilities, and such Attaching Party's facilities shall be attached above AT&T's facilities. When the facilities of more than one applicant are involved, AT&T will attempt, to the extent practicable, to designate the same relative position on each pole for each applicant's facilities.
- 21.4 AT&T 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.
- 21.5 In the event that Attaching Party proposes to deviate from the installation design provided or approved by AT&T during the application process, any such proposed deviations must be approved and authorized in writing by AT&T prior to implementation

22 USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY'S FACILITIES

- 22.1 Routine Maintenance of Attaching Party's Facilities. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within AT&T's poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner, which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party's occupancy permit. Notwithstanding the foregoing, Attaching Party may overlash its facilities in accordance with applicable safety specifications, as necessary, without approval from, but with notice to, AT&T.
- 22.2 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed thirty (30) days) non-emergency maintenance or repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by AT&T. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify AT&T of such use and must either vacate the maintenance duct within thirty (30) days or, with AT&T's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within thirty (30) days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies, which may occur while the maintenance duct is occupied.

23 MODIFICATION OF ATTACHING PARTY'S FACILITIES

- 23.1 Notification of Planned Modifications. Attaching Party shall notify AT&T in writing at least sixty (60) days prior to adding to relocating, replacing or otherwise materially modifying its facilities already attached to an AT&T Structure other than for emergency repairs. The notice shall contain sufficient information to enable AT&T to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Attaching Party's present occupancy permit or requires a new or amended occupancy permit. This section does not apply to "like for like" replacements. "Like for like" replacements would mean that the new and old attachments share the same dimensions, weight and location on the pole.
- 23.2 Replacement of Facilities and Overlashing Additional Cables. Attaching Party may replace existing facilities with new facilities, of the same, equal or lesser weight, occupying the same AT&T Structure, and may overlash additional cables to its own existing facilities without approval from, but with notice to, AT&T. In the event Make-Ready Work is necessary to accommodate Attaching Party's Overlashing, it shall notify AT&T of such need.
- 23.3 Attaching Party warrants that any Overlashing the Attaching Party conducts or permits (via a third party or contractor) shall meet the following requirements: (1) the Overlashing complies with the standards referenced in this Agreement; (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 ensure that any Make-Ready Work necessary will be conducted before the Overlashing occurs. Attaching Party agrees to indemnify AT&T should any of the preceding warranties be breached.

24 REQUIRED REARRANGEMENTS OF ATTACHING PARTY'S FACILITIES

- 24.1 Required Rearrangement of Attaching Party's Facilities. Attaching Party agrees that Attaching Party will cooperate with AT&T and Other Users in making rearrangements to AT&T Structure as may be necessary, and that costs incurred by Attaching Party in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the Parties in accordance with then applicable law. Notwithstanding the foregoing, Attaching Party shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or attachment is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity, including AT&T.
- 24.2 Whenever feasible, AT&T shall give Attaching Party not less than sixty (60) days prior written notice of the need for Attaching Party to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Attaching Party shall complete such rearrangements within the time prescribed in the notice. If Attaching Party does not rearrange facilities within noted time, AT&T will rearrange at Attaching Party's expense.
- 24.3 AT&T shall endeavor to minimize interference to Attaching Party's ability to utilize its Facilities as a result of such rearrangement. Where such rearrangement impedes Attaching Party's ability to utilize its facilities, AT&T shall permit Attaching Party to install a temporary facility at or near the original attachment if technically feasible and space is available until such rearrangement is complete.

25 EMERGENCY REPAIRS AND POLE REPLACEMENTS

- 25.1 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each Party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such Party to make such repairs.
- 25.1.1 Nothing contained in this Agreement shall be construed as requiring either Party to perform any repair or service restoration work of any kind with respect to the other Party's facilities or the facilities of Other Users.
- 25.1.2 Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that an entity using the maintenance duct for emergency repair activities will notify AT&T 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 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, as defined in Section 25.3, 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 assigned to the user of the duct and an occupancy permit issued.

- 25.1.3 The Attaching Party shall either vacate the maintenance duct within thirty (30) days or, with AT&T'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) days after such Attaching Party occupies the maintenance ducts. If Attaching Party fails to vacate the maintenance duct as described above, AT&T may install a maintenance conduit at the Attaching Party's expense.
- 25.2 Designation of Emergency Repair Coordinators and Other Information. For each AT&T construction district, Attaching Party shall provide AT&T 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 of changes to such information.
- 25.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, AT&T, Attaching Party, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties present in accordance with the following principles.
- 25.3.1 Emergency service restoration work requirements shall take precedence over other work operations.
- 25.3.2 Except as otherwise agreed upon by the Parties, restoration of lines for emergency services providers (e.g., 911, fire, police, national security and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The Parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.
- 25.3.3 AT&T shall endeavor to minimize interference to Attaching Party's ability to utilize its Facilities as a result of such pole replacement. During such pole replacement, AT&T shall permit Attaching Party to install a temporary facility at or near the original Pole if technically feasible and space is available until such replacement is complete.
- 25.3.4 AT&T shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by AT&T on a nondiscriminatory basis in accordance with the principles set forth in this section.
- 25.4 Emergency Pole Replacements.
- 25.4.1 When emergency pole replacements are required, AT&T shall promptly make a good faith effort to contact Attaching Party to notify Attaching Party of the emergency and to determine whether Attaching Party will respond to the emergency in a timely manner.
- 25.4.2 If notified by AT&T 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 replacement pole, the transfer shall be in accordance with AT&T's placement instructions.

