

**CALIFORNIA PUBLIC UTILITIES  
COMMISSION**  
Advice Letter Filing Summary Sheet  
(PAL)

(Date Filed / Received Stamp by CPUC Industry Division)

Date AL served on parties: October 24, 2012

<b>Company Name:</b> AT&T California	<b>CPUC Utility Number</b> <u>U -1001-C</u>
<b>Address:</b> 525 Market Street, #1944	<input type="checkbox"/> GRC-LEC <input checked="" type="checkbox"/> URF-Carrier <input type="checkbox"/> Other
<b>City, State, ZIP:</b> San Francisco, CA 94105	<input type="checkbox"/> Commission Resolution Requested <input type="checkbox"/> Carrier of Last Resort (See D.96-10-066)

<b>Filing #:</b> 41330	<b>Requested Effective Date:</b> October 25, 2012	<b>AL Tier</b> I <input checked="" type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/>
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	Name:	Email Address:	Phone No.:	Fax No.:
Filer	Ross Johnson	<u>regtss@att.com</u>	(415) 778-1299	(415) 543-3766
Certif.		<u>regtss@att.com</u>	(415) 778-1299	<b>No. Tariff Sheets:</b> 0

(Name, email address & Phone and FAX numbers are Required for "Filer")

**Tariff Schedules:** \_\_\_\_\_ **Keyword:** Other

For Contract Keyword, Type: Government  Other  Date Executed \_\_\_\_\_ Contract Total Rev (\$) \_\_\_\_\_

**Subject of filing:**  
(Service(s) included) Right of Way Agreements – 3<sup>rd</sup> Qtr. 2012

**Authorization for filing:**  
(Resolution #, Decision #, etc.) D.07-01-024, D.07-09-019

**Affected services:**  
(Other services affected, pending or replacement AL filings) \_\_\_\_\_

**Rate Element(s) affected and % change:**  
(Non-recurring and / or recurring) \_\_\_\_\_

Customer Notice Required (if so, please attach)

**Notes/Comments:**  
(Other information & reference to advice letter, etc.)

<p><b>File Protest and/or Correspondence to:</b> Director, Communications Division 505 Van Ness Ave., San Francisco, CA 94102 <b><u>and if you have email capability, ALSO email to:</u></b> <b>TD_PAL@cpuc.ca.gov</b> <b><u>Protest also must be served on utility:</u></b> (see utility advice letter for more information)</p>	<p><b>GRC-LEC</b> = Cost of Service LEC Carrier <b>URF-Carrier</b> = Uniform Regulatory Framework Carrier (see D.06-08-030/D.07-09-019) <b>OTHER</b> = Wireless (CMRS) Carrier</p>
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(FOR CPUC USE ONLY)

<p><input type="checkbox"/> Resolution Required <input type="checkbox"/> Executive Action Resolution Req'd. <input type="checkbox"/> TD Suspension on: ___ / ___ / ___ <input type="checkbox"/> Comm. Suspension on: ___ / ___ / ___</p> <p>Resolution No.: T - _____</p> <p><i>Rev. 09/24/07</i></p>	<p>Supv. / Analyst _____ / _____</p> <p>Due Date to Supv.: _____</p> <p>Analyst Completion Date: _____</p> <p>Supervisor Approval Date: _____</p> <p>AL / Tariff Effective Date: _____</p> <p>Notes: _____</p>
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October 24, 2012

U 1001 C  
Advice Letter No. 41330

Public Utilities Commission of the State of California

AT&T California, in accordance with Decision No. 98-10-058, Appendix A, Rule VI.C.1, hereby transmits the attached Right of Way (ROW) Agreement(s) that AT&T California finalized with telecommunications carriers and cable TV companies to provide access to AT&T California's support structures for the 3<sup>rd</sup> Quarter, 2012.

In compliance with General Order 96-B, we are serving a copy of this advice letter to interested parties who have requested it. This advice letter with attachments may be viewed on AT&T California's Web-Site at <https://ebiznet.att.com/calreg/>. If there are any questions regarding the distribution of this advice letter, call 415.778.1299.

Anyone may object to this advice letter, which was filed on October 24, 2012, by sending a written protest to: Telecommunications Advice Letter Coordinator, Communications Division, 505 Van Ness Avenue, 3rd Floor, San Francisco, CA 94102-3298. The protest must state specifically the grounds on which it is based. The protest must be received by the Telecommunications Advice Letter Coordinator no later than 20 days after the date that the advice letter was filed. On or before the day that the protest is sent to the Telecommunications Advice Letter Coordinator, the protestant must send a copy of the protest to Eric Batongbacal, 525 Market Street, #1944, San Francisco, CA 94105 (fax number 415.543.3766). If this advice letter was served via e-mail, the protest must be served to AT&T California via e-mail at [regtss@att.com](mailto:regtss@att.com). To obtain information about the Commission's procedures for advice letters and protests, go to the Commission's Internet site ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)) and look for document links to General Order 96-B.

This filing is effective October 25, 2012.

Yours truly,

AT&T California

A handwritten signature in black ink that reads "E. Batongbacal".

Executive Director

Attachments

AT&T California Advice Letter Service List

Via e-mail

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Commission-Maintained Service List for "Any advice letter not fitting within the preceding categories" found at:

<https://ia.cpuc.ca.gov/alsl/exportlist.aspx?listid=6>



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

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**STAND-ALONE 22-STATE STRUCTURE ACCESS AGREEMENT  
FOR POLES, CONDUITS, AND RIGHTS-OF-WAY**

This Agreement dated 8-13, 2012, is made by and between the "Parties", identified as the AT&T Inc. owned Incumbent Local Exchange Carrier Pacific Bell Telephone Company d/b/a AT&T California hereinafter referred to as defined below, (only to the extent that the agent for each such AT&T Inc.-owned ILEC executes this Agreement for such AT&T Inc. owned ILEC, and in the areas where, such AT&T Inc. owned ILEC provides Telephone Exchange Services as an ILEC in the State listed below) and **Race Telecommunications, Inc** ("CARRIER"), a **California** corporation, only to the extent, and in the areas where, Section 224 pole-attachment authority is established through actual or, in fact, planned provision of telecommunications service by as a telecommunications carrier, as defined in the 1934 Communications Act as amended by the 1996 Telecommunications Act, hereinafter referred to as "Attaching Party".

**Special Provisions**

- A. This Agreement shall apply only to those certain structures (as defined below) located within the State of California.

**1. INTRODUCTION**

- 1.1 This Agreement sets forth the terms and conditions for Rights-of-Way (ROW), Conduits and Poles provided by the applicable AT&T Inc. (AT&T) owned Incumbent Local Exchange Carrier (ILEC) and Attaching Party.
- 1.2 "AT&T Inc." means the holding company which directly or indirectly owns the following ILECs: Pacific Bell Telephone Company d/b/a AT&T California. As used in this Agreement, AT&T refers to the AT&T Inc. ILECs only. AT&T Inc. is not itself a party to this Agreement.
- 1.3 **AT&T-CALIFORNIA**- As used herein, **AT&T-CALIFORNIA** means Pacific Bell Telephone Company d/b/a **AT&T CALIFORNIA** and (and previously referred to as "SBC-California"), the applicable AT&T-owned ILEC doing business in California.

**2. DEFINITIONS**

- 2.1 Definitions in general. As used in this Agreement, the terms defined in this article shall have the meanings set forth below in Sections 2.1 to 2.17 except as the context otherwise requires.
- 2.2 Authorized Contractor. As used in this Agreement the term "Authorized Contractor" is used when referring to any contractor which is included on a list of contractors mutually approved by Attaching Party and **AT&T-CALIFORNIA** and who subject to Attaching Party's direction and control, and subject to the requirements and policies in each state, perform facilities modification or make-ready work which would ordinarily be performed by **AT&T-CALIFORNIA** or persons acting on **AT&T-CALIFORNIA**'s behalf as more specifically detailed in Section 21.2.
- 2.3 Conduit. The term "conduit" refers to tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. As used in this Agreement, the term "conduit" refers only to conduit structures (including ducts, manholes and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled

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environment vaults, or other AT&T-CALIFORNIA structures (such as huts and cabinets) which branch off from or are connected to AT&T-CALIFORNIA's conduit.

