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November 18, 2013

RECEIVED

NOV 20 2013

PUBLIC SERVICE
COMMISSION

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Filing of Agreement and Amendment

Dear Mr. Derouen:

Enclosed for filing is a CD-ROM containing the following Amendment and Agreement. The documents have been electronically filed with the Commission.

East Kentucky Network, LLC d/b/a Appalachian Wireless
Amendment
Case No. 00157

Zayo Group, LLC
Interconnection Agreement
Case No. 01139

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Michael D. Karno

MDK/tbd
Enclosure

AMENDMENT

BETWEEN

BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T KENTUCKY

AND

EAST KENTUCKY NETWORK, LLC DBA APPALACHIAN WIRELESS



Signature: eSigned - Allen Gillium

Signature: eSigned - William A. Bockelman

Name: eSigned - Allen Gillium
(Print or Type)

Name: eSigned - William A. Bockelman
(Print or Type)

Title: General Manager/CEO
(Print or Type)

Title: Director
(Print or Type)

Date: 12 Nov 2013

Date: 12 Nov 2013

East Kentucky Network, LLC dba Appalachian
Wireless

BellSouth Telecommunications, LLC d/b/a AT&T
KENTUCKY by AT&T Services, Inc., its authorized
agent

**AMENDMENT TO THE AGREEMENT
BETWEEN
EAST KENTUCKY NETWORK, LLC D/B/A APPALACHIAN WIRELESS
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 NORTH CAROLINA,
AT&T SOUTH CAROLINA, AT&T TENNESSEE**

This Amendment (the "Amendment") amends the Two-Way CMRS Interconnection Agreement by and 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 (collectively "AT&T") (f/k/a "BellSouth Telecommunications, Inc.") and East Kentucky Network, LLC d/b/a Appalachian Wireless ("Carrier"). AT&T Kentucky and Carrier are hereinafter referred to collectively as the "Parties" and individually as a "Party".

WHEREAS, AT&T Kentucky and Carrier are parties to a Two-Way CMRS Interconnection Agreement under Sections 251 and 252 of the Communications Act of 1996 for Commercial Mobile Radio Service (CMRS), approved July 7, 2005 and as subsequently amended (the "Agreement"); and

WHEREAS, East Kentucky Network, LLC d/b/a Appalachian Wireless seeks to add Structure Access rates, terms and conditions to the Agreement;

WHEREAS, the parties agree to modify Section XXIX Notices Paragraph A of the agreement;

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

1. Replace Section IX of the Agreement with the following language: BellSouth will provide nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by BellSouth pursuant to 47 U.S.C § 224, as amended by the Act, pursuant to terms and conditions of a license agreement negotiated with BellSouth pursuant to the terms and conditions in Attachment C - Structure Access and Wireless Pricing Schedule / Structure Access attached hereto.
2. The Parties intend that any references to "WSP" in Attachment C or the Pricing Schedule shall mean "Carrier."
3. The Parties agree to modify Section XXIX Paragraph A. with the following language:

A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person, via overnight mail, or given by postage prepaid mail or email if an email address is listed below, addressed to:

NOTICE CONTACT	CARRIER CONTACT
NAME/TITLE	Gerald Robinette, CEO
STREET ADDRESS	101 Technology Trail
CITY, STATE, ZIP CODE	Ivel, KY 41642
PHONE NUMBER*	606-874-7550
FACSIMILE NUMBER	606-791-2225
EMAIL ADDRESS	grobinette110@ekn.com

	AT&T CONTACT
NAME/TITLE	Contract Management ATTN: Notices Manager
STREET ADDRESS	311 S. Akard St., 19 th floor Four AT&T Plaza

CITY,STATE, ZIP CODE	Dallas, TX 75202-5398
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4. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
5. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.
6. This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with such Agreement.
7. This Amendment shall be filed with and is subject to approval by the State Commission and shall become effective ten (10) days following approval by such Commission.

ATTACHMENT C - STRUCTURE ACCESS

Table of Contents

1.0	INTRODUCTION.....	3
2.0	DEFINITIONS	3
3.0	GENERAL PROVISIONS	5
4.0	REQUIREMENTS AND SPECIFICATIONS	8
5.0	ADDITIONAL WSP RESPONSIBILITIES.....	14
6.0	FACILITIES AND LICENSES.....	14
7.0	MAKE-READY WORK	16
8.0	APPLICATION FORM AND FEES	17
9.0	PROCESSING OF APPLICATIONS (INCLUDING PRE-LICENSE SURVEYS AND FIELD INSPECTIONS).....	18
10.0	ISSUANCE OF LICENSES.....	19
11.0	CONSTRUCTION OF WSP’S FACILITIES	20
12.0	USE AND ROUTINE MAINTENANCE OF WSP’S FACILITIES	22
13.0	MODIFICATION AND REPLACEMENT OF WSP’S FACILITIES.....	23
14.0	REARRANGEMENT OF FACILITIES	23
15.0	EMERGENCY REPAIRS AND POLE REPLACEMENTS.....	24
16.0	INSPECTION BY AT&T-22STATE OF WSP’S FACILITIES.....	26
17.0	UNAUTHORIZED OCCUPANCY OR UTILIZATION OF AT&T-22STATE’S FACILITIES	28
18.0	REMOVAL OF WSP’S FACILITIES	29
19.0	RATES, FEES, CHARGES, AND BILLING.....	30
20.0	ADVANCE PAYMENT	31
21.0	INDEMNIFICATION	31
22.0	INSURANCE.....	32

1.0 Introduction

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

2.0 Definitions

- 2.1 "Anchor" means a device, structure, or assembly which stabilizes a Pole and holds it in place. An Anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or guy wire, which, in turn, is attached to the Pole. The term Anchor does not include the guy strand which connects the Anchor to the Pole and includes only those Anchors which are owned by AT&T-22STATE, as distinguished from Anchors which are owned and controlled by other persons or entities.
- 2.2 "Anchor/Guy Strand" means supporting wires, typically stranded together, or other devices attached to a Pole and connecting that Pole to an Anchor or to another Pole for the purpose of increasing Pole stability. The term Anchor/Guy Strand includes, but is not limited to, strands sometimes referred to as Anchor strands, down guys, guy strands, and Pole-to-Pole guys.
- 2.3 "Application" means the process of requesting information related to records, Pole and/or Conduit availability, or make-ready requirements for AT&T-22STATE-owned or controlled Facilities. Each Application is limited in size to a maximum of 1) 100 consecutive Poles or 2) 10 consecutive Manhole sections or 5000 feet, whichever is greater. The Application includes (but is not limited to) request for records, records investigation and/or a field investigation, and Make-Ready Work.
- 2.4 "Assigned" when used with respect to Conduit or Duct space or Poles, means any space in such Conduit or Duct or on such Pole that is occupied by a Telecommunications Service provider or a municipal or other governmental authority. To ensure the judicious use of Poles and Conduits, space Assigned to a Telecommunications Service provider must be physically occupied by the service provider, be it AT&T-22STATE or a new entrant, within twelve (12) months of the space being Assigned.
- 2.5 "AT&T-22STATE" means the AT&T-owned ILEC(s) doing business in Alabama, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas and Wisconsin.
- 2.6 "AT&T KENTUCKY" means the AT&T-owned ILEC doing business in Kentucky.
- 2.7 "Attachment(s)" as used herein means the physical connection to AT&T-22STATE's ROW and all associated Structure Access connectivity.
- 2.8 "Attaching Party" means any Party wishing to make a physical Facility Attachment on or in any AT&T-22STATE structure.
- 2.9 "Authorized Contractor" means any contractor included on a list of contractors mutually approved by Attaching Party and AT&T-22STATE and who subject to Attaching Party's direction and control, and subject to the requirements and policies of each state, perform Facilities modification or Make-Ready Work which would ordinarily be performed by AT&T-22STATE or persons acting on AT&T-22STATE's behalf as more specifically detailed in Section 14.1.2 below.
- 2.10 "Available" when used with respect to Conduit or Duct space or Poles, means any usable space in such Conduit or Duct or on such Pole not assigned to a specific provider at the applicable time.
- 2.11 "Conduit" means a structure containing one or more Ducts, usually placed in the ground, in which cables or wires may be installed.
- 2.12 "Conduit Occupancy" means the presence of wire, cable, optical conductors, or other Facilities within any portion of AT&T-22STATE's Conduit System.
- 2.13 "Conduit System" means any combination of Ducts, Conduits, Manholes, and Handholes joined to form an integrated whole. In this Appendix, the term refers to Conduit Systems owned or controlled by AT&T-22STATE.
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- 2.14 "Cost" means the charges made by AT&T-22STATE to WSP for specific work performed, and shall be (a) the actual charges made by subcontractors to AT&T-22STATE for work and/or, (b) if the work was performed by AT&T-22STATE employees, it shall be calculated on an individual case basis, based on the estimated amount of work to be performed.
- 2.15 "Duct(s)" means a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other Facilities. As used in this Appendix, the term Duct includes Inner-Ducts created by subdividing a Duct into smaller channels.
- 2.16 "Facilities" refer to any property or equipment used in the provision of Telecommunications Services.
- 2.17 "Handholes" means an enclosure, usually below ground level, used for the purpose of installing, operating, and maintaining Facilities in a Conduit. A Handhole is too small to permit personnel to physically enter.
- 2.18 "Inner-Duct" means a pathway created by subdividing a Duct into smaller channels.
- 2.19 "Joint User" means a public utility which has entered into an Agreement with AT&T-22STATE providing reciprocal rights of attachment of Facilities owned by each Party to the Poles, Ducts, Conduits and ROW owned by the other Party.
- 2.20 "Joint Use Pole" means a pole not owned by AT&T-22STATE, but upon which AT&T-22STATE maintains its Facilities.
- 2.21 "Lashing" means an attachment of a WSP's Sheath or Inner-Duct to a supporting strand.
- 2.22 "License" means any License issued pursuant to this Appendix and may, if the context requires, refer to Conduit Occupancy or Pole Attachment Licenses issued by AT&T-22STATE.
- 2.23 "Make-Ready Work" means to all work performed or to be performed to prepare AT&T-22STATE's Conduit Systems, Poles or Anchors and related Facilities for the requested occupancy or attachment of WSP's Facilities. Make-Ready Work includes, but is not limited to, clearing obstructions (e.g., by rodding Ducts to ensure clear passage), the rearrangement, transfer, replacement, and removal of existing Facilities on a Pole or in a Conduit System where such work is required solely to accommodate WSP's Facilities and not to meet AT&T-22STATE's business needs or convenience. Make-Ready Work may require "dig ups" of existing Facilities and may include the repair, enlargement or modification of AT&T-22STATE's Facilities (including, but not limited to, Conduits, Ducts, Handholes and Manholes) or the performance of other work required to make a Pole, Anchor, Conduit or Duct usable for the initial placement of WSP's Facilities.
- 2.24 "Manhole(s)" means an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete Manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining Facilities in a Conduit.
- 2.25 "Occupancy" means the physical presence of Telecommunication Facilities in a Duct, on a Pole, or within a ROW.
- 2.26 "Overlashing" means an attacher tying communication conductors to existing, supportive strands of cable on Poles, which enables attachers to replace deteriorated cables or expand the capacity of existing Facilities while reducing construction disruption and associated expense.
- 2.27 "Pole(s)" means both utility Poles and Anchors but only to those utility Poles and Anchors owned or controlled by AT&T-22STATE, and does not include utility Poles or Anchors with respect to which AT&T-22STATE has no legal authority to permit Attachments by other persons or entities.
- 2.28 "Periodic Inspections" means inspections that are planned and scheduled by AT&T-22STATE, for the purpose of inspecting the Facilities of WSPs attached to AT&T-22STATE structure, (e.g., Poles, Conduits, and Rights-of-Way).
- 2.29 "Pole Attachment Act" and "Pole Attachment Act of 1978" means those provisions of the Act, as amended, now codified as 47 U.S.C. § 224.
- 2.30 "Pre-License Survey" means all work and activities performed or to be performed to determine whether there is adequate capacity on a Pole or in a Conduit or Conduit System (including Manholes and Handholes) to
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accommodate WSP's Facilities and to determine what Make-Ready Work, if any, is required to prepare the Pole, Conduit or Conduit System to accommodate WSP's Facilities.