- 25.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise AT&T and thereby authorize AT&T (or any Other User sharing the pole with AT&T) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on Attaching Party's behalf at the Attaching Party's expense.
- 25.5 Expenses Associated with Emergency Repairs. Each Party shall bear all reasonable expenses arising out of or in connection with emergency repairs of its own facilities and transfers or rearrangements of such facilities associated with emergency pole replacements made in accordance with the provisions of this article.
- 25.5.1 Each Party shall be solely responsible for paying all persons and entities 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.
- 25.5.2 Attaching Party shall reimburse AT&T for the costs incurred by AT&T for work performed by AT&T on Attaching Party's behalf in accordance with the provisions of this article, upon the submittal of a cost summary to Attaching Party evidencing such costs.

26 INSPECTION BY AT&T OF ATTACHING PARTY'S FACILITIES AND NOTICE OF NON-COMPLIANCE

- 26.1 Post-Construction Inspections. AT&T may, in its sole discretion and within 180 days of completion of Attaching Party's construction, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of facilities to AT&T's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. AT&T will provide the Attaching Party advance written notice of proposed date and time of the post-construction inspection as well as a written report of any alleged non-compliance uncovered by such inspection. The Attaching Party may accompany AT&T on the post-construction inspection.
- 26.2 Right to Make Routine or Spot Inspections. AT&T shall have the discretionary right, but not the obligation, to make Routine or Spot Inspections of all facilities attached to AT&T's Structure to help ensure compliance with the terms and conditions of the applicable Agreements. AT&T will give Attaching Party advance notice of and an opportunity to participate in Routine Inspections involving Attaching Party facilities.
- 26.3 Cost of Routine or Spot Inspection. If Attaching Party's facilities are found to be in compliance with this Agreement, there will be no charges incurred by the Attaching Party for the Routine or Spot Inspection. However, if Attaching Party's facilities are found not in compliance with this Agreement, AT&T may charge Attaching Party for the cost of the Routine or Spot Inspection, as applicable to the particular item of Structure with the noncompliant attachment.
- 26.4 Notice of Noncompliance. If, at any time, AT&T 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 Agreement, AT&T shall 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's assertion that such facilities are not in compliance, Attaching Party agrees to provide AT&T, within 30 days, a schedule for bringing such facilities into compliance, to bring the facilities into compliance within a reasonable time as determined by AT&T, and to notify AT&T in writing when the facilities have been brought into compliance.
- 26.5 Attaching Party shall bring its noncompliant facilities into compliance within thirty (30) days after being notified of such noncompliance. If any Make-Ready Work or modification work to AT&T's Structure is required to bring Attaching Party's facilities into compliance, Attaching Party shall provide notice to AT&T 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.
- 26.6 Disputes over Alleged Noncompliance. If Attaching Party disputes AT&T's assertion that Attaching Party's facilities are not in compliance, Attaching Party shall notify AT&T in writing of the basis for Attaching Party's objection to the assertion that its facilities are noncompliant.

- 26.7 Failure to Bring Facilities into Compliance. If Attaching Party has not brought the facilities into compliance within a reasonable time or provided AT&T with proof sufficient to persuade AT&T that AT&T erred in asserting that the facilities were not in compliance, AT&T 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 Agreement.
- 26.8 Correction of Conditions by AT&T. If, after the process in Section 26.4-26.6 herein, AT&T elects to bring Attaching Party's facilities into compliance, the provisions of this Section shall apply.
- 26.8.1 AT&T will, whenever practicable, notify Attaching Party in writing before performing such work. The written notice shall describe the nature of the work to be performed and AT&T's schedule for performing the work.
- 26.8.2 If Attaching Party's facilities have become detached or partially detached from supporting racks or wall supports located within an AT&T manhole, AT&T may, at Attaching Party's expense, reattach them but shall not be obligated to do so. If AT&T does not reattach Attaching Party's facilities, AT&T shall endeavor to arrange with Attaching Party for the reattachment of any facilities affected.
- 26.8.3 AT&T 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 ensure that the facilities meet Attaching Party's performance requirements.
- 26.9 Attaching Party to Bear Expenses. 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.
- 26.10 Inventory Survey. AT&T shall have the right, upon thirty (30) days' notice to Attaching Party, to determine the total number and exact location of Attaching Party's attachments on AT&T poles and/or conduit through a physical survey conducted by AT&T or its agents. Attaching Party shall have the right to participate in the survey and shall be provided survey results, as applicable to the portion of the survey in which Attaching Party is sharing in the costs. The costs incurred by AT&T to conduct the physical inventory shall be shared proportionately with AT&T by Attaching Party. If the attachments of AT&T and Other Users are surveyed, AT&T and each such Other User shall be responsible for a proportionate share of the survey costs.