- 2.4 Conduit system. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Agreement, the term "conduit system" does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other AT&T-CALIFORNIA structures (such as huts and cabinets) which branch off from or are connected to AT&T-CALIFORNIA's conduit.
- 2.5 Duct. The term "duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Agreement, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels, but does not include cables and other telecommunications equipment located within such ducts.
- 2.6 Handhole. The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Agreement, the term "handhole" refers only to handholes, which are part of AT&T-CALIFORNIA's conduit system, and does not refer to handholes, which provide access to buried cables not housed within AT&T-CALIFORNIA ducts or conduits. As used in this Agreement, the term "handhole" refers only to handhole structures owned or controlled by AT&T-CALIFORNIA and does not include cables and other telecommunications equipment located within handhole structures.
- 2.7 Occupancy Permit. The term "occupancy permit" refers to a written instrument confirming that AT&T-CALIFORNIA has granted the structure access request of Attaching Party or a Third Party for access to pole, duct, conduit, or rights-of-way space.
- 2.8 Maintenance Duct. The term "maintenance duct" generally refers to a full-sized duct (typically three inches in diameter or larger) for use, on a short-term basis, for maintenance, repair, or emergency restoration activities. The term "maintenance duct" does not include ducts and conduits extending from an AT&T-CALIFORNIA manhole to customer premises. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.
- 2.9 Make-ready work. The term "make-ready work" refers to all work performed or to be performed to prepare AT&T-CALIFORNIA's poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Attaching Party's facilities.
- 2.10 Manhole. The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in ducts or conduits, which are parts of AT&T-CALIFORNIA's conduit system. As used in this Agreement, the term "manhole" does not include cables and other telecommunications equipment located within manhole structures.
- 2.11 Other User. The term "Other User" refers to entities, other than the Attaching Party, with facilities on an AT&T-CALIFORNIA pole, duct, conduit or rights-of-way to which the Attaching Party has obtained access. Other Users may include AT&T-CALIFORNIA, other attaching Parties, municipalities or other governmental entities, and electric utilities (which may own interests in AT&T-CALIFORNIA's poles, ducts, conduits or rights-of-ways).
- 2.12 Overlashing. The term "Overlashing" refers to the practice of placing an additional cable by lashing such cable with spinning wire over an existing cable and strand.
- 2.13 Periodic Inspections. The term "periodic inspections" refers to inspections that are planned and scheduled by AT&T-CALIFORNIA, for the purpose of inspecting the facilities of CARRIER's attached to AT&T-CALIFORNIA structure, (poles, conduits, and rights-of-way).
- 2.14 Pole. The term "pole" refers to poles (and associated anchors) which are owned or controlled by AT&T-CALIFORNIA and does not include cables and other telecommunications equipment attached to pole structures.

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- 2.15 Rights-of-way. The term "rights-of-way" refers to AT&T-CALIFORNIA owned or controlled legal rights to pass over or through property of another Party and used by AT&T-CALIFORNIA for its telecommunications distribution system. For purposes of this Agreement, "rights-of-way" includes property owned by AT&T-CALIFORNIA and used by AT&T-CALIFORNIA for its telecommunications distribution facilities. Rights-of-way do not include:
- 2.15.1 cables and other telecommunications equipment buried or located on such rights-of-way;
  - 2.15.2 public rights-of-way (which are owned by and subject to the control of governmental entities); or
  - 2.15.3 any space which is owned and controlled by a Third Party property owner and occupied by AT&T-CALIFORNIA with permission from such owner rather than as a matter of legal right.
- 2.16 Spot Inspections. The term "spot inspections" refers to spontaneous inspections done by AT&T-CALIFORNIA, which may be initiated, at AT&T-CALIFORNIA's discretion for the purpose of ensuring safety and compliance with AT&T-CALIFORNIA standards.
- 2.17 Structure. The term "Structure" refers collectively to poles, ducts, conduits and rights-of-way.

## 3. SCOPE OF AGREEMENT

- 3.1 This Agreement establishes the rates, terms, conditions, and procedures by which AT&T-CALIFORNIA shall provide non-discriminatory access to AT&T-CALIFORNIA's Structure. Separate tariffs, appendix, or agreements shall govern Attaching Party's access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Agreement:
- 3.1.1 AT&T-CALIFORNIA's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from AT&T-CALIFORNIA's central offices;
  - 3.1.2 controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
  - 3.1.3 ducts and conduits located within buildings owned by AT&T-CALIFORNIA; and
  - 3.1.4 ducts, conduits, equipment rooms, and similar spaces located in space leased by AT&T-CALIFORNIA from Third Party property owners for purposes other than to house cables and other equipment in active service as part of AT&T-CALIFORNIA's network distribution operations.
- 3.2 No Transfer of Property Rights to Attaching Party. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall create or vest (or be construed as creating or vesting) in either Party any right, title, or interest in or to any real or personal property owned by the other.
- 3.3 No Effect on AT&T-CALIFORNIA's Right to Abandon, Convey or Transfer Structure. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall in any way affect AT&T-CALIFORNIA's right to abandon, convey, or transfer to any other person or entity AT&T-CALIFORNIA's interest in any of AT&T-CALIFORNIA's Structure. AT&T-CALIFORNIA shall give Attaching Party at least 60 days written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or rights-of-way is to be conveyed or transferred.

## 4. EFFECTIVE DATE, TERM AND ELECTIVE TERMINATION

- 4.1 Effective Date. This Agreement shall be effective as of the latest date of execution on the signature page(s) of this Agreement.
- 4.2 Initial Term. Unless sooner terminated as herein provided, the initial term of this Agreement shall run from the effective date until the end of the calendar year, which includes the effective date.



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- 4.3 Automatic Renewal. Unless sooner terminated as herein provided, this Agreement shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year which includes the effective date.
- 4.4 Elective Termination. Either Party may terminate this Agreement by giving the other Party at least six months prior written notice as provided in this section. The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current term of this Agreement or six months after the date the notice is given.
- 4.5 Elective Termination by AT&T-CALIFORNIA. Attaching Party shall, within 60 days after the effective date of the elective termination by AT&T-CALIFORNIA either initiate negotiations for continued access to AT&T-CALIFORNIA's poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Section 28 of this Agreement.
- 4.6 Effect of Elective Termination. Elective termination of this Agreement by Attaching Party, as permitted under Section 4 of this Agreement, shall not affect Attaching Party's liabilities and obligations incurred under this Agreement prior to the effective date of termination and shall not entitle Attaching Party to the refund of any advance payment made to AT&T-CALIFORNIA under this Agreement. Elective termination of this Agreement by AT&T-CALIFORNIA shall not affect AT&T-CALIFORNIA's obligations to afford access to AT&T-CALIFORNIA's poles, ducts, conduits, and rights-of-way owned or controlled by AT&T-CALIFORNIA as required by the Pole Attachment Act, the Telecommunications Act of 1996, and other applicable laws, regulations, and commission orders.

## 5. GENERAL PROVISIONS

- 5.1 Entire Agreement. This Agreement and the Guidelines for Access to Structure, attached hereto and incorporated herein by reference, set forth the entire understanding and agreement of the Parties. The attached Guidelines are designated AT&T, but for purposes of this Agreement, they are applicable for AT&T-CALIFORNIA. In the event of a conflict between this Agreement and the Guidelines, the terms of this Agreement shall control.
- 5.2 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Attaching Party and AT&T-CALIFORNIA relating to the placement and maintenance of Attaching Party's facilities on and within AT&T-CALIFORNIA's poles, ducts, and conduits within this State.
- 5.3 Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both Parties.
- 5.4 Survival of Obligations. Any liabilities or obligations of either Party for acts or omissions prior to the termination of this Agreement, any obligations of either Party under provisions of this Agreement relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, will survive the termination of this Agreement.
- 5.5 Effect on Licenses or Occupancy Permits Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy permits granted to Attaching Party shall, on the effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.
- 5.6 Force Majeure. Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform; provided, however, that Force Majeure will not include acts of any governmental authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs, the Party whose performance fails or is delayed

# Race Telecommunications, Inc.

because of such Force Majeure condition will give prompt notice to the other Party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

- 5.7 Severability. If any article, section, subsection, or other provision or portion of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement as to either Party, the invalidity of such provision shall not render this entire Agreement unenforceable and this Agreement shall be administered as if it did not contain the invalid provision.
- 5.8 Choice of Law. Except to the extent that federal law controls any aspect of this Agreement, the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of this State, applied without regard to the provisions of this State's laws relating to conflicts-of-laws.
- 5.9 Changes in the Law. The Parties agree to negotiate in good faith changes to this Agreement to conform to changes applicable law pertaining to access to poles, ducts, conduits and rights-of-way, including the Pole Attachment Act.
- 5.10 Applicable Laws. The Parties shall at all times observe and comply with, and the provisions of this Agreement are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the Parties.
- 5.11 Dispute Resolution

Unless otherwise provided elsewhere in this Agreement, Attaching Party shall pay all rates and charges, as specified in the Agreement, within thirty (30) days from the dates of billing thereof. If Attaching Party disputes any amount invoiced by AT&T-CALIFORNIA, Attaching Party shall make payment of the invoice in full and shall notify AT&T-CALIFORNIA in writing of the disputed amount. Attaching Party may dispute any amount within ninety (90) days after the date that payment has been made. Attaching Party shall include any documentation supporting its position in such written notification. The Parties shall work together to resolve the dispute in an expeditious manner. In the event the dispute is resolved in the favor of the Attaching Party, or AT&T-CALIFORNIA then the other Party shall include interest calculated at the rate set forth in the Rates, Fees, Charges and Billing section of this Agreement.