- 2.31 "Right(s) of Way (ROW)" means the right to use the land or other property of another party to place Poles, Conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. A ROW may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes, or other locations.
- 2.32 "Sheath" or "Sheathing" means an outer covering containing communications wires, fibers, or other communications media.
- 2.33 "Spare Capacity" means any Poles, Conduit, Duct or Inner-Duct not currently assigned or subject to a pending Application for Attachment/Occupancy. Spare Capacity does not include an Inner-Duct (not to exceed one Inner-Duct per party) reserved by AT&T-22STATE, WSP, or a Third Party for maintenance, repair, or emergency restoration.
- 2.34 "Spot Inspections" mean spontaneous inspections done by AT&T-22STATE, initiated at AT&T-22STATE's discretion for the purpose of ensuring safety and compliance with AT&T-22STATE standards.

3.0 General Provisions

3.1 Undertaking of AT&T-22STATE:

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

3.2 Attachments and Occupancies Authorized by this Appendix:

- 3.2.1 AT&T-22STATE shall issue one or more Licenses to WSP authorizing WSP to attach Facilities to AT&T-22STATE owned or controlled Poles and to place Facilities within AT&T-22STATE's owned or controlled Conduits, Ducts or ROW under the terms and conditions set forth in this Appendix and the Act.
- 3.2.2 Unless otherwise provided herein, authority to attach Facilities to AT&T-22STATE's owned or controlled Poles, to place Facilities within AT&T-22STATE's owned or controlled Conduits, Ducts or ROW shall be granted only in individual Licenses granted under this Appendix and the placement or use of such Facilities shall be determined in accordance with such Licenses and procedures established in this Appendix.
- 3.2.3 WSP agrees that its Attachment of Facilities to AT&T-22STATE's owned or controlled Poles, Occupancy of AT&T-22STATE's owned or controlled Conduits, Ducts or ROW shall take place pursuant to the licensing procedures set forth herein, and AT&T-22STATE agrees that it shall not unreasonably withhold or delay issuance of such Licenses.
- 3.2.4 WSP may not sublease or otherwise authorize any Third Party to use any part of the AT&T-22STATE Facilities licensed to WSP under this Appendix, except that WSP may lease its own Facilities to Third Parties, or allow Affiliates to over lash cables to WSP cables. Notwithstanding the above, upon Notice to AT&T-22STATE, WSP may permit Third Parties who have an Agreement with AT&T-22STATE to over lash to existing WSP Attachments in accordance with the terms and conditions of such Third Party's Agreement with AT&T-22STATE.
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3.2.5 AT&T-22STATE WSP 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 NESC and any other industry standards; (2) the WSP 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 WSP has determined that no Make-Ready Work is necessary to accommodate the Overlashed Facility, or will insure that any Make-Ready Work necessary will be conducted before the overlashing occurs. WSP agrees to indemnify AT&T should any of the warranties be breached.

3.3 Licenses:

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

3.4 Access and Use of ROW:

3.4.1 AT&T-22STATE acknowledges that it is required by the Act to afford WSP access to and use of all associated ROW to any sites where AT&T-22STATE's owned or controlled Poles, Manholes, Conduits, Ducts or other parts of AT&T-22STATE's owned or controlled Conduit Systems are located.

3.4.2 AT&T-22STATE shall provide WSP with access to and use of such ROW to the same extent and for the same purposes that AT&T-22STATE may access or use such ROW, including but not limited to access for ingress, egress or other access and to construct, utilize, maintain, modify, and remove Facilities for which Pole Attachment, Conduit Occupancy, or ROW use Licenses have been issued, provided that any agreement with a Third Party under which AT&T-22STATE holds such rights expressly or impliedly grants AT&T-22STATE the right to provide such rights to others.

3.4.3 Where AT&T-22STATE notifies WSP that AT&T-22STATE's Agreement with a Third Party does not expressly or impliedly grant AT&T-22STATE the ability to provide such access and use rights to others, upon WSP's request, AT&T-22STATE will use its best efforts to obtain the owner's consent and to otherwise secure such rights for WSP. WSP agrees to reimburse AT&T-22STATE for the reasonable and demonstrable Costs incurred by AT&T-22STATE in obtaining such rights for WSP.

3.4.4 In cases where a Third Party agreement does not grant AT&T-22STATE the right to provide access and use rights to others as contemplated in Section 3.4.2 above and AT&T-22STATE, despite its best efforts, is unable to secure such access and use rights for WSP in accordance with Section 3.4.3 above, or, in the case where WSP elects not to invoke its rights under Section 3.4.2 above or Section 3.4.3 above, WSP shall be responsible for obtaining such permission to access and use such ROW. AT&T-22STATE shall cooperate with WSP in obtaining such permission and shall not prevent or delay any Third Party assignment of ROWs to WSP.

3.4.5 Where AT&T-22STATE has any ownership or ROW to buildings or building complexes, or within buildings or building complexes, AT&T-22STATE shall offer to WSP through a License or other attachment:

3.4.5.1 The right to use any available space owned or controlled by AT&T-22STATE in the building or building complex to install WSP equipment and Facilities; and

3.4.5.2 Ingress and egress to such space.

3.4.6 Except to the extent necessary to meet the requirements of the Act, neither this Appendix nor any License granted hereunder shall constitute a conveyance or assignment of any of either Party's rights to use any public or private ROW, and nothing contained in this Appendix or in any License granted hereunder shall be construed as conferring on one Party any right to interfere with the other Party's access to any such public or private ROW.

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

3.5.1 Nothing contained in this Appendix or in any License issued hereunder shall in any way affect the right of AT&T-22STATE to convey to any other person or entity any interest in real or personal property, including any Poles, Conduit or Ducts to or in which WSP has attached or placed Facilities pursuant to Licenses issued under this Appendix provided however that AT&T-22STATE shall give WSP reasonable advance written Notice of such intent to convey.

3.5.2 Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to WSP. AT&T-22STATE shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any Pole, Anchor, or Conduit System covered by this Appendix and WSP's rights hereunder.

3.6 No Effect on AT&T-22STATE's Rights to Manage its Own Facilities:

3.6.1 This Appendix shall not be construed as limiting or interfering with AT&T-22STATE's rights set forth below, except to the extent expressly provided by the provisions of this Appendix or Licenses issued hereunder or by the Act or other applicable laws, rules or regulations:

3.6.1.1 To locate, relocate, move, replace, modify, maintain, and operate AT&T-22STATE's own Facilities within AT&T-22STATE's Conduits, Ducts or ROW or any of AT&T-22STATE's Facilities attached to AT&T-22STATE's Poles at any time and in any reasonable manner which AT&T-22STATE deems appropriate to serve its End Users, avail itself of new business opportunities, or otherwise meet its business needs; or

3.6.1.2 enter into new agreements or arrangements with other persons or entities permitting them to attach or place their Facilities to or in AT&T-22STATE's Poles, Conduits or Ducts; provided, however, that such relocations, moves, replacements, modifications, maintenance and operations or new Attachments or arrangements shall not substantially interfere with WSP's Pole Attachment, Conduit Occupancy or ROW use rights provided by Licenses issued pursuant to this Appendix.