27 TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

- 27.1 Facilities to Be Marked. Attaching Party shall tag or otherwise mark all of Attaching Party's facilities, placed on or in AT&T's Structure, in a manner sufficient to identify the facilities as those belonging to the Attaching Party. In the case of existing attachments, Attaching Party shall tag such attachments as they are visited by Attaching Party for the performance of maintenance or other work where such tagging is not prohibited by a regulatory body having jurisdiction. Attaching Party's facilities on AT&T's poles shall be tagged at each pole attachment, and Attaching Party's facilities in AT&T's conduits shall be tagged inside each manhole so as to identify Attaching Party as the owner of the facilities. On aerial attachments, the tags shall be of sufficient size and lettering so as to be easily read from the ground.
- 27.2 Notice to Attaching Party. If any of Attaching Party's facilities for which no Occupancy Permit is presently in effect are found attached to AT&T's poles or anchors or within any part of AT&T's conduit system, AT&T, without prejudice to other rights or remedies available to AT&T under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Attaching Party advising Attaching Party that no occupancy permit is presently in effect with respect to the facilities and that Attaching Party must, within thirty (30) days, respond to the notice as provided in Section 27.3 of this Agreement.
- 27.3 Attaching Party's Response. Within thirty (30) days after receiving a notice under Section 27.2 of this Agreement, Attaching Party shall acknowledge receipt of the notice and submit to AT&T, in writing, a plan to

verify the information on the notice, including a reasonable timeframe for verification as to whether an Occupancy Permit exists for the location in question. Upon verification that no such Occupancy Permit exists, Attaching Party will obtain a new or amended Occupancy Permit with respect to unauthorized attachments and will pay any unauthorized attachment fees due and owing, and AT&T will include the attachments on its list of Attaching Party attachments for future billing. Attaching Party will be allowed to submit an application for one permit identifying each unauthorized location to bring their total attachment count with AT&T current.

- 27.4 Fees for Unauthorized Use. Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from AT&T's poles, conduit system or rights-of-way or until a new or amended occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party and its predecessors had continuously complied with all applicable AT&T licensing requirements. Such fees and charges shall be due and payable thirty (30) days after the date of the bill or invoice stating such fees and charges. In addition, the Attaching Party shall be liable for an unauthorized attachment and/or occupancy fee as specified in Section 29 of 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's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to AT&T or Other User, and shall pay AT&T for all costs incurred by AT&T in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities.
- 27.5 Removal of Unauthorized Attachments. If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized facilities within the specified period of time, AT&T shall by written notice advise Attaching Party to remove its unauthorized facilities not less than sixty (60) days from the date of notice, and Attaching Party shall remove the facilities within the time specified in the notice. If the facilities have not been removed within the time specified in the notice, AT&T may, at AT&T's option, remove Attaching Party's facilities at Attaching Party's expense.
- 27.6 No Ratification of Unpermitted Attachments or Unauthorized Use of AT&T's Facilities. No act, other than a written settlement agreement with AT&T, or failure to act by AT&T with regard to any unauthorized attachment or occupancy or unauthorized use of AT&T's Structure shall be deemed to constitute a ratification by AT&T of the unauthorized attachment or occupancy or use, nor shall the payment by Attaching Party of fees and charges for unauthorized pole attachments or conduit occupancy exonerate Attaching Party from liability for any trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities.

28 REMOVAL OF ATTACHING PARTY'S FACILITIES

- 28.1 When Attaching Party no longer intends to occupy space on an AT&T pole or in an AT&T duct or conduit, Attaching Party will provide written notification to AT&T 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 Attaching Party's facilities, the occupancy permit shall terminate and the space shall be available for reassignment.
- 28.1.1 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from AT&T's Structure.
- 28.1.2 Except as otherwise agreed upon in writing by the Parties, Attaching Party must, after removing its facilities, plug all previously occupied ducts at the entrances to AT&T's manholes.
- 28.1.3 Attaching Party shall be solely responsible for the removal of its own facilities from AT&T's Structure.
- 28.2 At AT&T's request, within a reasonable period of time, Attaching Party shall remove from AT&T'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 that 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's Structure.
- 28.3 Removal Following Termination of Occupancy Permit. Attaching Party shall remove its facilities from AT&T's poles, ducts, conduits, or rights-of-way within sixty (60) days after termination of the occupancy permit.

- 28.4 Removal Following Replacement of Facilities. Attaching Party shall remove facilities no longer in service from AT&T's Structures within sixty (60) days after the date Attaching Party replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit.
- 28.5 Removal to Avoid Forfeiture. If the presence of Attaching Party's facilities on or in AT&T's Structure would cause a forfeiture of the rights of AT&T to occupy the property where such Structure is located, AT&T 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 will give Attaching Party not less than sixty (60) days from the date of notice to remove Attaching Party's facilities unless prior removal is required to prevent the forfeiture of AT&T's rights. At Attaching Party's request, the Parties will engage in good faith negotiations with each other, with Other Users, and with third-party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of Attaching Party's facilities.
- 28.6 Removal of Facilities by AT&T; Notice of Intent to Remove. If Attaching Party fails to remove its facilities from AT&T's Structure in accordance with the provisions of Sections 28.1-28.5 of this Agreement, AT&T 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 shall give Attaching Party not less than sixty (60) days prior written notice of its intent to remove Attaching Party's facilities pursuant to this section.
- 28.7 Removal of Facilities by AT&T. If AT&T removes any of Attaching Party's facilities pursuant to this article, Attaching Party shall reimburse AT&T for AT&T's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.