## 6. DISCLAIMER OF WARRANTIES

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

## 7. INTENTIONALLY LEFT BLANK

## 8. INDEMNIFICATION

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

## Race Telecommunications, Inc.

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

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person acting on the Indemnifying Party's behalf, while present on, within, or in the vicinity of any AT&T-CALIFORNIA pole, duct, conduit, or rights-of-way.

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

## 9. LIABILITIES AND LIMITATIONS OF LIABILITY

- 9.1 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2 AT&T-CALIFORNIA Not Liable to Attaching Party for Acts of Third Parties or Acts of God. By affording Attaching Party access to AT&T-CALIFORNIA Structure AT&T-CALIFORNIA does not warrant, guarantee, or insure the uninterrupted use of such facilities by Attaching Party. Except as specifically provided in Section 9.4 of this Agreement, Attaching Party assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to Attaching Party's facilities attached to AT&T-CALIFORNIA's poles or placed in AT&T-CALIFORNIA's Structure and AT&T-CALIFORNIA shall not be liable to Attaching Party for any damages to Attaching Party's facilities other than as provided in Section 9.4. In no event shall AT&T-CALIFORNIA be liable to Attaching Party under this Agreement for any death of person or injury, loss, or damage resulting from the acts or omissions of (1) any Other User or any person acting on behalf of an Other User, (2) any governmental body or governmental employee, (3) any Third Party property owner or persons acting on behalf of such property owner, or (4) any permit, invitee, trespasser, or other person present at the site or in the vicinity of any AT&T-CALIFORNIA pole, duct, conduit, or rights-of-way in any capacity other than as a AT&T-CALIFORNIA employee or person acting on AT&T-CALIFORNIA's behalf. In no event shall AT&T-CALIFORNIA be liable to Attaching Party under this Agreement for injuries, losses, or damages resulting from acts of God (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on AT&T-CALIFORNIA's behalf, cable cuts by persons other than AT&T-CALIFORNIA's employees or persons acting on AT&T-CALIFORNIA's behalf, or other causes beyond AT&T-CALIFORNIA's control which occur at sites subject to this Agreement.
- 9.3 Damage to Facilities. Each Party shall exercise due care to avoid damaging the facilities of the other or of Other Users and hereby assumes all responsibility for any and all loss from damage caused by the Party and persons acting on the Party's behalf. A Party shall make an immediate report to the other of the occurrence of any damage and hereby agrees to reimburse the other Party, and/or Other Users for any property damaged caused by the Party or persons acting on the Party's behalf.
- 9.4 No Limitations of Liability in Contravention of Federal or State Law. Nothing contained in this article shall be construed as exempting either Party from any liability, or limiting such Party's liability, in contravention of federal law or in contravention of the laws of this State.

## 10. INSURANCE

- 10.1 At all times in which the Attaching Party has attachments to AT&T-CALIFORNIA poles, or is occupying AT&T-CALIFORNIA conduit or rights-of-way, Attaching Party shall keep and maintain in force, at its own expense, the minimum insurance coverage and limits set forth below. Such insurance and coverage shall not only cover the Attaching Party, but it must cover all contractors, subcontractors and/or any other person acting on Attaching Party's behalf, that are providing services under this Agreement.
- 10.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee. To the fullest extent allowable by law, the policy must include a waiver of subrogation in favor of AT&T, its affiliates, and their directors, officers and employees.

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- 10.1.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations; Fire Legal Liability sub-limits a minimum of \$1,000,000 are also required. **AT&T, its affiliates, officers, agents and employees shall be listed as additional insured** on the Commercial General Liability policy. A waiver of subrogation shall be in favor of AT&T. The liability policies shall be primary and non-contributory from any insurance that is maintained by AT&T.
- 10.1.3 Umbrella/Excess Liability insurance with limits of at least \$5,000,000 each occurrence with terms and conditions at least as broad as the underlying Commercial General Liability, Business Automobile Liability and Employers Liability policies. Umbrella/Excess Liability limits will be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T.
- 10.1.4 Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired and non-owned vehicles.
- 10.2 Attaching Party agrees to name **AT&T-CALIFORNIA** as an Additional Insured on the Commercial General Liability policy and Commercial Automobile Liability Policy.
- 10.3 **AT&T-CALIFORNIA** agrees to accept the Attaching Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
  - 10.3.1 Workers' Compensation and Employers Liability: Attaching Party submit to **AT&T-CALIFORNIA** its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and
  - 10.3.2 Automobile liability: Attaching Party shall submit to **AT&T-CALIFORNIA** a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
  - 10.3.3 General liability: Attaching Party must provide evidence acceptable to **AT&T-CALIFORNIA** that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 10.4 All insurance required in accordance with this section must be in effect before **AT&T-CALIFORNIA** will issue pole attachment or conduit occupancy permits under this Agreement.
- 10.5 Attaching Party agrees to provide **AT&T-CALIFORNIA** with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

## 11. ASSIGNMENT OF RIGHTS

- 11.1 Assignment Permitted. Neither Party may assign, or otherwise transfer its rights or obligations, under this Agreement except as provided in this section.
  - 11.1.1 **AT&T-CALIFORNIA** may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with **AT&T-CALIFORNIA** or which acquires or succeeds to ownership of substantially all of **AT&T-CALIFORNIA**'s assets.
  - 11.1.2 Overlapping of Attaching Party's facilities on **AT&T-CALIFORNIA** poles by a third Party will be allowed under the following conditions:

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- 11.1.2.1 The Overlapping entity must enter into an agreement with AT&T-CALIFORNIA for access to AT&T-CALIFORNIA Structures and abide by the terms and conditions of such an Occupancy Permit.
- 11.1.2.2 The Overlapping entity must obtain written approval from the Attaching Party and provide a copy to AT&T-CALIFORNIA prior to submitting a request for access to structure.
- 11.1.2.3 The Overlapping Party must submit a written request for access to structure, and indicate on the request that the request is for Overlapping of an existing attachment of the Attaching Party in order to ensure that pole loadings are not exceeded.
- 11.1.2.4 The Overlapping entity is responsible for paying the fees for Overlapping in Pricing Appendix, which are separate, and in addition to the fees paid by the Attaching Party, (e.g. the application fees and all make ready fees, etc.).
- 11.1.3 Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without AT&T-CALIFORNIA's consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Agreement, subject to the express terms of this Agreement. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third Party to acquire Attaching Party's assets through public or private sale or through an Agreement with Attaching Party, Attaching Party's lender or the third Party acquiring Attaching Party's rights under this Agreement shall assume all outstanding obligations of Attaching Party under the agreement and provide proof satisfactory to AT&T-CALIFORNIA that such lender or third Party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third Party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third Party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Attaching Party under the Agreement, including liability to AT&T-CALIFORNIA for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third Party succeeds to the rights of Attaching Party under the Agreement, as applicable.
- 11.1.4 Except as provided in Section 11.2 below, no assignment or transfer by Attaching Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this article, secured AT&T-CALIFORNIA's prior written consent to the assignment or transfer, if necessary, and given AT&T-CALIFORNIA notice of the assignment or transfer pursuant to Section 11.3.
- 11.2 Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article. However, if Attaching Party provides sixty (60) days written notice to AT&T-CALIFORNIA of its intent to assign its rights, delegate its benefits and delegate its duties and obligations under this Agreement to any entity controlling, controlled by, or under common control with Attaching Party, or to any entity which acquires or succeeds to ownership of substantially all of Attaching Party's assets, such assignment and delegations shall be deemed approved if AT&T-CALIFORNIA has not indicated otherwise by the end of this sixty (60) day notice period. AT&T-CALIFORNIA shall not unreasonably withhold or deny consent.