3.7 No Effect on WSP's Rights to Manage its Own Facilities:

3.7.1 This Appendix shall not be construed as limiting or interfering with WSP's rights set forth below, except to the extent expressly provided by the provisions of this Appendix or Licenses issued hereunder or by the Act or other applicable laws, rules or regulations:

3.7.1.1 To locate, relocate, move, replace, modify, maintain, and operate its own Facilities within AT&T-22STATE's Conduits, Ducts or ROW or its Facilities attached to AT&T-22STATE's Poles at any time and in any reasonable manner which WSP deems appropriate to serve its End Users, avail itself of new business opportunities, or otherwise meet its business needs; or

3.7.1.2 To enter into new agreements or arrangements with other persons or entities permitting WSP to attach or place its Facilities to or in such other persons' or entities' Poles, Conduits or Ducts, or ROW; provided, however, that such relocations, moves, replacements, modifications, maintenance and operations or new Attachments or arrangements shall not conflict with WSP's obligations under Licenses issued pursuant to this Appendix.

3.8 No Right to Interfere with Facilities of Others:

3.8.1 The provisions of this Appendix or any License issued hereunder shall not be construed as authorizing either Party to this Appendix to rearrange or interfere in any way with any of the other Party's Facilities,

with the Facilities of other persons or entities, or with the use of or access to such Facilities by such other party or such other persons or entities, except to the extent expressly provided by the provisions of this Appendix or any License issued hereunder or by the Act or other applicable laws, rules or regulations.

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

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

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

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

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

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

3.9 Assignment of Space:

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

4.0 Requirements and Specifications

4.1 Industry recognized standards are incorporated below by reference. WSP agrees that its Facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:

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

4.1.2 The National Electrical Code (NEC); and

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

4.2 Changes in Industry Recognized Standards:

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

4.3 Additional Electrical Design Specifications:

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

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

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

4.3.1.3 Any WSP's proposal or design for Facilities that will carry AC voltage will be considered on a case by case basis in the region where the proposal is planned.

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

4.3.1.5 WSP's coaxial cable may carry continuous DC voltages up to 1800 volts to ground where the conductor current will not exceed one-half amperes and where such cable has two separate grounded metal Sheaths or shields and a suitable insulating jacket over the outer Sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer Sheath shall not exceed 200 micro-amperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.

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

4.4 Additional Physical Design Specifications:

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

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

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

4.4.1.3 New construction splices in WSP's fiber optic and twisted pair cables shall be located in Manholes, pull boxes or Handholes. No splices are permitted to be pulled into Conduit.

4.5 Additional Specifications Applicable to Connections:

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

4.5.1.1 WSP will be permitted to connect its Conduit or Duct only at an AT&T-22STATE Manhole. No Attachment will be made by entering or breaking into Conduit between Manholes. All

necessary work to install WSP Facilities will be performed by WSP or its contractor at WSP's expense. In no event shall WSP or its contractor "core bore" or make any other modification to AT&T-22STATE Manhole(s) without the prior written approval of AT&T-22STATE, which approval will not be unreasonably delayed or withheld.

- 4.5.1.2 If WSP constructs or utilizes a Duct connected to AT&T-22STATE's Manhole, the Duct and all connections between that Duct and AT&T-22STATE's Manhole shall be sealed, to the extent practicable, to prevent the entry of gases or liquids into AT&T-22STATE's Conduit System. If WSP's Duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into AT&T-22STATE's Conduit System. If a core bore is planned and conduit placed, any unused Inner Duct in that structure must be made accessible to other requestors.

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

- 4.6.1 Duct clearing, rodding or modifications required to grant WSP access to AT&T-22STATE's Conduit Systems may be performed by AT&T-22STATE at WSP's expense at charges which represent AT&T-22STATE's actual Costs. Alternatively (at WSP's option) such work may be performed by a contractor who demonstrates compliance with AT&T-22STATE certification requirements, which certification requirements shall be consistent with F.C.C. rules. The Parties acknowledge that WSP, its contractors, and other persons acting on WSP's behalf will perform work for WSP (e.g., splicing WSP's Facilities) within AT&T-22STATE's Conduit System. WSP represents and warrants that neither WSP nor any Person Acting on WSP's behalf shall permit any person to climb or work on or in any of AT&T-22STATE's Poles or to enter AT&T-22STATE's Manholes or work within AT&T-22STATE's Conduit System unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to Pole or the Conduit Systems and to perform the work safely.
- 4.6.2 WSP's Facilities within AT&T-22STATE's Conduit System shall be constructed, placed, rearranged, modified, and removed upon receipt of License specified in Section 6.1 below. However, no such License will be required for the inspection, maintenance, repair or non-physical modifications of WSP's Facilities.
- 4.6.3 Rodding or clearing of Ducts in AT&T-22STATE's Conduit System shall be done only when specific authorization for such work has been obtained in advance from AT&T-22STATE, which authorization shall not be unreasonably delayed or withheld by AT&T-22STATE. The Parties agree that such rodding or clearing shall be performed according to existing industry standards and practices. WSP may contract with AT&T-22STATE for performance of such work or (at WSP's option) with a contractor who demonstrates compliance with AT&T-22STATE certification requirements.
- 4.6.4 Personnel performing work on AT&T-22STATE's or WSP's behalf in AT&T-22STATE's Conduit System shall not climb on, step on, or otherwise disturb the other Party's or any Third Party's cables, air pipes, equipment, or other Facilities located in any Manhole or other part of AT&T-22STATE's Conduit System.
- 4.6.5 Personnel performing work on AT&T-22STATE's or WSP's behalf within AT&T-22STATE's Conduit System (including any Manhole) shall, upon completing their work, make reasonable efforts to remove all tools, unused materials, wire clippings, cable Sheathing and other materials brought by them to the work site.
- 4.6.6 All of WSP's Facilities shall be firmly secured and supported in accordance with Telcordia and industry standards as referred to in Section 4.1 above.
- 4.6.7 Identification of Facilities in Conduit/Manholes:
- 4.6.7.1 WSP's Facilities shall be plainly identified with WSP's name in each Manhole with a firmly affixed permanent tag that meets standards set by AT&T-22STATE for its own Facilities.
- 4.6.8 Identification of Pole Attachments.
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- 4.6.8.1 WSP's Facilities attached to AT&T-22STATE Poles shall be plainly identified with WSP's name firmly affixed at each Pole by a permanent tag that meets industry standards as referred to in Section 4.1 above.
- 4.6.9 Manhole pumping and purging required in order to allow WSP's work operations to proceed shall be performed by a vendor approved by AT&T-22STATE in compliance with AT&T-22STATE Practice Sec. 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures," and any amendments, revisions or supplements thereto and in compliance with all regulations and standards established by the United States Environmental Protection Agency and by any applicable state or local environmental regulators.
- 4.6.10 Planks or other types of platforms shall not be installed using cables, pipes or other equipment as a means of support. Platforms shall be supported only by cable racks.
- 4.6.11 Any leak detection liquid or device used by WSP or personnel performing work on WSP's Facilities within AT&T-22STATE's Conduit System shall be of a type approved by AT&T-22STATE or Telcordia as referenced in Section 4.1 above.
- 4.6.12 When WSP or personnel performing work on WSP's behalf are working within or in the vicinity of any part of AT&T-22STATE's Poles or Conduit System which is located within, under, over, or adjacent to streets, highways, alleys or other traveled ROW, WSP and all personnel performing work on WSP's behalf shall follow procedures which WSP deems appropriate for the protection of persons and property. WSP shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. WSP will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers and property from danger. AT&T-22STATE shall have no responsibility for the safety of personnel performing work on WSP's behalf, for the safety of bystanders, and for insuring that all operations conform to current OSHA regulations and all other governmental rules, ordinances or statutes. AT&T-22STATE reserves the right to suspend WSP's activities on, in or in the vicinity of AT&T-22STATE's Poles or Conduit System if, in AT&T-22STATE's reasonable judgment, any hazardous condition arises due to the activity (including both acts and omissions) of WSP or any personnel performing work on WSP's behalf, which suspension shall cease when the condition has been rectified.
- 4.6.13 Except for protective screens, no temporary cover shall be placed by WSP or personnel performing work on WSP's behalf over an open Manhole unless it is at least four (4) feet above the surface level of the Manhole opening.
- 4.6.14 Smoking or the use of any open flame is prohibited in AT&T-22STATE's Manholes, in any other portion of AT&T-22STATE's Conduit System, or within ten (10) feet of any open Manhole entrance; provided that this provision will not prohibit the use of spark producing tools such as electric drills, fusion splicers, etc.
- 4.6.15 Artificial lighting, when required, will be provided by WSP. Only explosion proof lighting fixtures shall be used.
- 4.6.16 Neither WSP nor personnel performing work on WSP's behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in AT&T-22STATE's Conduit System (including any Manhole) during work operations performed within or in the vicinity of AT&T-22STATE's Conduit System.
- 4.6.17 WSP will abide by any laws, regulations or ordinances regarding the use of spark producing tools, equipment or devices in AT&T-22STATE's Manholes, in any other portions of AT&T-22STATE's Conduit System, or within ten (10) feet of any open Manhole opening. This includes, but is not limited to, such tools as electric drills and hammers, meggers, breakdown sets, induction sets, and the like.
- 4.7 Opening of Manholes:
- 4.7.1 The following requirements apply to the opening of AT&T-22STATE's Manholes and the authority of AT&T-22STATE personnel present when work on WSP's behalf is being performed within or in the vicinity of AT&T-22STATE's Conduit System.
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- 4.7.1.1 AT&T-22STATE's Manholes shall be opened only as permitted by AT&T-22STATE's authorized employees or agents, which permission shall not be unreasonably denied or delayed.
 - 4.7.1.2 WSP shall notify AT&T-22STATE forty-eight (48) hours in advance of any routine work operation requiring entry into any of AT&T-22STATE's Manholes.
 - 4.7.1.3 WSP shall be responsible for obtaining any necessary authorization from appropriate authorities to open Manholes for Conduit work operations therein.
 - 4.7.1.4 AT&T-22STATE's authorized employee or agent shall not direct or control the conduct of WSP's work at the work site. The presence of AT&T-22STATE's authorized employee or agent at the work site shall not relieve WSP or personnel performing work on WSP's behalf of their responsibility to conduct all work operations within AT&T-22STATE's Conduit System in a safe and workmanlike manner.
 - 4.7.1.5 Although AT&T-22STATE's authorized employee or agent shall not direct or control the conduct of WSP's work at the work site, AT&T-22STATE's employee or agent shall have the authority to suspend WSP's work operations within AT&T-22STATE's Conduit System if, in the reasonable discretion of such AT&T-22STATE employee or agent, it appears that any hazardous conditions arise or any unsafe practices are being followed by WSP or personnel performing work on WSP's behalf.
- 4.8 Occupational Safety and Health Administration (OSHA) Compliance: Notice to AT&T-22STATE of Unsafe Conditions:
- 4.8.1 WSP agrees that:
 - 4.8.1.1 Its Facilities shall be constructed, placed, maintained, repaired, and removed in accordance with the OSHA rules and regulations promulgated thereunder.
 - 4.8.1.2 All persons acting on WSP's behalf, including but not limited to WSP's employees, agents, contractors, and subcontractors shall, when working on or within AT&T-22STATE's Poles or Conduit System, comply with OSHA and all rules and regulations thereunder.
 - 4.8.1.3 WSP shall establish appropriate procedures and controls to assure compliance with all requirements of this section.
 - 4.8.1.4 WSP (and any Person Acting on WSP's Behalf) may report unsafe conditions on, in or in the vicinity of AT&T-22STATE's Poles or Conduit System to AT&T-22STATE.
- 4.9 Compliance with Environmental Laws and Regulations:
- 4.9.1 WSP acknowledges that, from time to time, environmental contaminants may enter AT&T-22STATE's Conduit System and accumulate in Manholes or other Conduit Facilities and that certain Conduit (Transite type) are constructed with asbestos-containing materials. If AT&T-22STATE has knowledge of the presence of such contaminants in a Conduit for which WSP has applied for or holds a License, AT&T-22STATE will promptly notify WSP of such fact.
- 4.10 Notwithstanding any of AT&T-22STATE's notification requirements in this Appendix, WSP acknowledges that some of AT&T-22STATE's Conduit is fabricated from asbestos-containing materials. Such Conduit is generally marked with a designation of "C Fiber Cement Conduit," "Transite" or "Johns-Manville." Until proven otherwise, WSP will presume that all Conduit not fabricated of plastic, tile, or wood is asbestos-containing and will handle it pursuant to all applicable regulations relating to worker safety and protection of the environment.
- 4.11 AT&T-22STATE makes no representations to WSP or personnel performing work on WSP's behalf that AT&T-22STATE's Conduit System or any specific portions thereof will be free from environmental contaminants at any particular time. WSP agrees to comply with the following provisions relating to compliance with environmental laws and regulations:
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- 4.11.1 WSP's Facilities shall be constructed, placed, maintained, repaired, and removed in accordance with all applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws, including but not limited to the Resource Conservation and Recovery Act (42 U.S.C. §§ 9601 et. seq.), the Toxic Substance Control Act (15 U.S.C. §§ 2601 2629), the Clean Water Act (33 U.S.C. §§ 1251 et. seq.), and the Safe Drinking Water Act (42 U.S.C. §§ 300f 300j).
- 4.11.2 All persons acting on WSP's behalf, including but not limited to WSP's employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of AT&T-22STATE's Poles or Conduit System, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.
- 4.11.3 WSP shall establish appropriate procedures and controls to assure compliance with all requirements of this section. AT&T-22STATE will be afforded a reasonable opportunity to review such procedures and controls and provide comments that will be reasonably considered in advance of their implementation. Review and comment by AT&T-22STATE pursuant to this section will be provided in a timely manner.
- 4.11.4 WSP and all personnel performing work on WSP's behalf shall comply with such standards and practices as AT&T-22STATE and WSP may from time to time mutually agree to adopt to comply with environmental laws and regulations including, without limitation, AT&T-22STATE Practice Sec. 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures". Pursuant to this practice, neither WSP nor AT&T-22STATE nor personnel performing work on either Party's behalf shall discharge water or any other substance from any AT&T-22STATE Manhole or other Conduit Facility onto public or private property, including any storm water drainage system, without first testing such water or substance for contaminants in accordance with mutually agreed standards and practices and determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person. No such waste material shall be deposited on AT&T-22STATE premises for storage or disposal.
- 4.12 Compliance with Other Governmental Requirements:
- 4.12.1 WSP agrees that its Facilities attached to AT&T-22STATE's Facilities shall be constructed, placed, maintained, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter. WSP 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. WSP shall establish appropriate procedures and controls to assure such compliance by all persons acting on WSP's behalf, including but not limited to, WSP's employees, agents, contractors, and subcontractors.
- 4.13 Differences in Standards or Specifications:
- 4.13.1 To the extent that there may be differences in any applicable standards or specifications referred to in Section 4.0 above, the most stringent standard or specification shall apply.
- 4.14 WSP Solely Responsible for the Condition of Its Facilities:
- 4.14.1 WSP shall be responsible at all times for the condition of its Facilities and its compliance with the requirements, specifications, rules, regulations, ordinances, and laws specified above. In this regard, AT&T-22STATE shall have no duty to WSP to inspect or monitor the condition of WSP's Facilities (including but not limited to splices and other Facilities connections) located within AT&T-22STATE's Conduit and Ducts or any Attachment of WSP's Facilities to AT&T-22STATE's Poles, Anchors, Anchor/Guy Strands or other Pole Facilities. AT&T-22STATE may, however, conduct such inspections and audits of its Poles and Conduit System as AT&T-22STATE determines reasonable or necessary. Such inspection and audits shall be conducted at AT&T-22STATE's expense with the exception of (1) follow-up inspection to confirm remedial action after an observed WSP violation of the requirements of this Appendix; and (2) inspection of WSP Facilities in compliance with a specific mandate of appropriate governmental authority for which inspections the Cost shall be borne by WSP.
- 4.14.2 Either Party may audit the other Party's compliance with the terms of this Section.
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4.14.3 Observed safety hazards or imminent Facility failure conditions of another Party shall be reported to the affected Party where such Party can be readily identified.