29 RATES, FEES, CHARGES, AND BILLING

- 29.1 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees outlined in this Agreement will be set forth on a pricing sheet available via AT&T's CLEC Online web site, <https://clec.att.com/clec/> and attached hereto as Exhibit A. All rates, charges and fees, and changes thereto, shall be subject to all applicable federal and state laws, rules, regulations, and commission orders.
- 29.2 Late Fees. Attaching Party agrees that in the event Attaching Party fails to pay an amount due and payable within the period of time set forth for payment in this Agreement, interest shall accrue on the unpaid balance thereof at the rate of 1 ½% per month for each month from the expiration of such period until payment is received by AT&T or the maximum interest rate permitted by law, whichever is the lesser amount.
- 29.3 Unauthorized Attachments. For all states that have not established their own unauthorized attachment fees, the following shall apply:
- 29.3.1. Upon AT&T's discovery of unauthorized Attachments in an Inventory Survey or Attaching Party's self-report of unauthorized attachments and written notice of said unauthorized attachments (including location), Attaching Party shall pay AT&T the back-rent plus interest that would have been due for these Attachments, plus an additional amount of five (5) times the annual rent per Attachment for Attachments made without a permit.
- 29.3.2. If Attaching Party declines to participate (i.e. not respond to requests for records of attachments) in an Inventory Survey and AT&T discovers an unauthorized Attachment by Attaching Party, AT&T will also be entitled to invoice Attaching Party a sanction of one hundred dollars (\$100) for each such unauthorized Attachment that is discovered.
- 29.3.3. Amounts for unauthorized Attachments will be invoiced by AT&T and Attaching Party shall pay the invoice in full within thirty (30) days of the invoice date.
- 29.3.4. Attaching Party can avoid the one hundred dollar (\$100) sanction by submitting an Application within sixty (60) days of receiving written notice or invoice from AT&T and correcting any safety violations within one hundred eighty (180) days.

- 29.4 In the state of California, each individual unauthorized attachment shall be assessed a five hundred dollar (\$500) penalty in addition to all other costs which are part of Attaching Party's responsibility
- 29.5 Changes to Rates, Charges and Fees. Subject to applicable federal and state laws, rules, regulations and orders, AT&T shall have the right to change the rates, charges and fees outlined in this Agreement. AT&T will provide the Attaching Party at least sixty (60) days' written notice, advising the Attaching Party of any increase being made and the effective date of the change. If the changes outlined in the notice are not acceptable to the Attaching Party, Attaching Party may either: (1) seek renegotiation of this Agreement, (2) terminate this Agreement, or (3) seek relief through the dispute resolution process in the General Provisions section of this Agreement.

30 ASSURANCE OF PAYMENT

- 30.1 Upon request by AT&T, Attaching Party will provide AT&T with the AT&T Credit Application form, which provides information to AT&T regarding Attaching Party's credit and financial condition.
- 30.2 Assurance of payment may be requested by AT&T, if or when:
- 30.2.1 based on AT&T's analysis of the AT&T Credit Application form and other relevant information regarding Attaching Party's credit and financial condition, there is an impairment of the credit, financial health, or credit worthiness of Attaching Party. Such impairment will be determined from information available from third party financial sources; or
 - 30.2.2 Attaching Party fails to timely pay or dispute and put in escrow a bill rendered to Attaching Party by AT&T; or
 - 30.2.3 Attaching Party's gross monthly billing has increased, AT&T reserves the right to request additional security (or to require a security deposit if none was previously requested) and/or file a Uniform Commercial Code (UCC-1) security interest in Attaching Party's "accounts receivables and proceeds"; or
 - 30.2.4 Attaching Party admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 30.3 If AT&T requires Attaching Party to provide a security deposit, Attaching Party shall provide such security deposit prior to the inauguration of service or within fifteen (15) calendar days of AT&T's request, as applicable. Deposit request notices will be sent to Attaching Party via certified mail or overnight delivery. Such notice period will start the day after the deposit request notice is rendered by certified mail or overnight delivery.
- 30.4 Unless otherwise agreed by the Parties, the assurance of payment will consists of one of the following at AT&T's sole discretion
- 30.4.1 a Cash Deposit; or
 - 30.4.2 a Letter of Credit; or
 - 30.4.3 a Surety Bond.
- 30.5 The Cash Deposit, Letter of Credit or Surety Bond must be in an amount covering a minimum of three (3) months anticipated charges excluding pre-paid charges for Survey and Make-Ready Work (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges, charges for AT&T removal of Attaching Party's equipment pursuant to this Agreement, and advance payments), as reasonably determined by AT&T, for the functions, facilities, products or services ("service") to be furnished by AT&T under this Agreement. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if Attaching Party has received service from AT&T during such period at a level comparable to that anticipated to occur over the next six (6) months. If either Attaching Party or AT&T has reason to believe that the level of service to be received during the next six (6) months will be materially higher