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- 11.3 Assignment Shall Not Relieve Attaching Party of Prior Obligations. Except as otherwise expressly agreed by **AT&T-CALIFORNIA** in writing, no assignment permitted by **AT&T-CALIFORNIA** under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 8 of this Agreement.
- 11.4 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. **AT&T-CALIFORNIA** may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Attaching Party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement.
- 11.5 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting Attaching Party the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or occupancy permits subject to this Agreement to any third Party. Except as otherwise expressly permitted in this Agreement, Attaching Party shall not allow third Party to attach or place facilities to or in pole or conduit space occupied by or assigned to Attaching Party or to utilize such space.

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

- 12.1 Termination Due to Non-Use of Facilities or Loss of Required Authority. Subject to notice and the opportunity to cure as provided in Sections 12.4, 12.5 and 12.6 below, this Agreement and all occupancy permits subject to this Agreement shall terminate if Attaching Party ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if Attaching Party is cable television system having access to **AT&T-CALIFORNIA**'s poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in this State (if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in this State), or ceases to make active use of **AT&T-CALIFORNIA**'s poles, ducts, conduits, and rights-of-way.
- 12.2 Subject to notice and the opportunity to cure as provided in Sections 12.4, 12.5 and 12.6 below, individual occupancy permits subject to this Agreement shall terminate if (a) Attaching Party ceases to utilize the pole attachment or conduit or rights-of-way space subject to such occupancy permit or (b) Attaching Party's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated, or local governmental authority or third-Party property owner having authority to revoke, deny, or terminate such use or access.
- 12.3 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Attaching Party's access to **AT&T-CALIFORNIA**'s Structure shall not materially interfere with or impair service over any facilities of **AT&T-CALIFORNIA** or any Other User, cause material damage to **AT&T-CALIFORNIA**'s plant or the plant of any Other User, impair the privacy of communications carried over the facilities of **AT&T-CALIFORNIA** or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of **AT&T-CALIFORNIA**'s poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, **AT&T-CALIFORNIA** may limit, terminate or refuse access if Attaching Party violates this provision.
- 12.4 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either Party, the aggrieved Party may give written notice of such claimed breach.
- 12.5 The complaining Party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given; and
- 12.5.1 the breaching Party fails to cure the breach within thirty (30) days of such notice, if the breach is one which can be cured within thirty (30) days; or
- 12.5.2 the breaching Party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than thirty (30) days will be required to affect such cure.



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- 12.6 Remedies for Breach. Subject to the provisions of this article, either Party may terminate this Agreement in the event of a material breach by the other Party or exercise any other legal or equitable right, which such Party may have to enforce the provisions of this Agreement. In any action based on an alleged breach of this Agreement, the prevailing Party shall be entitled to recover all costs and expenses incurred by such Party, including but not limited to reasonable attorneys' fees.

## 13. FAILURE TO ENFORCE

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

## 14. CONFIDENTIALITY OF INFORMATION

- 14.1 Information Provided by Attaching Party to AT&T-CALIFORNIA. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Attaching Party to AT&T-CALIFORNIA in connection with this Agreement (including but not limited to information submitted in connection with Attaching Party's applications for occupancy permit shall be deemed to be "confidential" or "proprietary" information of Attaching Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for review of records or its inquiry about AT&T-CALIFORNIA facilities. This article does not limit the use by AT&T-CALIFORNIA of aggregate information relating to the occupancy and use of AT&T-CALIFORNIA's Structure by firms other than AT&T-CALIFORNIA (that is, information submitted by Attaching Party and aggregated by AT&T-CALIFORNIA in a manner that does not directly or indirectly identify Attaching Party).
- 14.2 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Attaching Party to AT&T-CALIFORNIA in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons other than those who have a need to know such information for the limited purposes set forth in Sections 14.3-14.6.
- 14.3 Permitted Uses of Attaching Party's Confidential Information. Notwithstanding the provisions of Sections 14.1 and 14.2 above, AT&T-CALIFORNIA and persons acting on AT&T-CALIFORNIA's behalf may utilize Attaching Party's confidential or proprietary information for the following purposes (and on a need to know basis):
- 14.3.1 posting information, as necessary, to AT&T-CALIFORNIA's outside plant records;
  - 14.3.2 placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing AT&T-CALIFORNIA's Structure and any AT&T-CALIFORNIA facilities located on, within, or in the vicinity of such Structure;
  - 14.3.3 performing AT&T-CALIFORNIA's obligations under this Agreement and similar agreements with Third Parties;
  - 14.3.4 determining which of AT&T-CALIFORNIA's Structure are (or may in the future be) available for AT&T-CALIFORNIA's own use, and making planning, engineering, construction, and budgeting decisions relating to AT&T-CALIFORNIA's Structure;
  - 14.3.5 preparing cost studies;
  - 14.3.6 responding to regulatory requests for information;
  - 14.3.7 maintaining AT&T-CALIFORNIA's financial accounting records; and
  - 14.3.8 complying with other legal requirements relating to Structure.

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- 14.4 Defense of Claims. In the event of a dispute between **AT&T-CALIFORNIA** and any person or entity, including Attaching Party, concerning **AT&T-CALIFORNIA**'s performance of this Agreement, satisfaction of obligations under similar agreements with Third Parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, **AT&T-CALIFORNIA** may utilize confidential or proprietary information submitted by Attaching Party in connection with this Agreement as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that **AT&T-CALIFORNIA** shall not disclose Attaching Party's proprietary or confidential information without first, at **AT&T-CALIFORNIA**'s option ( in an individual market if practicable):
- 14.4.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
  - 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
  - 14.4.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.
- 14.5 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding **AT&T-CALIFORNIA** from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that **AT&T-CALIFORNIA** shall not disclose Attaching Party's proprietary or confidential information without first, at **AT&T-CALIFORNIA**'s option:
- 14.5.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
  - 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
  - 14.5.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

## 15. ACCESS TO RIGHTS-OF-WAY

- 15.1 To the extent, **AT&T-CALIFORNIA** has the authority to do so, **AT&T-CALIFORNIA** grants Attaching Party a right to use any rights-of-way for **AT&T-CALIFORNIA** poles, ducts, or conduits to which Attaching Party may attach its facilities for the purposes of constructing, operating and maintaining such Attaching Party's facilities on **AT&T-CALIFORNIA**'s poles, ducts or conduits. Notwithstanding the foregoing, Attaching Party shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, rights-of-way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the **AT&T-CALIFORNIA** pole, duct or conduit to which Attaching Party seeks to attach its facilities. Attaching Party shall furnish proof of any such easement, rights-of-way, license, permit, permission, certification, or franchise within thirty (30) days of request by **AT&T-CALIFORNIA**. **AT&T-CALIFORNIA** does not warrant the validity or apportionability of any rights it may hold to place facilities on private property. At Attaching Party's sole reasonable cost and expense, **AT&T-CALIFORNIA** agrees to work in good faith to provide copies of applicable easement and other right-of-way documents, if **AT&T-CALIFORNIA** has the legal right to do so and has the documents readily available for copying, to help enable Attaching Party to attach to the pole
- 15.2 Private Rights-of-Way Not Owned or Controlled by Either Party. Neither Party shall restrict or interfere with the other Party's access to or right to occupy property owned by Third Parties which is not subject to the other Party's control, including property as to which either Party has access subject to non-exclusive rights-of-way. Each Party shall make its own, independent legal assessment of its right to

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enter upon or use the property of Third Party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.

- 15.3 Access to Rights-of-Way Generally. At locations where AT&T-CALIFORNIA has access to third-Party property pursuant to non-exclusive rights-of-way, AT&T-CALIFORNIA shall not interfere with Attaching Party's negotiations with third-Party property owners for similar access; nor with Attaching Party's access to such property pursuant to easements or other rights-of-ways obtained by Attaching Party from the property owner. At locations where AT&T-CALIFORNIA has obtained exclusive rights-of-way from third-Party property owners or otherwise controls the rights-of-way, AT&T-CALIFORNIA shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Attaching Party on a nondiscriminatory basis, provided that the underlying agreement with the property owner permits AT&T-CALIFORNIA to provide such access, and provided further that if AT&T-CALIFORNIA has available space that it shares with Attaching Party in AT&T-CALIFORNIA non-aerial rights-of-way or easements (e.g., for cabinets placed on or under ground), which have not been accounted for in rates determined in accordance with the Pole Attachment Act (i.e., aerial, linear rights of way for pole lines are so accounted for), AT&T-CALIFORNIA shall include Attaching Party's pro rata portion of the charges, if any, paid by AT&T-CALIFORNIA to obtain such non-aerial rights-of-way or easements, plus any other documented legal, administrative, and engineering costs incurred by AT&T-CALIFORNIA in obtaining such rights-of-way or easements and processing Attaching Party's requests for such access.