4.15 Efficient use of Conduit:

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

5.0 Additional WSP Responsibilities

5.1 Third Party Property Owners:

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

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

5.2 Required Permits, Certificates and Licenses:

5.2.1 WSP shall be responsible for obtaining any building permits or certificates from governmental authorities necessary to construct, operate, maintain and remove its Facilities on public or private property.

5.2.2 WSP shall not attach or place its Facilities to or in AT&T-22STATE's Poles, Conduit or Duct located on any property for which it or AT&T-22STATE has not first obtained all required authorizations.

5.2.3 AT&T-22STATE shall have the right to request evidence that all appropriate authorizations have been obtained. However, such request shall not delay AT&T-22STATE's Pre-License Survey work.

5.3 Lawful Purposes:

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

6.0 Facilities and Licenses

6.1 Licenses Required:

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

6.2 Provision of Records and Information to WSP:

- 6.2.1 In order to obtain information regarding Facilities, WSP shall make a written request to AT&T-22STATE, identifying with reasonable specificity the geographic area for which Facilities are required, the types and quantities of the required Facilities and the required in-service date. In response to such request, AT&T-22STATE shall provide WSP with information regarding the types, quantity and location (which may be provided by provision of route maps) and availability of AT&T-22STATE Poles.
- 6.2.2 AT&T SOUTHEAST REGION 9-STATE: Conduit and ROW located within the geographic area specified by WSP. Provision of information under the terms of this section shall include the right of WSP employees or agents to obtain copies of engineering records or drawings which pertain to those Facilities within the geographic area identified in WSP's request. Such copies of records shall be provided to WSP or be made available at the records location center, at the expense of WSP.
- 6.2.3 AT&T-13STATE: Within five (5) business days after Attaching Party submits request to view records to AT&T-13STATE, AT&T-13STATE will notify Attaching Party of the place and time that attaching Party may view the structure records.
- 6.2.3.1 The viewing room must be reserved for a minimum of two (2) hours. Attaching Party may request additional time prior to the viewing date. AT&T-13STATE may not be able to provide Attaching Party with unscheduled additional time for viewing AT&T-13STATE structure records on the viewing date, but if unable will immediately make alternative arrangements that are mutually acceptable for the viewing of records as soon thereafter as possible. AT&T-13STATE may make available at the Attaching Party's expense, an AT&T-13STATE representative with sufficient knowledge about AT&T-13STATE structure records to clarify matters relating to such structure records and to assist Attaching Party during their viewing.
- 6.2.4 For AT&T-22STATE requests, the contact information can be found via the AT&T-22STATE Prime Access website under Structure Access. The Costs of producing and mailing copies of records, which are to be paid by WSP, are on an individual case basis. The components which make up the total Costs are the sum of:
- 6.2.4.1 AT&T-22STATE employee Costs based on the time spent researching, reviewing and copying records
- 6.2.4.2 Copying costs
- 6.2.4.3 Shipping costs
- 6.3 No Warranty of Record Information:
- 6.3.1 WSP acknowledges that records and information provided by AT&T-22STATE pursuant to Section 6.2 above may not reflect field conditions and that physical inspection is necessary to verify presence and condition of outside plant Facilities and ROW. In providing such records and information, AT&T-22STATE assumes no liability to WSP or any Third Party for errors/omissions contained therein.
- 6.4 Determination of Availability:
- 6.4.1 AT&T-22STATE shall provide Pole, Conduit and ROW availability information in response to a request from WSP which identifies with reasonable specificity the Facilities for which such information is desired. If such request includes Joint Use Pole(s), AT&T-22STATE shall respond with respect to such Joint Use Pole(s) as to what Make-Ready Work is required for AT&T-22STATE's Facilities only. WSP may elect to be present at any field based survey of Facilities identified pursuant to this paragraph and AT&T-22STATE shall provide WSP at least forty-eight (48) hours notice prior to initiating such field survey. WSP employees or agents shall be permitted to enter AT&T-22STATE Manholes and inspect such structures to confirm usability and/or evaluate condition of the structure(s) with at least forty-eight (48) hours notice to AT&T-22STATE, with an AT&T-22STATE representative present and at WSP's expense.
- 6.5 Assignment of Conduit, Duct and Pole Space:
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6.5.1 AT&T-22STATE shall not unreasonably deny or delay issuance of any License and, in any event, AT&T-22STATE shall issue such License as follows: (a) after the determination has been made that Make-Ready Work is not required, or (b) completion of Make-Ready Work. Response intervals commence upon conclusion of the field survey.