- or lower than received in the previous six (6) months, Attaching Party and AT&T shall agree on a level of estimated billings based on all relevant information.
- 30.6 To the extent that AT&T elects to require a Cash Deposit, the Parties intend that the provision of such Cash Deposit shall constitute the grant of a security interest in the Cash Deposit pursuant to Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.
- 30.7 AT&T may, but is not obligated to, draw on the Letter of Credit, cash the Surety Bond, or apply the Cash Deposit, as applicable, upon the occurrence of any one of the following events:
- 30.7.1 Attaching Party owes AT&T charges and fees under this Agreement that are more than thirty (30) calendar days past due; or
- 30.7.2 Attaching Party admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding; or
- 30.7.3 The expiration or termination of this Agreement.
- 30.8 If AT&T draws on the Letter of Credit or applies the Cash Deposit, upon request by AT&T, Attaching Party will provide a replacement or supplemental Letter of Credit, Surety Bond or Cash Deposit conforming to the requirements above.
- 30.9 Notwithstanding anything else set forth in this Agreement, if AT&T makes a request for assurance of payment in accordance with the terms of this Section then AT&T shall have no obligation thereafter to perform under this Agreement until such time as Attaching Party has furnished AT&T with the assurance of payment requested; provided, however, that AT&T will permit Attaching Party a minimum of fifteen(15) calendar days to respond to a request for assurance of payment before invoking this Section.
- 30.10 In the event Attaching Party fails to provide AT&T with a suitable form of security deposit or additional security deposit as required herein, defaults on its account(s), or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time required, service to Attaching Party may be suspended, discontinued or terminated in accordance with the terms of this Agreement. Upon termination of services, AT&T shall apply any security deposit to Attaching Party's final bill for its account(s). If Attaching Party fails to furnish the requested adequate assurance of payment on or before the date set forth in the request, AT&T may also invoke the provisions set forth in this Agreement.
- 30.11 A Cash Deposit held by AT&T shall be returned to Attaching Party if the following conditions have been met:
- 30.11.1 Payment was made in accordance with this Agreement on bills rendered to Attaching Party by AT&T as of the Bill Due Date for all but one time during the prior twelve month period and all payments were made with checks that were honored and,
- 30.11.2 There has been no impairment of the established credit and/or financial health from information available from financial sources, including but not limited to Moody's, Standard and Poor's, and the Wall Street Journal. Financial information about Attaching Party that may be considered includes, but is not limited to, investor warning briefs, rating downgrades, and articles discussing pending credit problems.
- 30.12 The fact that a Cash Deposit, Surety Bond or Letter of Credit is requested by AT&T shall in no way relieve Attaching Party from timely compliance with all payment obligations under this Agreement (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), nor does it constitute a waiver or modification of the terms of this Agreement pertaining to disconnection or re-entry for non-payment of any amounts required to be paid hereunder.
- 30.13 At least seven (7) calendar days prior to the expiration of any Letter of Credit provided by Attaching Party as security under this Agreement, Attaching Party shall renew such Letter of Credit or provide AT&T with evidence that Attaching Party has obtained a suitable replacement for the Letter of Credit. If Attaching Party fails to

comply with the foregoing, AT&T shall thereafter be authorized to draw down the full amount of such Letter of Credit and utilize the cash proceeds as security for Attaching Party account(s). If Attaching Party provides a security deposit or additional security deposit in the form of a Surety Bond as required herein, Attaching Party shall renew the Surety Bond or provide AT&T with evidence that Attaching Party has obtained a suitable replacement for the Surety Bond at least seven (7) calendar days prior to the cancellation date of the Surety Bond. If Attaching Party fails to comply with the foregoing, AT&T shall thereafter be authorized to take action on the Surety Bond and utilize the cash proceeds as security for Attaching Party's account(s). If the credit rating of any bonding company that has provided Attaching Party with a Surety Bond provided as security hereunder has fallen below "B", AT&T will provide written Notice to Attaching Party that Attaching Party must provide a replacement bond or other suitable security within fifteen (15) calendar days of AT&T's written Notice. Notwithstanding anything contained in this Agreement to the contrary, AT&T shall be authorized to draw down the full amount of any Letter of Credit or take action on any Surety Bond provided by Attaching Party as security hereunder if Attaching Party defaults on its account(s) or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time, as required herein.

30.14 Requirements to Establish Escrow Accounts:

30.14.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria:

- 30.14.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;
- 30.14.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
- 30.14.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH credit transfers.

30.14.2 In addition to the foregoing requirements for the Third Party escrow agent, the Attaching Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to AT&T that the escrow account will meet all of the following criteria:

- 30.14.2.1 The escrow account must be an interest bearing account;
- 30.14.2.2 all charges associated with opening and maintaining the escrow account will be borne by the Attaching Party;
- 30.14.2.3 none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;
- 30.14.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and
- 30.14.2.5 disbursements from the escrow account will be limited to those:
 - 30.14.2.5.1 authorized in writing by both the Attaching Party and AT&T (that is, signature(s) from representative(s) of the Attaching Party only are not sufficient to properly authorize any disbursement); or
 - 30.14.2.5.2 made in accordance with a final, non-appealable order of a state or federal commission; or
 - 30.14.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to review a state or federal commission order.