## 16. SPECIFICATIONS

- 16.1 Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities attached to AT&T-CALIFORNIA's poles or occupying space in AT&T-CALIFORNIA's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Agreement and the Guidelines.
- 16.2 Published Standards. Attaching Party's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:
- 16.2.1 the Blue Book Manual of Construction Procedures, Special Report SR-1421, published by Bell Communications Research, Inc., and sometimes referred to as the "Blue Book";
  - 16.2.2 the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE");
  - 16.2.3 the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA");
  - 16.2.4 California Public Utility Commission's General Orders 95 and 128 for attachments to Pacific Bell Telephone Company poles, ducts, conduits and rights of way; and,
  - 16.2.5 the Structure Access Guidelines as identified in section 5.1.
- 16.3 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of AT&T-CALIFORNIA's manholes and access to AT&T-CALIFORNIA's conduit system.
- 16.3.1 Attaching Party will notify AT&T-CALIFORNIA not less than 5 business days in advance before entering AT&T-CALIFORNIA's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the Parties. The notice shall state the general nature of the work to be performed.

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16.3.2 An authorized employee or representative of AT&T-CALIFORNIA may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within AT&T-CALIFORNIA's conduit system. Attaching Party must notify AT&T-CALIFORNIA when Attaching Party has completed such work in the conduit system. If AT&T-CALIFORNIA has not had the opportunity to complete the review, AT&T-CALIFORNIA will attempt to meet with Attaching Party's contractors to finalize the review. If AT&T-CALIFORNIA is not available when Attaching Party notifies AT&T-CALIFORNIA of their notice of completion then AT&T-CALIFORNIA will perform a post-construction inspection as described in section 26.1. Attaching Party shall reimburse AT&T-CALIFORNIA for costs associated with the presence of AT&T-CALIFORNIA's authorized employee or representative.

16.3.3 Each Party must obtain any necessary authorization from appropriate authorities to open manholes.

## 17. ACCESS TO RECORDS

17.1 AT&T-CALIFORNIA will, upon request and at the expense of the Attaching Party, provide Attaching Party access to and copies of redacted maps, records and additional information relating to the location, capacity and utilization of AT&T-CALIFORNIA's Structure. Upon request, AT&T-CALIFORNIA will meet with the Attaching Party to clarify matters relating to maps, records or additional information. AT&T-CALIFORNIA does not warrant the accuracy or completeness of information on any maps or records.

17.2 Maps, records or information are and remain the proprietary property of AT&T-CALIFORNIA, are provided to the Attaching Party solely for the pursue of enabling the Attaching Party to obtain access to AT&T-CALIFORNIA's Structure, and may not be resold, reproduced or disseminated by the Attaching Party.

17.3 AT&T-CALIFORNIA will provide information currently available on the AT&T-CALIFORNIA's maps and/or records regarding:

17.3.1 the location of Structure and street addresses for manholes and poles as shown on AT&T-CALIFORNIA's maps;

17.3.2 the footage between manholes or lateral ducts lengths, as shown on AT&T-CALIFORNIA's maps;

17.3.3 the footage between poles, if shown on AT&T-CALIFORNIA's maps;

17.3.4 the total capacity of the Structure;

17.3.5 the existing utilization of the Structure.

17.4 AT&T-CALIFORNIA will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by AT&T-CALIFORNIA.

17.5 AT&T-CALIFORNIA will expunge any confidential or proprietary information from its maps and records prior to providing access to the Attaching Party.

17.6 AT&T-CALIFORNIA will:

17.6.1 Within five (5) business days after attaching Party submits Billing Authorization to AT&T-CALIFORNIA, AT&T-CALIFORNIA will notify attaching Party of the place and time that attaching Party may view the Structure Records.

17.6.2 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-CALIFORNIA may not be able to provide attaching Party with unscheduled additional time for viewing AT&T-CALIFORNIA Structure Records on the viewing date, but if unable will immediately make alternative

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arrangements that are mutually acceptable for the viewing of records as soon thereafter as possible.

- 17.6.3 AT&T-CALIFORNIA may make available at the Attaching Party's expense, an AT&T-CALIFORNIA representative with sufficient knowledge about AT&T-CALIFORNIA Structure Records to clarify matters relating to such Structure Records and to assist Attaching Party during their viewing.
- 17.7 Charges associated with map preparation, viewing and assistance will be on a Time and Material basis as set forth in the following Applicable Tariffs:

## 18. APPLICATIONS AND PRE-OCCUPANCY PERMIT SURVEYS

- 18.1 Occupancy Permits Required. Attaching Party shall apply in writing for and receive an occupancy permit before attaching facilities to specified AT&T-CALIFORNIA poles or placing facilities within specified AT&T-CALIFORNIA ducts, conduits, or rights-of-way.
- 18.2 Structure Access Request Form. To apply for an occupancy permit under this Agreement, Attaching Party shall submit to AT&T-CALIFORNIA the appropriate AT&T-CALIFORNIA request forms. Attaching Party shall promptly withdraw or amend its request if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific AT&T-CALIFORNIA Structure. In addition, Attaching Party shall also:
- 18.2.1 submit payment for the estimate authorizing AT&T-CALIFORNIA or its contractor to complete the make-ready survey; or
- 18.2.2 advise AT&T-CALIFORNIA of its willingness to perform the proposed make-ready work itself or an Authorized Contractor if permissible in the application area.
- 18.2.3 confirm that Attaching Party has calculated storm loadings, guying, or pole class to ensure pole loadings are not exceeded and indicate if additional holding or loading capacity is required.
- 18.2.4 provide sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to AT&T-CALIFORNIA's poles or placed in AT&T-CALIFORNIA's conduit system.
- 18.3 Make-Ready Survey. A Make-Ready survey must be completed by AT&T-CALIFORNIA or, subject to the requirements and policies in each state, the Attaching Party before an occupancy permit is issued. The primary purposes of the make ready survey will be to enable AT&T-CALIFORNIA to:
- 18.3.1 confirm or determine the modifications, capacity expansion, and make-ready work, if any, necessary to accommodate Attaching Party's attachment of facilities to AT&T-CALIFORNIA structures;
- 18.3.2 plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare AT&T-CALIFORNIA's poles, ducts, conduits, rights-of-way, and associated facilities for Attaching Party's proposed attachments or occupancy; and
- 18.3.3 estimate the costs associated with such facilities modification, capacity expansion, or make-ready work; and
- 18.3.4 identify the owner of the pole.

## 19. POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

- 19.1 Selection of Space. AT&T-CALIFORNIA will select or approve the Attaching Party's selection of the space Applicant will occupy on AT&T-CALIFORNIA's poles or in AT&T-CALIFORNIA's conduit systems. Maintenance ducts shall not be considered available for Attaching Party's use except as specifically provided elsewhere in this Agreement. Where required by law or franchise agreement, ducts and attachment space on poles reserved for municipal use shall not be considered available for the Attaching Party's use. All other ducts, inner ducts, space on poles or space in rights-of-ways, which

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are not assigned or occupied, shall be deemed available for use by AT&T-CALIFORNIA Attaching Party, and other Parties entitled to access under applicable law.

### 19.2 Pole, Duct, and Conduit Space Assignments.

19.2.1 After Attaching Party's application for a pole attachment or conduit occupancy permit has been approved by AT&T-CALIFORNIA, the pole, duct, and conduit space selected and/or approved by AT&T-CALIFORNIA in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed twelve (12) months.

19.2.2 AT&T CALIFORNIA: The pole, duct, and conduit space selected and/or approved by AT&T-CALIFORNIA in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed nine (9) months in AT&T CALIFORNIA only as detailed by the California Public Utility Commission.

19.2.3 AT&T-CALIFORNIA may assign space to itself by making appropriate entries in the same records used to log assignments to Attaching Party and Third Parties. If AT&T-CALIFORNIA assigns pole, duct, or conduit space to itself, such assignment will automatically lapse twelve (12) months after the date the assignment has been entered into the appropriate AT&T-CALIFORNIA record if AT&T-CALIFORNIA has not occupied such assigned space within such twelve (12) month period.