6.5.1.1 No Make-Ready Work Required:

6.5.1.1.1 Within 45 days of Attaching Party's submission of a request for access to AT&T structure, AT&T shall provide a written response to the application. The response shall state whether the request is being granted or denied, and if the request is denied, provide the reasons why the request is being denied. If denial of access is proposed, AT&T will meet with the Attaching Party and explore in good faith reasonable alternatives to accommodate the proposed Attachment. The Attaching Party must request such meeting within ten (10) Business Days of receipt of a notice of denial. AT&T will schedule the meeting within ten (10) Business Days of receipt of the Attaching Party's written request for a meeting.

6.5.1.1.2 If AT&T-22STATE determines that no Make-Ready Work is required, AT&T-22STATE shall approve Applications for Pole Attachment and Conduit Occupancy Licenses and issue such Licenses within forty-five (45) calendar days after AT&T-22STATE receives WSP's Application.

6.5.1.2 Make-Ready Work Required:

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

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

7.0 Make-Ready Work

7.1 Work Performed by AT&T-22STATE:

7.1.1 If performed by AT&T-22STATE, Make-Ready Work to accommodate WSP's Facilities on Poles, Joint Use Pole(s) or in Conduit System shall be included in the normal work load schedule of AT&T-22STATE with construction responsibilities in the geographic areas where the relevant Poles or Conduit Systems are located and shall not be entitled to priority, advancement, or preference over other work to be performed by AT&T-22STATE in the ordinary course of AT&T-22STATE's business.

7.1.2 If WSP desires Make-Ready Work to be performed on an expedited basis and AT&T-22STATE agrees to perform the work on such a basis, AT&T-22STATE shall recalculate the estimated Make-Ready Work charges to include any expedite charges. If WSP accepts AT&T-22STATE's revised estimate of charges, WSP shall pay such additional charges.

7.2 All charges for Make-Ready Work, including work on Joint Use Pole(s), performed by AT&T-22STATE are payable in advance, with the amount of any such advance payment to be due within sixty (60) calendar days after receipt of an invoice from AT&T-22STATE. AT&T-22STATE will begin Make-Ready Work required to accommodate WSP after

receipt of WSP's Make-Ready Work payment. After receipt of payment, AT&T-22STATE will schedule the work for completion.

7.3 Work Performed by Certified Contractor:

7.3.1 In lieu of obtaining performance of Make-Ready Work by AT&T-22STATE, WSP at its option may arrange for the performance of such work by a contractor certified by AT&T-22STATE to work on or in its Facilities. Certification shall be granted based upon reasonable and customary criteria employed by AT&T-22STATE in the selection of its own contract labor. Notwithstanding any other provisions of this Section, WSP may not employ a contractor to accomplish Make-Ready Work if AT&T-22STATE is likewise precluded from contractor selection under the terms of an applicable joint use agreement or collective bargaining agreement. In accordance with Section 4.6.9 above, all Manhole pumping and purging shall be performed by a vendor approved by AT&T-22STATE.

7.4 Completion of Make-Ready Work:

7.4.1 AT&T-22STATE will issue a License to WSP once all Make-Ready Work necessary to WSP's Attachment or occupancy has been completed.

7.5 If Attaching Party utilizes space or capacity on any AT&T structure created at the expense of AT&T or other users after February of 1996, the Attaching Party will reimburse AT&T or the other users on a pro-rata basis for the Attaching Party's share, if any, of the capacity creation costs of AT&T before the License is issued to the other users.

8.0 Application Form and Fees

8.1 Application Process:

8.1.1 To apply for a License under this Appendix, WSP shall submit the appropriate AT&T-22STATE administrative form(s), which can be found on the AT&T-22STATE Prime Access website, (two (2) sets of each and either a route map specifically indicating WSP desired route or engineered drawings are to be included). WSP has the option of (1) requesting copies of AT&T-22STATE records only, (2) requesting a records and/or field survey to determine availability, and/or (3) requesting a Make-Ready Work estimate. Any Joint Use Pole(s) included in such a request shall be included in the records/field survey and Make-Ready Work estimate. Before the Application and Conduit Occupancy License or Application and Pole Attachment License form is approved for Attachment, Make-Ready Work must be complete or a records or field survey conducted by AT&T-22STATE has determined that Make-Ready Work is not required. WSP shall submit with WSP's License Application a proposed or estimated construction schedule as set forth below in Section 11.0 below.

8.2 AT&T-22STATE will process License Applications in the order in which they are received; provided, however, that when WSP has multiple Applications on file with AT&T-22STATE, WSP may designate its desired priority of completion of Pre-Licenses and Make-Ready Work with respect to all such Applications.

8.2.1 Each Application for a License under this Section shall specify the proposed route of WSP's Facilities and identify the Conduits and Ducts or Poles, Joint Use Pole(s) and Pole Facilities along the proposed route in which WSP desires to place or attach its Facilities, and describe the physical size, weight and jacket material of the cable which WSP desires to place in each Conduit or Duct or the number and type of cables, apparatus enclosures and other Facilities which WSP desires to attach to each Pole or Joint Use Pole.

8.2.2 Each Application for a License under this Section shall be accompanied by a proposed (or estimated) construction schedule containing the information specified below in Section 11.1 below of this Appendix, and an indication of whether WSP will, at its option, perform its own Make-Ready Work.

8.3 Multiple Cables, Multiple Services, Lashing or Placing Additional Cables, and Replacement of Facilities:

8.3.1 WSP may include multiple cables in a single License Application and multiple services (e.g., CATV and non-CATV services) may be provided by WSP in the same cable Sheath. WSP's Lashing additional cable to existing Facilities and placing additional cables in Conduits or Ducts already occupied by WSP's

Facilities shall be permitted, and no additional fees will be applied; provided, however, that if WSP desires to lash additional cable to existing Facilities of a Third Party, WSP shall provide AT&T-22STATE with reasonable Notice, and shall obtain written permission from the owner of the existing Facilities. If AT&T-22STATE determines that the requested Lashing would violate safety or engineering requirements, AT&T-22STATE shall provide written Notice to WSP within a reasonable time specifying in detail AT&T-22STATE's findings. If WSP desires to place additional cables in Conduits or Ducts which are already occupied, or to replace existing Facilities with new Facilities substantially different from those described in Licenses in effect, WSP must apply for and acquire a new License specifically describing the physical size, weight and jacket material of the cable to be placed in AT&T-22STATE's Conduits and Ducts or the physical size, weight, and jacket type of cables and the size and weight of apparatus enclosures and other Facilities to be attached to AT&T-22STATE Poles.

- 8.4 Each Application shall designate an employee as WSP's single point of contact for any and all purposes of that Application under this Section, including, but not limited to, processing Licenses and providing records and information. WSP may at any time designate a new point of contact by giving written Notice of such change while the Application is open.

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

9.1 WSP's Priorities:

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

9.2 Pre-License Survey:

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

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

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

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

specifications, rules, regulations, ordinances and laws. WSP acknowledges that AT&T-22STATE is not explicitly or implicitly warranting to WSP that WSP's proposed use of AT&T-22STATE's Facilities will be in compliance with applicable requirements, specifications, rules, regulations, ordinances, and laws.

9.3 Administrative Processing:

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

10.0 Issuance of Licenses

10.1 Obligation to Issue Licenses:

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

10.2 Multiple Applications:

10.2.1 WSP acknowledges the following:

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

10.2.1.2 That the Make-Ready Work required to prepare AT&T-22STATE's Facilities to accommodate multiple applicants may differ from the Make-Ready Work required to accommodate a single applicant.

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

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

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

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

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

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

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

Facilities to accommodate the placement or Attachment of WSP's Facilities in or to AT&T-22STATE's structures.

10.5 License:

- 10.5.1 When WSP's Application for a Pole Attachment or Conduit Occupancy License is approved, and all required Make-Ready Work completed, AT&T-22STATE will execute and return a signed authorization to WSP, as appropriate, authorizing WSP to attach or place the specified Facilities on AT&T-22STATE's Poles or in AT&T-22STATE's Conduit or Ducts.
- 10.5.2 Each License issued under this Section shall authorize WSP to attach to AT&T-22STATE's Poles or place or maintain in AT&T-22STATE's Conduit or Ducts only those Facilities specifically described in the License, and no others.
- 10.5.3 Except as expressly stated to the contrary in individual Licenses issued hereunder, each License issued pursuant to this Section shall incorporate all terms and conditions of this Section whether or not such terms or conditions are expressly incorporated by reference on the face of the License itself.

11.0 Construction of WSP's Facilities

11.1 Construction Schedule:

- 11.1.1 WSP shall submit with WSP's License Application a proposed or estimated construction schedule. Promptly after the issuance of a License permitting WSP to attach Facilities to AT&T-22STATE's Poles or place Facilities in AT&T-22STATE's Conduit or Ducts, WSP shall provide AT&T-22STATE with an updated construction schedule and shall thereafter keep AT&T-22STATE informed of significant anticipated changes in the construction schedule.
- 11.1.2 Construction schedules required by this Section shall include, at a minimum, the following information:
 - 11.1.2.1 The name, title, business address, and business telephone number of the manager responsible for construction of the Facilities;
 - 11.1.2.2 The names of each contractor and subcontractor which will be involved in the construction activities;
 - 11.1.2.3 The estimated dates when construction will begin and end; and
 - 11.1.2.4 The approximate dates when WSP or persons acting on WSP's behalf will be performing construction work in connection with the placement of WSP's Facilities in AT&T-22STATE's Conduit or Ducts.