30.15 Disputed amounts in escrow will be subject to Late Payment Charges as set forth in Section 29.2 above.

30.16 Issues related to disputed amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 5.11 above.

- 30.17 If the Attaching Party disputes any charges and any portion of the dispute is resolved in favor of such Attaching Party, the Parties will cooperate to ensure that all of the following actions are completed:
- 30.17.1 AT&T will credit the invoice of the Attaching Party for that portion of the disputed amounts resolved in favor of the Attaching Party, together with any Late Payment Charges assessed with respect thereto no later than 60 days after resolution of the dispute;
 - 30.17.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed disputed amounts resolved in favor of the Attaching Party will be released to the Attaching Party, together with any interest accrued thereon;
 - 30.17.3 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed disputed amounts resolved in favor of AT&T will be released to AT&T, together with any interest accrued thereon; and
 - 30.17.4 no later than 90 days after the resolution of the dispute, the Attaching Party will pay AT&T the difference between the amount of accrued interest AT&T received from the escrow disbursement and the amount of Late Payment Charges AT&T is entitled to receive pursuant to Section 29.2 above.

31 NONPAYMENT

- 31.1. Failure to pay charges shall be grounds for removal of Structure access furnished under this Agreement. If Attaching Party fails to pay any charges billed to it under this Agreement, including but not limited to any late payment charges, and any portion of such unpaid charges remain unpaid after the bill due date, AT&T will send a notice of unpaid charges to Attaching Party. Attaching Party must remit all unpaid charges to AT&T within fifteen (15) calendar days of the notice.
- 31.2. If Attaching Party desires to dispute any portion of the unpaid charges, Attaching Party must complete all of the following actions not later than fifteen (15) calendar days following receipt of AT&T's notice of unpaid charges:
 - 31.2.2. notify AT&T in writing which portion(s) of the unpaid charges it disputes, including the total disputed, together with the reasons for its dispute; pay all undisputed unpaid charges to AT&T;
 - 31.2.3 pay all disputed amounts into an interest bearing escrow account that complies with the requirements set forth in Section 30 above; and
 - 31.2.4 furnish written evidence to AT&T that Attaching Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 30 above and deposited a sum equal to the disputed amounts into that account. Until evidence that the full amount of the disputed charges has been deposited into an escrow account that complies with Section 30 above is furnished to AT&T, such unpaid charges will not be deemed to be "disputed" under Section 5.11 above.
- 31.3. Issues related to disputed amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 5.11 above.
- 31.4. If Attaching Party fails to:
 - 31.4.1. pay any undisputed unpaid charges to AT&T in response to and within fifteen (15) calendar days of AT&T's notice of unpaid charges;
 - 31.4.2. Deposit the disputed portion of any unpaid charges into an interest bearing escrow account that complies with all of the terms set forth in Section 30 within the time specified above
 - 31.4.3. timely furnish any assurance of payment requested in accordance with Section 30 above; or
 - 31.4.4. make a payment in accordance with the terms of any mutually agreed payment arrangement,
 - 31.4.5. AT&T may, in addition to exercising any other rights or remedies it may have under applicable law; provide written demand to Attaching Party for payment of any of the obligations set forth above within ten (10) Business Days. On or after the day that AT&T provides such written demand to Attaching Party, AT&T may also exercise any or all of the following options:

- 31.4.5.1 suspend acceptance of any application, request or order from Attaching Party for new or additional Structure access under this Agreement; and/or
- 31.4.5.2 suspend completion of any pending application, request or order from Attaching Party for new or additional Structure access under this Agreement.

31.5. Notwithstanding anything to the contrary in this Agreement, Attaching Party's exercise of any of its options will not delay or relieve Attaching Party's obligation to pay all charges on each and every invoice on or before the applicable bill due date.

32 RADIO FREQUENCY REQUIREMENTS FOR ANY WIRELESS ATTACHMENTS

- 32.1. Attaching Party is solely responsible for the radio frequency ("RF") emissions emitted by its equipment and will comply with all Federal Communications Commission (FCC) regulations regarding RF exposure limitations. To the extent required by FCC rules and any applicable state rules, Attaching Party shall install appropriate signage to notify workers and the public of the potential for exposure to RF emissions.
- 32.2. Attaching Party is under a duty and obligation in connection with the operation of its own facilities, now existing or in the future, to protect against RF interference to the RF signals of any party legally utilizing AT&T Structure, as applicable, as may emanate or arise. Attaching Party shall endeavor to correct any interference to the RF signals of any party legally utilizing AT&T Structure created by Attaching Party's RF emissions. In the event AT&T's operations interfere with Attaching Party's RF signals, AT&T and Attaching Party shall cooperate to stop such interference.
- 32.3. Attaching Party shall install a power cut-off switch on every AT&T pole or facilities to which it has attached facilities that can emit RF energy. AT&T's authorized field personnel will contact the Attaching Party's designated point of contact not less than 24 hours in advance to inform the Attaching Party of the need for a temporary power shut-down. In the event of an unplanned power outage or other unplanned cut-off of power, or an emergency, the power-down will be with such advance notice as may be practicable. In all instances, once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform Attaching Party as soon as possible that power has been restored.
- 32.4. Emergency After Hours Contact Information. Attaching Party shall provide emergency after hours contact information to AT&T. Attaching Party shall be required to include signage which indicates Attaching Party's emergency contact information and NESC-required information.
- 32.5. Installation and Upkeep of Sign(s). Attaching Party is responsible for the installation and upkeep of its sign or signs on each pole. The signage will be placed so that it is clearly visible to workers who climb the pole or ascend by mechanical means. The signs will contain the information approved for such signs by the FCC or applicable state agency, or in the absence of such standards, the information commonly used in the industry for such signs.