19.2.4 Notices and applications, including assignment requests, will be date and time stamped on receipt.

## 20. ISSUANCE OF OCCUPANCY PERMITS (INCLUDING MAKE-READY WORK)

20.1 Response Within 45 Days. Within forty-five (45) days of Attaching Party's submission of a request for access to AT&T-CALIFORNIA Structure, AT&T-CALIFORNIA 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-CALIFORNIA 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-CALIFORNIA will schedule the meeting within ten (10) business days of receipt of the Attaching Party's written request for a meeting.

20.2 If access is granted the response will further advise Attaching Party in writing of:

20.2.1 what modifications, capacity expansions, or make-ready work, if any, will be required to prepare AT&T-CALIFORNIA's Structure, and

20.2.2 an estimate of charges for such modifications, capacity expansions, or make-ready work.

20.3 Make-ready Work. If it is determined that make ready work will be necessary to accommodate Attaching Party's facilities, Attaching Party shall have forty-five (45) days (the "acceptance period") to either:

20.3.1 submit payment for the estimate authorizing AT&T-CALIFORNIA or its contractor to complete the make-ready work; or

20.3.2 advise AT&T-CALIFORNIA of its willingness to perform the proposed make-ready work itself if permissible in the application area.

20.3.2.1 Make-ready work performed by Attaching Party, or by an Authorized Contractor selected by Attaching Party, shall be performed in accordance with AT&T-CALIFORNIA's specifications and in accordance with the same standards and practices, which would be followed if such work were being performed by AT&T-CALIFORNIA or AT&T-CALIFORNIA'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-CALIFORNIA's Structures or interferes

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with any existing use of AT&T-CALIFORNIA's facilities or the facilities of any Other User.

- 20.4 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. Attaching Party shall make arrangements with the Other Users with facilities attached to AT&T-CALIFORNIA's poles or occupying space in AT&T-CALIFORNIA's conduit system regarding reimbursement for any expenses incurred by the Other Users in transferring or rearranging the Other Users' facilities to accommodate the attachment or placement of Attaching Party's facilities to or in AT&T-CALIFORNIA's poles, ducts, conduits and rights of ways.
- 20.5 Reimbursement for the Creation or Use of Additional Capacity. If any additional capacity is created as a result of make-ready work performed to accommodate Attaching Party's facilities, Attaching Party shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to AT&T-CALIFORNIA for the use of such additional capacity. If AT&T-CALIFORNIA utilizes additional space or capacity created at Attaching Party's expense, AT&T-CALIFORNIA will reimburse Attaching Party on a pro-rata basis for AT&T-CALIFORNIA's share, if any, of Attaching Party's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. AT&T-CALIFORNIA will notify the Attaching Party if AT&T-CALIFORNIA attaches facilities to additional capacity on AT&T-CALIFORNIA's Structure created at the Attaching Party's expense. AT&T-CALIFORNIA shall not be required to collect or remit any such amounts to Attaching Party, to resolve or adjudicate disputes over reimbursement between Attaching Party and Other Users.
- 20.6 If Attaching Party utilizes space or capacity on any AT&T-CALIFORNIA Structure created at AT&T-CALIFORNIA's expense after February of 1996, the Attaching Party will reimburse Attaching Party on a pro-rata basis for the Attaching Party's share, if any, of AT&T-CALIFORNIA's capacity creation costs.
- 20.7 Occupancy Permit and Attachment. After all required make-ready work is completed; AT&T-CALIFORNIA will issue an occupancy permit confirming that Attaching Party may attach specified facilities to AT&T-CALIFORNIA's Structure.
- 20.8 The Attaching Party must occupy the assigned space within a period not to exceed twelve (12) months from the issuance of the occupancy permit. If the Attaching Party does not occupy the assigned space within the twelve (12) month period, the Occupancy Permit will lapse and the space will be considered available for use by AT&T-CALIFORNIA or Other User. Notwithstanding anything to the contrary, prior to the expiration of the twelve (12) month period, the Attaching Party may submit a request for an extension of time based on the need to receive zoning or other approvals and consents, setting forth an explanation of the need and the basis for the amount of time requested. Attaching Party shall diligently pursue needed zoning and other approvals and consents and include facts showing such diligence in any request for an extension of time. If another telecommunications carrier, including an AT&T-CALIFORNIA carrier, requests the same space after the initial twelve (12) month period has passed, and other sufficient space is not available, any such extension shall be limited to three months. AT&T-CALIFORNIA will not unreasonably withhold or deny an extension.
- 20.9 The Attaching Party's obligation to pay semiannual pole attachment or conduit occupancy fees will commence on the date the Occupancy Permit is provided by AT&T-CALIFORNIA to the Attaching Party.

## 21. CONSTRUCTION OF ATTACHING PARTY'S FACILITIES

- 21.1 Responsibility for Attaching and Placing Facilities. The Attaching Party shall be responsible for the actual attachment of its facilities to AT&T-CALIFORNIA's poles and the placement of such facilities in AT&T-CALIFORNIA's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities.
- 21.2 Responsibilities of Attaching Party. Attaching Party is responsible for the Authorized Contractors or contractors it selects.

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- 21.2.1 As used in this Agreement, the term "Authorized Contractor" does not refer to contractors performing routine installation, maintenance, or repair work on Attaching Party's behalf or other contractors who may be selected by Attaching Party to perform work on Attaching Party's behalf without AT&T-CALIFORNIA's approval.
- 21.2.2 Subject to state specific requirements, Authorized Contractors have received certification from AT&T-CALIFORNIA to perform one or more of the following tasks within a specified AT&T-CALIFORNIA construction district, as applicable:
- (a) installation of those sections of Attaching Party's ducts or facilities, which connect to AT&T-CALIFORNIA's conduit system;
  - (b) installation of inner duct;
  - (c) excavation work in connection with the removal of retired or inactive (dead) cables; or
  - (d) Make-Ready work.
- 21.2.3 A person or entity approved as an Authorized Contractor is only an Authorized Contractor with respect to those tasks for which such person or entity has been approved by both Parties and is an Authorized Contractor only in those AT&T-CALIFORNIA construction districts agreed to by both Parties.
- 21.2.4 Designation of an Authorized Contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an Authorized Contractor for other purposes, nor shall approval of an Authorized Contractor by one AT&T-CALIFORNIA's construction district constitute approval of such Authorized Contractor for the area served by a different AT&T-CALIFORNIA construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an Authorized Contractor shall, for the purposes of that job, be deemed to have been approved by all AT&T-CALIFORNIA construction districts in which the work is to be performed.
- 21.3 Construction Schedule. After the issuance of an occupancy permit, Attaching Party shall provide AT&T-CALIFORNIA with a construction schedule and thereafter keep AT&T-CALIFORNIA informed of anticipated changes in the construction schedule.

## 22. USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY'S FACILITIES

- 22.1 Routine Maintenance of Attaching Party's Facilities. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within AT&T-CALIFORNIA's poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner, which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party's occupancy permit.
- 22.2 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed thirty (30) days) non-emergency maintenance or repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by AT&T-CALIFORNIA. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify AT&T-CALIFORNIA of such use and must either vacate the maintenance duct within thirty (30) days or, with AT&T-CALIFORNIA's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within thirty (30) days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies, which may occur while the maintenance duct is occupied.



**23. MODIFICATION OF ATTACHING PARTY'S FACILITIES**

- 23.1 Notification of Planned Modifications. Attaching Party shall notify **AT&T-CALIFORNIA** in writing at least thirty (30) days before adding to, relocating, replacing or otherwise modifying its facilities already attached to an **AT&T-CALIFORNIA** Structure. The notice shall contain sufficient information to enable **AT&T-CALIFORNIA** to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Attaching Party's present occupancy permit or requires a new or amended occupancy permit.
- 23.2 Replacement of Facilities and Overlashing Additional Cables. Attaching Party may replace existing facilities with new facilities occupying the same **AT&T-CALIFORNIA** Structure, and may overlash additional cables to its own existing facilities; provided, however, that such activities shall not be considered to be routine maintenance and shall be subject to the requirements of this article.

**24. REQUIRED REARRANGEMENTS OF ATTACHING PARTY'S FACILITIES**

- 24.1 Required Rearrangement of Attaching Party's Facilities. Attaching Party agrees that Attaching Party will cooperate with **AT&T-CALIFORNIA** and other users in making rearrangements to **AT&T-CALIFORNIA** Structure as may be necessary, and that costs incurred by Attaching Party in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the Parties in accordance with then applicable law.
- 24.2 Whenever feasible, **AT&T-CALIFORNIA** shall give Attaching Party not less than thirty (30) days prior written notice of the need for Attaching Party to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Attaching Party shall complete such rearrangements within the time prescribed in the notice. If Attaching Party does not rearrange facilities within noted time, **AT&T-CALIFORNIA** will rearrange at Attaching Party's expense.