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

- 11.2.1 The following procedures shall apply before WSP places Facilities in AT&T-22STATE's Conduit System:
 - 11.2.1.1 WSP shall give written notice of the type of Facilities which are to be placed; and
 - 11.2.1.2 AT&T-22STATE shall designate the particular Duct or Ducts or Inner Ducts (if available) to be occupied by WSP's Facilities, the location and manner in which WSP's Facilities will enter and exit AT&T-22STATE's Conduit System, and the specific location and manner of installation of any associated equipment which is permitted by AT&T-22STATE to occupy the Conduit System. WSP may not occupy a Duct other than the specified Duct without the express written consent of AT&T-22STATE. AT&T-22STATE shall provide to WSP space in Manholes for racking and storage of up to fifty (50) feet of cable, provided space is available.

11.3 Responsibility for Constructing or Placing Facilities:

- 11.3.1 AT&T-22STATE shall have no obligation to construct any Facilities for WSP or to attach WSP's Facilities to, or place WSP's Facilities in, AT&T-22STATE's Poles or Conduit System, except to the extent

expressly provided in this section, any License issued hereunder, or by the Telecommunications Act or any other applicable law.

11.4 WSP Responsible for Constructing, Attaching and Placing Facilities:

11.4.1 Except where otherwise mutually agreed by WSP and AT&T-22STATE, WSP shall be responsible for constructing its own Facilities and attaching those Facilities to, or placing them in AT&T-22STATE's Poles, Conduit or Ducts at WSP's sole Cost and expense. WSP shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and placement of WSP's Facilities and for directing the activities of all persons acting on WSP's behalf while they are physically present on AT&T-22STATE's Pole, in any part of AT&T-22STATE's Conduit System or in the vicinity of AT&T-22STATE's Poles or Conduit System.

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

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

11.5.2 WSP shall construct, attach and place its Facilities in compliance with all requirements and specifications set forth above in this Appendix.

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

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

11.6 Construction Notices:

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

11.7 Points for Attachment:

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

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

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

11.10 WSP shall hold AT&T-22STATE harmless and indemnify AT&T-22STATE for damages to itself or Third Parties in accordance with the Two-Way CMRS Interconnection Agreement (Wireless) - General Terms and Conditions, that result from the operation or maintenance of WSP's Attachments, including but not limited to power supplies, antennas, cabinets and wireless equipment.

11.11 Manhole and Conduit Break-Outs:

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

11.12 Completion of WSP Construction:

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

12.0 Use and Routine Maintenance of WSP's Facilities

12.1 Use of WSP's Facilities:

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

12.2 Routine Maintenance of WSP's Facilities:

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

12.3 WSP Responsible for Maintenance of WSP's Facilities:

12.3.1 WSP shall maintain its Facilities in accordance with the provisions of this Section (including but not limited to all requirements set forth in this Appendix) and all Licenses issued hereunder. WSP shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the maintenance of WSP's Facilities and for directing the activities of all persons acting on WSP's behalf while they are physically present on AT&T-22STATE's Poles, within AT&T-22STATE's Conduit System or in the immediate vicinity of such Poles or Conduit System.

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

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

12.5 Information Concerning the Maintenance of WSP's Facilities:

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

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

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

13.0 Modification and Replacement of WSP's Facilities

13.1 Notification of Planned Modification or Replacement of Facilities:

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

13.2 New or Amended License Required:

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

13.2.1.1 Requires that WSP use additional space on AT&T-22STATE's Poles or in its Conduits or Ducts (including but not limited to any additional Ducts, Inner-Ducts, or substantial space in any Handhole or Manhole) on either a temporary or permanent basis; or

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

14.0 Rearrangement of Facilities

14.1 Make-Ready Work:

14.1.1 If it is determined that Make-Ready Work will be necessary to accommodate Attaching Party's Facilities, Attaching Party shall have forty-five (45) calendar days (the "acceptance period") to either:

14.1.1.1 submit payment for the estimate authorizing AT&T-22STATE or its contractor to complete the Make-Ready Work; or

14.1.1.2 advise AT&T-22STATE of its willingness to perform the proposed Make-Ready Work itself if permissible in the application area.

14.1.2 Make-Ready Work performed by Attaching Party, or by an Authorized Contractor selected by Attaching Party, shall be performed in accordance with AT&T-22STATE's specifications and in accordance with the same standards and practices which would be followed if such work were being performed by AT&T-22STATE or AT&T-22STATE's contractors. Neither Attaching Party nor Authorized Contractors selected by Attaching Party shall conduct such work in any manner which degrades the integrity of AT&T-22STATE's structures or interferes with any existing use of AT&T-22STATE's Facilities or the Facilities of any other user.

14.1.3 AT&T-22STATE shall determine, in the exercise of sound engineering judgment, whether or not Make-Ready Work is necessary or possible. In determining whether Make-Ready Work is necessary or what Make-Ready Work is necessary, AT&T-22STATE shall endeavor to minimize its Costs to WSP. If it is determined that such Make-Ready Work is required, AT&T-22STATE shall provide WSP with the estimated Costs for Make-Ready Work and a Make Ready-Work due date.

14.1.4 WSP shall be solely responsible for negotiating with persons or entities other than AT&T-22STATE for the rearrangement of such persons' or entities' Facilities or structures and, except where such rearrangement is for the benefit of AT&T-22STATE and/or other WSPs as well as WSP, shall be solely

responsible for paying all charges attributable to the rearrangement of such Facilities; provided, however, that if Facilities rearrangements require new Licenses from AT&T-22STATE, AT&T-22STATE shall issue such Licenses in conjunction with the issuance of the applied-for License to WSP.

14.2 Rearrangement of WSP's Facilities at AT&T-22STATE's Request:

- 14.2.1 WSP acknowledges that, from time to time, it may be necessary or desirable for AT&T-22STATE to change out Poles, relocate, reconstruct, or modify portions of its Conduit System or rearrange Facilities contained therein or connected thereto and that such changes may be necessitated by AT&T-22STATE's business needs or authorized Application of another entity seeking access to AT&T-22STATE's Poles or Conduit Systems. WSP agrees that WSP will, upon AT&T-22STATE's request, and at AT&T-22STATE's expense, but at no Cost to WSP, participate with AT&T-22STATE (and other WSPs) in the relocation, reconstruction, or modification of AT&T-22STATE's Conduit System or Facilities rearrangement. WSP acknowledges that, from time to time, it may be necessary or desirable for AT&T-22STATE to change out Poles, relocate, reconstruct, or modify portions of its Conduit System or rearrange Facilities contained therein or connected thereto as a result of an order by a municipality or other governmental authority. WSP shall, upon AT&T-22STATE's request, participate with AT&T-22STATE (and other WSPs) in the relocation, reconstruction, or modification of AT&T-22STATE's Conduit System or Facilities rearrangement and pay its proportionate share of any Costs of such relocation, reconstruction, or modification that are not reimbursed by such municipality or governmental authority.
- 14.2.2 WSP shall make all rearrangements of its Facilities within such period of time as is jointly deemed reasonable by the Parties based on the amount of rearrangements necessary and a desire to minimize chances for service interruption or Facility-based service denial to a WSP End User.
- 14.2.3 If WSP fails to make the required rearrangements within the time prescribed or within such extended periods of time as may be granted by AT&T-22STATE in writing, AT&T-22STATE may perform such rearrangements with written Notice to WSP, and WSP shall reimburse AT&T-22STATE for actual costs and expenses incurred by AT&T-22STATE in connection with the rearrangement of WSP's Facilities; provided, however, that nothing contained in this Section or any License issued hereunder shall be construed as requiring WSP to bear any expenses which, under the Act or other applicable federal or state laws or regulations, are to be allocated to persons or entities other than WSP; and provided further, however, that WSP shall have no responsibility for rearrangement costs and expenses relating to rearrangements performed for the purpose of meeting AT&T-22STATE's business needs.

15.0 Emergency Repairs and Pole Replacements

15.1 Responsibility for Emergency Repairs; Access to Maintenance Duct:

- 15.1.1 In general, each Party shall be responsible for making emergency repairs to its own Facilities and for formulating appropriate plans and practices enabling such Party to make such repairs.
- 15.1.2 Nothing contained in this Appendix shall be construed as requiring either Party to perform any repair or service restoration work of any kind with respect to the other Party's Facilities or the Facilities of joint users.
- 15.1.3 Maintenance Ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with Facilities in the Conduit System in which the maintenance Duct is located; provided, however, that an entity using the maintenance Duct for emergency repair activities will notify AT&T-22STATE within twelve (12) hours of the current Business Day (or first Business Day following a non-Business Day) that such entity is entering the AT&T-22STATE Conduit System and using the maintenance Duct for emergency restoral purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance Ducts will be used to restore the highest priority services, first. Existing spare Ducts may be used for restoration purposes providing the spare Ducts are restored after restoration work is complete. Any spare Ducts not returned will be included to be assigned to the user of the Duct and an Occupancy License issued.
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15.1.3.1 The Attaching Party shall either vacate the maintenance Duct within thirty (30) calendar days or, with AT&T-22STATE's consent, rearrange its Facilities to ensure that at least one full-sized replacement maintenance Duct (or, if the designated maintenance Duct was an Inner-Duct, a suitable replacement Inner-Duct) is available for use by all occupants in the Conduit System within thirty (30) calendar days after such Attaching Party occupies the maintenance Ducts. If Attaching Party fails to vacate the maintenance Duct as described above, AT&T-22STATE may install a maintenance Conduit at the Attaching Party's expense.