33 NOTICES

- 33.1. Notices. All written notices required to be given to a Party shall be delivered or mailed to the Party's duly authorized agent or attorney, as designated in this section.
 - 33.1.1 Such notice may be mailed to the Party's duly authorized agent or attorney by registered or certified mail, return receipt requested, or by a nationally recognized overnight carrier. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit or the next business day if sent via a national recognized overnight carrier.
- 33.2. Changes in Notice Requirements. Either Party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other Party. Such notice shall state, at a minimum, the name, title, phone number, and full address of the new addressee.

NOTICE CONTACT:

ATTACHING PARTY:

NAME/TITLE: T-Mobile USA, Inc.
Attn: Lease Compliance
STREET ADDRESS: 12920 S.E. 38th Street
CITY, STATE, ZIP CODE: Bellevue, WA 98006

AT&T:

Region/state-specific contact information can be found in the online document found at the following URL:

https://clec.att.com/clec_documents/unrestr/hb/13%20State/250//Primary%20Points%20of%20Contact%20for%20CLEC%20Online%20Dec%202015.doc

Exhibit A - Pricing Sheet

	A	B	C	D	E
1					
2					
3	State	Rate Element Description	Annual Recurring Charge	Non- Recurring Charge	Per Unit
4	AL	Poles - Telecom NON-URBAN	\$4.57		\$/pole/yr. #
5	AL	Poles - Telecom URBAN	\$4.55		\$/pole/yr. #
6	AL	Ducts - Conduit Occupancy Fees - Full Duct	\$0.26		\$/ft/yr.
7	AL	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.18		\$/ft/yr.
8					
9	AR*	Poles - Telecom NON-URBAN	\$1.71		\$/pole/yr. #
10	AR*	Poles - Telecom URBAN	\$1.70		\$/pole/yr. #
11	AR*	Ducts - Conduit Occupancy Fees - Full Duct	\$0.63		\$/ft/yr.
12	AR*	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.42		\$/ft/yr.
13					
14	CA*	Poles	\$7.33		\$/ft/yr.
15	CA*	Ducts - Conduit Occupancy Fees - Full Duct	\$0.56		\$/ft/yr.
16	CA*	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.37		\$/ft/yr.
17					
18	FL	Poles - Telecom NON-URBAN	\$3.59		\$/pole/yr. #
19	FL	Poles - Telecom URBAN	\$3.57		\$/pole/yr. #
20	FL	Ducts - Conduit Occupancy Fees - Full Duct	\$0.54		\$/ft/yr.
21	FL	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.36		\$/ft/yr.
22					
23	GA	Poles - Telecom NON-URBAN	\$4.46		\$/pole/yr. #
24	GA	Poles - Telecom URBAN	\$4.43		\$/pole/yr. #
25	GA	Ducts - Conduit Occupancy Fees - Full Duct	\$1.07		\$/ft/yr.
26	GA	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.72		\$/ft/yr.
27					
28	IL*	Pole Attachment Fee	\$1.69		\$/ft/yr
29	IL*	Ducts - Conduit Occupancy Fees - Full Duct	\$0.76		\$/ft/yr.
30	IL*	Conduit Attachment Fee - two or fewer innerducts	\$0.38		\$/ft/yr.
31	IL*	Conduit Attachment Fee - three innerducts	\$0.26		\$/ft/yr.

Exhibit A - Pricing Sheet

	A	B	C	D	E
1					
2					
3	State	Rate Element Description	Annual Recurring Charge	Non- Recurring Charge	Per Unit
32	IL*	Conduit Attachment Fee - four innerducts	\$0.19		\$/ft/yr.
33	IL*	Poles & Ducts Application fee		\$ 200.00	Per request or assignment
34	IL*	Unauthorized Attachment Fee		5X Annual Rate	Per unauthorized attachment
35					
36	IN	Poles - Telecom NON-URBAN	\$2.65		\$/pole/yr. #
37	IN	Poles - Telecom URBAN	\$2.64		\$/pole/yr. #
38	IN	Ducts - Conduit Occupancy Fees - Full Duct	\$0.43		\$/ft/yr.
39	IN	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.29		\$/ft/yr.
40					
41	KS	Poles - Telecom NON-URBAN	\$0.99		\$/pole/yr. #
42	KS	Poles - Telecom URBAN	\$0.67		\$/pole/yr. #
43	KS	Ducts - Conduit Occupancy Fees - Full Duct	\$0.50		\$/ft/yr.
44	KS	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.34		\$/ft/yr.
45					
46	KY*	Poles - 2-user	\$9.45		\$/pole/yr.
47	KY*	Poles - 3-user	\$5.35		\$/pole/yr.
48	KY*	Anchors - 2-user	\$12.90		\$/anchor/yr.
49	KY*	Anchors - 3-user	\$8.60		\$/anchor/yr.
50	KY*	Ducts - Conduit Occupancy Fees	\$0.70		\$/ft/yr.
51	KY*	Unauthorized Attachment or Occupancy Fee		2X Annual Rate	per unauthorized attachment or occupancy per year back to most recent reconciliation
52					
53	LA*	Poles	\$4.90		\$/attachment/yr
54	LA*	Ducts - Conduit Occupancy Fees - Full Duct	\$1.61		\$/ft/yr.