**25. EMERGENCY REPAIRS AND POLE REPLACEMENTS**

- 25.1 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each Party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such Party to make such repairs.
- 25.1.1 Nothing contained in this Agreement shall be construed as requiring either Party to perform any repair or service restoration work of any kind with respect to the other Party's facilities or the facilities of joint users.
- 25.1.2 Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that an entity using the maintenance duct for emergency repair activities will notify **AT&T-CALIFORNIA** 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-CALIFORNIA** conduit system and using the maintenance duct for emergency restoral purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance ducts will be used to restore the highest priority services, as defined in Section 25.3, first. Existing spare ducts may be used for restoration purposes providing the spare ducts are restored after restoration work is complete. Any spare ducts not returned will be included be assigned to the user of the duct and an occupancy permit issued.
- 25.1.3 The Attaching Party shall either vacate the maintenance duct within thirty (30) days or, with **AT&T-CALIFORNIA**'s consent, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner-duct, a suitable replacement inner-duct) is available for use by all occupants in the conduit section within thirty (30) days after such Attaching Party occupies the maintenance ducts. If Attaching Party fails to vacate the maintenance duct as described above, **AT&T-CALIFORNIA** may install a maintenance conduit at the Attaching Party's expense.

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- 25.2 Designation of Emergency Repair Coordinators and Other Information. For each AT&T-CALIFORNIA construction district, Attaching Party shall provide AT&T-CALIFORNIA 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-CALIFORNIA of changes to such information.
- 25.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, AT&T-CALIFORNIA, Attaching Party, and other affected Parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected Parties present in accordance with the following principles.
- 25.3.1 Emergency service restoration work requirements shall take precedence over other work operations.
- 25.3.2 Except as otherwise agreed upon by the Parties, restoration of lines for emergency services providers (e.g., 911, fire, police, national security and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The Parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.
- 25.3.3 AT&T-CALIFORNIA shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected Parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by AT&T-CALIFORNIA on a nondiscriminatory basis in accordance with the principles set forth in this section.
- 25.4 Emergency Pole Replacements.
- 25.4.1 When emergency pole replacements are required, AT&T-CALIFORNIA shall promptly make a good faith effort to contact Attaching Party to notify Attaching Party of the emergency and to determine whether Attaching Party will respond to the emergency in a timely manner.
- 25.4.2 If notified by AT&T-CALIFORNIA 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-CALIFORNIA replacement pole, the transfer shall be in accordance with AT&T-CALIFORNIA's placement instructions.
- 25.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise AT&T-CALIFORNIA and thereby authorize AT&T-CALIFORNIA (or any Other User sharing the pole with AT&T-CALIFORNIA) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on Attaching Party's behalf at the Attaching Party's expense.
- 25.5 Expenses Associated with Emergency Repairs. Each Party shall bear all reasonable expenses arising out of or in connection with emergency repairs of its own facilities and transfers or rearrangements of such facilities associated with emergency pole replacements made in accordance with the provisions of this article.
- 25.5.1 Each Party shall be solely responsible for paying all persons and entities that provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such Party's facilities.
- 25.5.2 Attaching Party shall reimburse AT&T-CALIFORNIA for the costs incurred by AT&T-CALIFORNIA for work performed by AT&T-CALIFORNIA on Attaching Party's behalf in accordance with the provisions of this article.

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

- 26.1 Post-Construction Inspections. **AT&T-CALIFORNIA** will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of facilities to **AT&T-CALIFORNIA 22's** Structures for the purpose of determining the conformance of the attachments to the occupancy permit. **AT&T-CALIFORNIA** 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-CALIFORNIA** on the post-construction inspection.
- 26.2 Right to Make Periodic or Spot Inspections. **AT&T-CALIFORNIA** shall have the right, but not the obligation, to make Periodic or Spot Inspections of all facilities attached to **AT&T-CALIFORNIA** Structure. Periodic Inspections will not be made more often than once every two (2) years unless in **AT&T-CALIFORNIA's** judgment such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Agreement.
- 26.3 If Attaching Party's facilities are in compliance with this Agreement, 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 Agreement, **AT&T-CALIFORNIA** 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.
- 26.4 If the inspection reflects that Attaching Party's facilities are not in compliance with the terms of this Agreement, Attaching Party shall bring its facilities into compliance within thirty (30) days after being notified of such noncompliance. If any make ready or modification work to **AT&T-CALIFORNIA's** Structures is required to bring Attaching Party's facilities into compliance, the Attaching Party shall provide notice to **AT&T-CALIFORNIA** and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment. If the violation creates a hazardous condition, facilities must be brought into compliance upon notification.
- 26.5 Notice of Noncompliance. If, at any time, **AT&T-CALIFORNIA** determines that Attaching Party's facilities or any part thereof have not been placed or maintained or are not being used in accordance with the requirements of this Agreement, **AT&T-CALIFORNIA** 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-CALIFORNIA's** assertion that such facilities are not in compliance, Attaching Party agrees to provide **AT&T-CALIFORNIA** with a schedule for bringing such facilities into compliance, to bring the facilities into compliance within a reasonable time, and to notify **AT&T-CALIFORNIA** in writing when the facilities have been brought into compliance.
- 26.6 Disputes over Alleged Noncompliance. If Attaching Party disputes **AT&T-CALIFORNIA's** assertion that Attaching Party's facilities are not in compliance, Attaching Party shall notify **AT&T-CALIFORNIA** in writing of the basis for Attaching Party's assertion that its facilities are in compliance.
- 26.7 Failure to Bring Facilities into Compliance. If Attaching Party has not brought the facilities into compliance within a reasonable time or provided **AT&T-CALIFORNIA** with proof sufficient to persuade **AT&T-CALIFORNIA** that **AT&T-CALIFORNIA** erred in asserting that the facilities were not in compliance, and if **AT&T-CALIFORNIA** determines in good faith that the alleged noncompliance causes or is likely to cause material damage to **AT&T-CALIFORNIA's** facilities or those of other users, **AT&T-CALIFORNIA** may, at its option and Attaching Party's expense, take such non-service affecting steps as may be required to bring Attaching Party's facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this Agreement.
- 26.8 Correction of Conditions by AT&T-CALIFORNIA. If **AT&T-CALIFORNIA** elects to bring Attaching Party's facilities into compliance, the provisions of this Section shall apply.

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- 26.8.1 AT&T-CALIFORNIA will, whenever practicable, notify Licensee in writing before performing such work. The written notice shall describe the nature of the work to be performed and AT&T-CALIFORNIA's schedule for performing the work.
- 26.8.2 If Attaching Party's facilities have become detached or partially detached from supporting racks or wall supports located within a AT&T-CALIFORNIA manhole, AT&T-CALIFORNIA may, at Attaching Party's expense, reattach them but shall not be obligated to do so. If AT&T-CALIFORNIA does not reattach Attaching Party's facilities, AT&T-CALIFORNIA shall endeavor to arrange with Attaching Party for the reattachment of any facilities affected.
- 26.8.3 AT&T-CALIFORNIA 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.
- 26.9 Attaching Party to Bear Expenses. Attaching Party shall bear all expenses arising out of or in connection with any work performed to bring Attaching Party's facilities into compliance with this Section; provided, however that nothing contained in this Section or any license issued hereunder shall be construed as requiring Attaching Party to bear any expenses which, under applicable federal or state laws or regulations, must be borne by persons or entities other than Attaching Party.