15.2 Designation of Emergency Repair Coordinators and Other Information:

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

15.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations:

15.3.1 When notice and coordination are practicable, AT&T-22STATE, Attaching Party, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties present in accordance with the following principles.

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

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

15.3.4 AT&T-22STATE shall determine the order of precedence of work operations and assignment of Duct space in the maintenance Duct (and other unoccupied Ducts) only if the affected parties present are unable to reach consensus provided, however, that these decisions shall be made by AT&T-22STATE on a nondiscriminatory basis in accordance with the principles set forth in this Section.

15.4 Emergency Pole Replacements:

15.4.1 When emergency Pole replacements are required, AT&T-22STATE shall promptly make a good faith effort to contact Attaching Party to notify Attaching Party of the emergency and to determine whether Attaching Party will respond to the emergency in a timely manner.

15.4.2 If notified by AT&T-22STATE that an emergency exists which will require the replacement of a Pole, Attaching Party shall transfer its Facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to an AT&T-22STATE replacement Pole, the transfer shall be in accordance with AT&T-22STATE's placement instructions.

15.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise AT&T-22STATE and thereby authorize AT&T-22STATE (or any other user sharing the Pole with AT&T-22STATE) to perform such emergency-necessitated transfers (and associated Facilities rearrangements) on Attaching Party's behalf at the Attaching Party's expense.

15.5 Expenses Associated with Emergency Repairs:

15.5.1 Each Party shall bear all reasonable expenses arising out of or in connection with emergency repairs of

its own Facilities and transfers or rearrangements of such Facilities associated with emergency Pole replacements made in accordance with the provisions of this article.

- 15.5.2 Each Party shall be solely responsible for paying all persons and entities that provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such Party's Facilities.
- 15.5.3 Attaching Party shall reimburse AT&T-22STATE for the Costs incurred by AT&T-22STATE for work performed by AT&T-22STATE on Attaching Party's behalf in accordance with the provisions of this article.

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

- 16.1 AT&T-22STATE may monitor, at WSP's expense, the entrance and exit of WSP's Facilities into AT&T-22STATE's Manholes and the placement of WSP's Facilities in AT&T-22STATE's Manholes.
 - 16.2 Post-Construction Inspections:
 - 16.2.1 AT&T-22STATE will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's Attachment of Facilities to AT&T-22STATE's structures for the purpose of determining the conformance of the Attachments to the Occupancy License. AT&T-22STATE will provide the Attaching Party advance written Notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany AT&T-22STATE on the post-construction inspection.
 - 16.3 Periodic or Spot Inspections:
 - 16.3.1 AT&T-22STATE shall have the right, but not the obligation, to make Periodic or Spot Inspections of all Facilities attached to AT&T-22STATE's structure. Periodic Inspections will not be made more often than once every two (2) years, unless in AT&T-22STATE's judgment, such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Appendix.
 - 16.3.2 AT&T-22STATE will give WSP advance written Notice of such inspections, and WSP shall have the right to have a representative attend such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written Notice has been forwarded to WSP.
 - 16.3.3 Such inspections shall be conducted at AT&T-22STATE's expense; provided, however, that WSP shall bear the Costs of inspections as delineated in Sections 16.1 above and 16.2.1 above.
 - 16.3.4 If Attaching Party's Facilities are in compliance with this Appendix, there will be no charges incurred by the Attaching Party for the Periodic or Spot Inspection. If Attaching Party's Facilities are not in compliance with this Appendix, AT&T-22STATE may charge Attaching Party for the inspection. The Costs of Periodic Inspections will be paid by those Attaching Parties with 2% or greater of their Attachments in violation. The amount paid by the Attaching Party shall be the percentage that their violations bear to the total violations of all Attaching Parties found during the inspection.
 - 16.3.5 If the inspection reflects that Attaching Party's Facilities are not in compliance with the terms of this Appendix, Attaching Party shall bring its Facilities into compliance within thirty (30) calendar days after being notified of such noncompliance. If any make ready or modification work to AT&T-22STATE's Structures is required to bring Attaching Party's Facilities into compliance, the Attaching Party shall provide Notice to AT&T-22STATE and the Make Ready Work or modification will be treated in the same fashion as Make Ready Work or modifications for a new request for Attachment. If the violation creates a hazardous condition, Facilities must be brought into compliance upon notification.
 - 16.3.6 Inventory Survey. Not more than once every five (5) calendar years, AT&T shall have the right, upon 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 AT&T Conduit through a physical survey conducted by AT&T or its agents. Attaching Party shall have the right to participate in the survey. The costs incurred by AT&T to conduct the survey shall be reimbursed to AT&T by Attaching Party, upon demand by AT&T. If the
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Attachments of other users are surveyed, each such Attaching Party shall reimburse a proportionate share of the Costs to AT&T.

- 16.4 Neither the act of inspection by AT&T-22STATE of WSP's Facilities nor any failure to inspect such Facilities shall operate to impose on AT&T-22STATE any liability of any kind whatsoever or to relieve WSP of any responsibility, obligations or liability under this Section or otherwise existing.
- 16.5 Notice of Noncompliance:
- 16.5.1 If, at any time, AT&T-22STATE determines that Attaching Party's Facilities or any part thereof have not been placed or maintained or are not being used in accordance with the requirements of this Appendix, AT&T-22STATE may send written Notice to Attaching Party specifying the alleged noncompliance. Attaching Party agrees to acknowledge receipt of the Notice as soon as practicable. If Attaching Party does not dispute AT&T-22STATE's assertion that such Facilities are not in compliance, Attaching Party agrees to provide AT&T-22STATE with a schedule for bringing such Facilities into compliance, to bring the Facilities into compliance within a reasonable time, and to notify AT&T-22STATE in writing when the Facilities have been brought into compliance.
- 16.6 Disputes over Alleged Noncompliance:
- 16.6.1 If Attaching Party disputes AT&T-22STATE's assertion that Attaching Party's Facilities are not in compliance, Attaching Party shall notify AT&T-22STATE in writing of the basis for Attaching Party's assertion that its Facilities are in compliance.
- 16.7 Failure to Bring Facilities into Compliance:
- 16.7.1 If Attaching Party has not brought the Facilities into compliance within a reasonable time or provided AT&T-22STATE with proof sufficient to persuade AT&T-22STATE that AT&T-22STATE erred in asserting that the Facilities were not in compliance, and if AT&T-22STATE determines in good faith that the alleged noncompliance causes or is likely to cause material damage to AT&T-22STATE's Facilities or those of other users, AT&T-22STATE may, at its option and Attaching Party's expense, take such non-service affecting steps as may be required to bring Attaching Party's Facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this Appendix.
- 16.8 Correction of Conditions by AT&T-22STATE:
- 16.8.1 If AT&T-22STATE elects to bring Attaching Party's Facilities into compliance, the provisions of this Section shall apply.
- 16.8.2 AT&T-22STATE will, whenever practicable, notify WSP in writing before performing such work. The written Notice shall describe the nature of the work to be performed and AT&T-22STATE's schedule for performing the work.
- 16.8.3 If Attaching Party's Facilities have become detached or partially detached from supporting racks or wall supports located within a AT&T-22STATE Manhole, AT&T-22STATE may, at Attaching Party's expense, reattach them but shall not be obligated to do so. If AT&T-22STATE does not reattach Attaching Party's Facilities, AT&T-22STATE shall endeavor to arrange with Attaching Party for the reattachment of any Facilities affected.
- 16.8.4 AT&T-22STATE shall, as soon as practicable after performing the work, advise Attaching Party in writing of the work performed or action taken. Upon receiving such Notice, Attaching Party shall inspect the Facilities and take such steps as Attaching Party may deem necessary to insure that the Facilities meet Attaching Party's performance requirements.
- 16.8.5 Attaching Party to Bear Expenses:
- 16.8.5.1 Attaching Party shall bear all expenses arising out of or in connection with any work performed to bring Attaching Party's Facilities into compliance with this Section; provided, however that nothing contained in this Section or any License issued hereunder shall be construed as
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requiring Attaching Party to bear any expenses which, under applicable federal or state laws or regulations, must be borne by persons or entities other than Attaching Party.

17.0 Unauthorized Occupancy or Utilization of AT&T-22STATE's Facilities

17.1 Tagging of Facilities and Unauthorized Attachments:

17.1.1 Facilities to Be Marked:

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

17.1.2 Removal of Untagged Facilities:

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

17.2 Notice to Attaching Party:

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

17.3 Approval of Request and Retroactive Charges:

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

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

17.4 Removal of Unauthorized Attachments:

17.4.1 If Attaching Party does not obtain a new or amended Occupancy License with respect to unauthorized Facilities within the specified period of time, AT&T-22STATE shall by written Notice advise Attaching

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

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

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

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

17.6 Prompt Payment of Applicable Fees and Charges:

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

17.7 No Implied Waiver or Ratification of Unauthorized Use:

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

18.0 Removal of WSP's Facilities

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

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

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

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

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

18.3 Removal Following Termination of Occupancy License:

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

18.4 Removal Following Replacement of Facilities:

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

18.5 Removal to Avoid Forfeiture:

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

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

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

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

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

19.0 **Rates, Fees, Charges, And Billing**

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

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

19.2 Changes to Rates, Charges and Fees:

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

19.3 Notice of Rate and Computation of Charges:

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

19.4 Rate "True-Up":

- 19.4.1 The Parties agree that the fees reflected as interim herein shall be "trued-up" (up or down) based on final fees either determined by further agreement or by an effective order, in a proceeding involving AT&T-22STATE before the Commission, in the state which WSP has either attached to or occupied AT&T-22STATE structures (ROW, Conduits, Ducts, and/or Poles).
- 19.4.2 Under the "True-Up" process, the interim fees for each structure shall be multiplied by the volume of that structure either attached to or occupied by WSP to arrive at the total interim amount paid ("Total Interim Price"). The final fees for that structure shall be multiplied by the volume of that structure either attached to or occupied by WSP to arrive at the total final amount due ("Total Final Price"). The Total Interim Price shall be compared with the Total Final Price. If the Total Final Price is more than the Total Interim Price, WSP shall pay the difference to AT&T-22STATE. If the Total Final Price is less than the Total Interim Price, AT&T-22STATE shall pay the difference to WSP.
- 19.4.3 Each Party shall keep its own records upon which a "True-Up" can be based and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such "True-Up," the Parties agree to follow the Dispute Resolution Process in the Two-Way CMRS Interconnection Agreement (Wireless) - General Terms & Conditions.