Exhibit A - Pricing Sheet

	A	B	C	D	E
1					
2					
3	State	Rate Element Description	Annual Recurring Charge	Non- Recurring Charge	Per Unit
55	LA*	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.80		\$/ft/yr.
56					
57	MI*	Poles	\$1.45		\$/ft/yr.
58	MI*	Ducts - Conduit Occupancy Fees - Full Duct	\$0.55		\$/ft/yr.
59	MI*	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.37		\$/ft/yr.
60	MI*	Poles & Ducts Application fee		\$ 200.00	Per request or assignment
61	MI*	Unauthorized Attachment Fee		5X Annual Rate	Per unauthorized attachment
62					
63	MO	Poles - Telecom NON-URBAN	\$1.97		\$/pole/yr. #
64	MO	Poles - Telecom URBAN	\$1.31		\$/pole/yr. #
65	MO	Ducts - Conduit Occupancy Fees - Full Duct	\$0.59		\$/ft/yr.
66	MO	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.39		\$/ft/yr.
67					
68	MS	Poles - Telecom NON-URBAN	\$2.24		\$/pole/yr. #
69	MS	Poles - Telecom URBAN	\$2.23		\$/pole/yr. #
70	MS	Ducts - Conduit Occupancy Fees - Full Duct	\$0.32		\$/ft/yr.
71	MS	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.21		\$/ft/yr.
72					
73	NV	Poles - Telecom NON-URBAN	\$3.15		\$/pole/yr. #
74	NV	Poles - Telecom URBAN	\$3.13		\$/pole/yr. #
75	NV	Ducts - Conduit Occupancy Fees - Full Duct	\$0.32		\$/ft/yr.
76	NV	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.21		\$/ft/yr.
77					
78	OHIO Rates Effective 1/1/16 through 7/31/16				
79	OH*	Poles	\$2.52		\$/ft/yr.
80	OH*	Ducts - Conduit Occupancy Fees - Full Duct	\$0.74		\$/ft/yr.
81	OH*	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.37		\$/ft/yr.

Exhibit A - Pricing Sheet

	A	B	C	D	E
1					
2					
3	State	Rate Element Description	Annual Recurring Charge	Non- Recurring Charge	Per Unit
82	OH*	Poles & Ducts Application Fee		\$ 200.00	Per request or assignment
83	OH*	Unauthorized Attachment Fee		5X Annual Rate	Per unauthorized attachment
84					
85	OHIO Rates Effective for NEW applications on or after 8/1/16				
86	OH*	Poles	\$2.48		\$/ft/yr.
87	OH*	Ducts - Conduit Occupancy Fees - Full Duct	\$0.77		\$/ft/yr.
88	OH*	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.51		\$/ft/yr.
89	OH*	Poles & Ducts Application Fee		\$ 200.00	Per request or assignment
90	OH*	Unauthorized Attachment Fee		5X Annual Rate	Per unauthorized attachment
91					
92	OK	Poles - Telecom NON-URBAN	\$0.93		\$/pole/yr. #
93	OK	Poles - Telecom URBAN	\$0.62		\$/pole/yr. #
94	OK	Ducts - Conduit Occupancy Fees - Full Duct	\$0.54		\$/ft/yr.
95	OK	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.36		\$/ft/yr.
96					
97	SC	Poles - Telecom NON-URBAN	\$2.44		\$/pole/yr. #
98	SC	Poles - Telecom URBAN	\$2.43		\$/pole/yr. #
99	SC	Ducts - Conduit Occupancy Fees - Full Duct	\$0.55		\$/ft/yr.
100	SC	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.37		\$/ft/yr.
101					
102	TN	Poles - Telecom NON-URBAN	\$6.19		\$/pole/yr. #
103	TN	Poles - Telecom URBAN	\$6.16		\$/pole/yr. #
104	TN	Ducts - Conduit Occupancy Fees - Full Duct	\$0.57		\$/ft/yr.
105	TN	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.38		\$/ft/yr.
106					

Exhibit A - Pricing Sheet

	A	B	C	D	E
1					
2					
3	State	Rate Element Description	Annual Recurring Charge	Non- Recurring Charge	Per Unit
107	TX	Poles - Telecom NON-URBAN	\$3.13		\$/pole/yr. #
108	TX	Poles - Telecom URBAN	\$2.07		\$/pole/yr. #
109	TX	Ducts - Conduit Occupancy Fees - Full Duct	\$0.73		\$/ft/yr.
110	TX	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.49		\$/ft/yr.
111					
112	WI	Poles - Telecom NON-URBAN	\$3.11		\$/pole/yr. #
113	WI	Poles - Telecom URBAN	\$3.09		\$/pole/yr. #
114	WI	Ducts - Conduit Occupancy Fees - Full Duct	\$0.60		\$/ft/yr.
115	WI	Ducts - Conduit Occupancy Fees - Inner Duct	\$0.40		\$/ft/yr.
116	WI	Poles & Ducts Application Fee		\$ 200.00	Per request or assignment
117	WI	Unauthorized Attachment Fee		5X Annual Rate	Per unauthorized attachment
118					
119	* State has certified that it regulates these rates. (See DA 10-893, dated 5/19/2010.)				
120	# Telecom Rates assume one foot of usable space occupancy. AT&T reserves the right to assess additional amounts if more space is occupied.				