20.0 Advance Payment

20.1 Attachment and Occupancy Fees:

- 20.2 Fees for Pole Attachment and Conduit Occupancy shall be based on the Facilities for which Licenses have been issued as of the date of billing by AT&T-22STATE and shall be computed as set forth herein.
- 20.2.1 Charges associated with newly Licensed Attachments or Occupancies and other Attachments or Occupancies of less than the entire annual billing period shall be prorated.
- 20.2.2 Charges shall be prorated retroactively in the event of the removal of WSP's Facilities.
- 20.2.3 The amount of any advance payment required shall be due within sixty (60) calendar days after receipt of an invoice from AT&T-22STATE.

21.0 Indemnification

- 21.1 In addition to the Indemnification clauses in the Two-Way CMRS Interconnection Agreement (Wireless) - General Terms & Conditions, the following shall apply to this Appendix:
- 21.1.1 AT&T-22STATE shall exercise precaution to avoid damaging the communications Facilities of WSP and shall make an immediate report to WSP of the occurrence of any such damage caused by its employees, agents or contractors. AT&T-22STATE agrees to reimburse WSP for all reasonable Costs incurred by WSP for the physical repair of such Facilities damaged by the negligence of AT&T-22STATE, its employees, agents, contractors, subcontractors or invitees. However, AT&T-22STATE shall not be liable to WSP for any interruption of WSP's service or for interference with the operation of WSP's Communications Facilities, or for any special, indirect, or consequential damages arising in any manner, including AT&T-22STATE's negligence, out of the use of Pole(s), Anchor(s), or Conduit Systems or AT&T-22STATE's actions or omissions in regard thereto and WSP shall indemnify and save harmless AT&T-22STATE from and against any and all claims, demands, causes of action, costs and reasonable attorneys' fees with respect to such special, indirect or consequential damages.
- 21.1.2 WSP shall exercise precaution to avoid damaging the Facilities of AT&T-22STATE and of others attached to Pole(s), Anchor(s), or occupying a Conduit System and shall make an immediate report to the owner of the occurrence of any such damage caused by WSP's employees, agents or contractors. WSP agrees to reimburse AT&T-22STATE for all reasonable Costs incurred by AT&T-22STATE for the physical repair of such Facilities damaged by the negligence of WSP.
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- 21.1.3 WSP shall indemnify, protect and save harmless AT&T-22STATE, its directors, officers, employees and agents, AT&T-22STATE's other WSPs, and Joint User(s) from and against any and all claims, demands, causes of action, damages and Costs, including reasonable attorney's fees through appeals incurred by AT&T-22STATE, AT&T-22STATE's other WSPs and Joint User(s) as a result of acts by the WSP, its employees, agents or contractors, including but not limited to the Costs of relocating Pole(s), Anchor(s), Guy(s), or Conduit System resulting from a loss of ROW or property owner consents and/or the Costs of defending those rights and/or consents.
- 21.1.4 The WSP shall indemnify, protect and save harmless AT&T-22STATE, its directors, officers, employees and agents, AT&T-22STATE's other WSPs, and Joint User(s) from and against any and all claims, demands, causes of actions and Costs, including reasonable attorney's fees, through appeals for damages to property and injury or death to persons, including but not limited to payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, caused by, arising from, incident to, connected with or growing out of the erection, rearrangement, maintenance, presence, use or removal of WSP's Facilities, or by their proximity to the Facilities of all parties attached to a Pole, Anchor and/or Guy, or placed in a Conduit System, or by any act or omission of the WSP's employees, agents or contractors in the vicinity of AT&T-22STATE's Pole(s), Anchor(s), Guy(s), or Conduit System.
- 21.1.5 The WSP shall indemnify, protect and save harmless AT&T-22STATE, its directors, officers, employees, and agents, AT&T-22STATE's other WSPs, and Joint User(s) from any and all claims, demands, causes of action and Costs, including attorneys' fees through appeals, which arise directly or indirectly from the construction and operation of WSP's Facilities, including but not limited to taxes, special charges by others, claims and demands for damages or loss from infringement of copyrights, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from and against all claims, demands and Costs, including attorney's fees through appeals for infringement of patents with respect to the construction, maintenance, use and operation of WSP's Facilities in combination with Pole(s), Anchor(s), Conduit Systems or otherwise.
- 21.1.6 WSP shall promptly advise AT&T-22STATE of all claims relating to damage of property or injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, by the erection, maintenance, repair, replacement, presence, use or removal of the WSP's Facilities. WSP shall promptly notify AT&T-22STATE in writing of any suits or causes of action which may involve AT&T-22STATE and, upon the request of AT&T-22STATE copies of all relevant accident reports and statements made to WSP's insurer by WSP or others shall be furnished promptly to AT&T-22STATE.

22.0 Insurance

- 22.1 At all times during the term of this Agreement, WSP shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law:
- 22.1.1 With respect to WSP's performance under this Agreement, and in addition to WSP's obligation to indemnify, WSP shall at its sole cost and expense:
- 22.1.1.1 maintain the insurance coverage and limits required by this Section 22.0 and any additional insurance and/or bonds required by law:
- 22.1.1.1.1 at all times during the term of this Agreement and until completion of all work associated with this Agreement is completed, whichever is later;
- 22.1.1.1.2 with respect to any coverage maintained in a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all work associated with this Agreement, whichever is later. If a "claims-made" policy is maintained, the retroactive date must precede the commencement of work under this Agreement;
- 22.1.1.2 require each subcontractor who may perform work under this Agreement or enter upon the work site to maintain coverage, requirements, and limits at least as broad as those listed in

this Section 22.0 from the time when the subcontractor begins work, throughout the term of the subcontractor's work; and with respect to any coverage maintained on a "claims-made" policy, for two (2) years thereafter:

- 22.1.1.3 procure the required insurance from an insurance company eligible to do business in the state or states where work will be performed and having and maintaining a Financial Strength Rating of "A-" or better and a Financial Size Category of "VII" or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, except that, in the case of Workers' Compensation insurance, WSP may procure insurance from the state fund of the state where work is to be performed; and
- 22.1.1.4 deliver to AT&T-22STATE certificates of insurance stating the types of insurance and policy limits. WSP shall provide or will endeavor to have the issuing insurance company provide at least thirty (30) days advance written notice of cancellation, non-renewal, or reduction in coverage, terms, or limits to AT&T-22STATE. WSP shall deliver such certificates:
 - 22.1.1.4.1 prior to execution of this Agreement and prior to commencement of any work;
 - 22.1.1.4.2 prior to execution of any insurance policy required in this Section 22.0; and
 - 22.1.1.4.3 for any coverage maintained on a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all work associated with this Agreement, whichever is later.

22.1.2 The Parties agree:

- 22.1.2.1 the failure of AT&T-22STATE to demand such certificate of insurance or failure of AT&T-22STATE to identify a deficiency will not be construed as a waiver of WSP's obligation to maintain the insurance required under this Agreement;
- 22.1.2.2 that the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect WSP, nor be deemed as a limitation on WSP's liability to AT&T-22STATE in this Agreement;
- 22.1.2.3 WSP may meet the required insurance coverages and limits with any combination of primary and Umbrella/Excess liability insurance; and
- 22.1.2.4 WSP is responsible for any deductible or self-insured retention.

22.2 The insurance coverage required by this Section 22.0 includes:

- 22.2.1 Workers' Compensation insurance with benefits afforded under the laws of any state in which the work is to be performed and Employers Liability insurance with limits of at least:
 - 22.2.1.1 \$500,000 for Bodily Injury – each accident; and
 - 22.2.1.2 \$500,000 for Bodily Injury by disease – policy limits; and
 - 22.2.1.3 \$500,000 for Bodily Injury by disease – each employee.
 - 22.2.1.4 To the fullest extent allowable by Law, the policy must include a waiver of subrogation in favor of AT&T-22STATE, its Affiliates, and their directors, officers and employees.
- 22.2.2 In the states where Workers' Compensation insurance is a monopolistic state-run system, WSP shall add Stop Gap Employers Liability with limits not less than \$500,000 each accident or disease.
- 22.2.3 Commercial General Liability insurance written on Insurance Service Office (ISO) Form CG 00 01 12 04 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least:
 - 22.2.3.1 \$2,000,000 General Aggregate limit; and

22.2.3.2 \$1,000,000 each occurrence limit for all bodily injury or property damage incurred in any one (1) occurrence; and

22.2.3.3 \$1,000,000 each occurrence limit for Personal Injury.

22.2.4 The Commercial General Liability insurance policy must include each Party, its Affiliates, and their directors, officers, and employees as Additional Insureds. Each Party shall provide a copy of the Additional Insured endorsement to the other Party. The Additional Insured endorsement may either be specific to each Party or may be "blanket" or "automatic" addressing any person or entity as required by contract. A copy of the Additional Insured endorsement must be provided within sixty (60) days of execution of this Agreement and within sixty (60) days of each Commercial General Liability policy renewal; include a waiver of subrogation in favor of each Party, its Affiliates, and their directors, officers and employees; and be primary and non-contributory with respect to any insurance or self-insurance that is maintained by each Party.

22.3 This Section 22.0 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a referenced instrument.