### 27. TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

- 27.1 Facilities to Be Marked. Attaching Party shall tag or otherwise mark all of Attaching Party's facilities placed on or in AT&T-CALIFORNIA's Structure in a manner sufficient to identify the facilities as those belonging to the Attaching Party.
- 27.2 Removal of Untagged Facilities. AT&T-CALIFORNIA may, without notice to any person or entity, remove from AT&T-CALIFORNIA's poles or any part of AT&T-CALIFORNIA's conduit system the Attaching Party's facilities, if AT&T-CALIFORNIA determines that such facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on AT&T-CALIFORNIA's poles or in AT&T-CALIFORNIA's conduit system.
- 27.3 Notice to Attaching Party. If any of Attaching Party's facilities for which no occupancy permit is presently in effect are found attached to AT&T-CALIFORNIA's poles or anchors or within any part of AT&T-CALIFORNIA's conduit system, AT&T-CALIFORNIA, without prejudice to other rights or remedies available to AT&T-CALIFORNIA under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Attaching Party advising Attaching Party that no occupancy permit is presently in effect with respect to the facilities and that Attaching Party must, within 30 days, respond to the notice as provided in Section 27.4 of this Agreement.
- 27.4 Attaching Party's Response. Within thirty (30) days after receiving a notice under Section 27.3 of this Agreement, Attaching Party shall acknowledge receipt of the notice and submit to AT&T-CALIFORNIA, in writing, an application for a new or amended occupancy permit with respect to such facilities.
- 27.5 Approval of Request and Retroactive Charges. If AT&T-CALIFORNIA approves Attaching Party's application for a new or amended occupancy permit, Attaching Party shall be liable to AT&T-CALIFORNIA for all fees and charges associated with the unauthorized attachments as specified in Section 27.10 of this Agreement. The issuance of a new or amended occupancy permit as provided by this article shall not operate retroactively or constitute a waiver by AT&T-CALIFORNIA of any of its rights or privileges under this Agreement or otherwise.
- 27.6 Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from AT&T-CALIFORNIA's poles, conduit system or rights of way or until a new or amended occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party and its predecessors had continuously complied with all applicable AT&T-CALIFORNIA licensing requirements. Such fees and charges shall be due

## Race Telecommunications, Inc.

and payable 30 days after the date of the bill or invoice stating such fees and charges. In addition, the Attaching Party shall be liable for an unauthorized attachment and/or occupancy fee as specified in Section 29 of this Agreement. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Attaching Party shall rearrange or remove its unauthorized facilities at AT&T-CALIFORNIA's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to AT&T-CALIFORNIA or another Other User, and shall pay AT&T-CALIFORNIA for all costs incurred by AT&T-CALIFORNIA in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities.

- 27.7 Removal of Unauthorized Attachments. If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized facilities within the specified period of time, AT&T-CALIFORNIA shall by written notice advise Attaching Party to remove its unauthorized facilities not less than 60 days from the date of notice and Attaching Party shall remove the facilities within the time specified in the notice. If the facilities have not been removed within the time specified in the notice, AT&T-CALIFORNIA may, at AT&T-CALIFORNIA's option, remove Attaching Party's facilities at Attaching Party's expense.
- 27.8 No Ratification of Unpermitted Attachments or Unauthorized Use of AT&T-CALIFORNIA's Facilities. No act or failure to act by AT&T-CALIFORNIA with regard to any unauthorized attachment or occupancy or unauthorized use of AT&T-CALIFORNIA's Structure shall be deemed to constitute a ratification by AT&T-CALIFORNIA of the unauthorized attachment or occupancy or use, nor shall the payment by Attaching Party of fees and charges for unauthorized pole attachments or conduit occupancy exonerate Attaching Party from liability for any trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities.

## 28. REMOVAL OF ATTACHING PARTY'S FACILITIES

- 28.1 When Attaching Party no longer intends to occupy space on an AT&T-CALIFORNIA pole or in an AT&T-CALIFORNIA duct or conduit, Attaching Party will provide written notification to AT&T-CALIFORNIA that it wishes to terminate the occupancy permit with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Attaching Party's facilities, the occupancy permit shall terminate and the space shall be available for reassignment.
- 28.1.1 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from AT&T-CALIFORNIA's Structure.
- 28.1.2 Except as otherwise agreed upon in writing by the Parties, Attaching Party must, after removing its facilities, plug all previously occupied ducts at the entrances to AT&T-CALIFORNIA's manholes.
- 28.1.3 Attaching Party shall be solely responsible for the removal of its own facilities from AT&T-CALIFORNIA's Structure.
- 28.2 At AT&T-CALIFORNIA's request, Attaching Party shall remove from AT&T-CALIFORNIA'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-CALIFORNIA's Structure.
- 28.3 Removal Following Termination of Occupancy permit. Attaching Party shall remove its facilities from AT&T-CALIFORNIA's poles, ducts, conduits, or rights-of-way within thirty (30) days after termination of the occupancy permit.
- 28.4 Removal Following Replacement of Facilities. Attaching Party shall remove facilities no longer in service from AT&T-CALIFORNIA's Structures within thirty (30) 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.

# Race Telecommunications, Inc.

- 28.5 Removal to Avoid Forfeiture. If the presence of Attaching Party's facilities on or in **AT&T-CALIFORNIA's** Structure would cause a forfeiture of the rights of **AT&T-CALIFORNIA** to occupy the property where such Structure is located, **AT&T-CALIFORNIA** 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-CALIFORNIA** will give Attaching Party not less than thirty (30) days from the date of notice to remove Attaching Party's facilities unless prior removal is required to prevent the forfeiture of **AT&T-CALIFORNIA's** rights. At Attaching Party's request, the Parties will engage in good faith negotiations with each other, with Other Users, and with third-Party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of Attaching Party's facilities.
- 28.6 Removal of Facilities by **AT&T-CALIFORNIA**; Notice of Intent to Remove. If Attaching Party fails to remove its facilities from **AT&T-CALIFORNIA's** Structure in accordance with the provisions of Sections 28.1-28.6 of this Agreement, **AT&T-CALIFORNIA** 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-CALIFORNIA** shall give Attaching Party not less than thirty (30) days prior written notice of its intent to remove Attaching Party's facilities pursuant to this section.
- 28.7 Removal of Facilities by **AT&T-CALIFORNIA**. If **AT&T-CALIFORNIA** removes any of Attaching Party's facilities pursuant to this article, Attaching Party shall reimburse **AT&T-CALIFORNIA** for **AT&T-CALIFORNIA's** costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.
- 28.8 Removal of CLEC's Facilities. **AT&T- CALIFORNIA** retains the authority and right to remove any abandoned equipment left on or in AT&T structures or buildings and to sell, at salvage value, any abandoned equipment to recover removal costs.

## 29. RATES, FEES, CHARGES, AND BILLING

- 29.1 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees outlined in this Agreement will be set forth in Pricing Appendix to this Agreement. All rates, charges and fees, and changes thereto, shall be subject to all applicable federal and state laws, rules, regulations, and commission orders. **AT&T-CALIFORNIA** may accordingly change rates, charges and fees and will provide at least sixty (60) days notice to Attaching Party prior to making rate changes. Pole top space will be charged based on the number of vertical feet of space occupied, at the rates that will be in Pricing Appendix, except that in no case shall the charge be for less than one (1) vertical foot regardless of the amount of vertical space actually occupied.

Attaching Party agrees that in the event Attaching Party fails to pay an amount due and payable within the period of time set forth for payment in this Agreement, interest shall accrue on the unpaid balance thereof at the rate of 1 ½% per month for each month from the expiration of such period until payment is received by Licensor or the maximum interest rate permitted by law, whichever is the lesser amount.

- 29.2 Changes to Rates, Charges and Fees. Subject to applicable federal and state laws, rules, regulations and orders, **AT&T-CALIFORNIA** shall have the right to change the rates, charges and fees outlined in this Agreement. **AT&T-CALIFORNIA** will provide the Attaching Party 60 day's 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 Agreement, (2) terminate this Agreement, or (3) seek relief through the dispute resolution process in the General Provisions section of this Agreement.

## 30.0 PERFORMANCE AND PAYMENT BONDS, LETTERS OF CREDIT, OR CASH DEPOSITS

- 30.1 Bonds, Letters of Credit, or Cash Deposits May Be Required. **AT&T-CALIFORNIA** may require Attaching Party, Authorized Contractors and other persons acting on Attaching Party's behalf to

# Race Telecommunications, Inc.

execute performance and payment bonds, letters of credit or cash deposits ( or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of the Attaching Party's obligations arising out of or in connection with this Agreement.

30.1.1 If a bond or similar form of assurance is required of the Attaching Party, an Authorized Contractor, or other person acting on Attaching Party's behalf. Attaching Party shall promptly submit to **AT&T-CALIFORNIA** adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing **AT&T-CALIFORNIA** 60 days written notice.

30.1.2 Upon request by **AT&T-CALIFORNIA**, Attaching Party will provide **AT&T-CALIFORNIA** with the **AT&T-CALIFORNIA** Credit Profile form and provide information to **AT&T- CALIFORNIA** regarding Attaching Party's credit and financial condition.

Payment and Performance Bonds in Favor of Contractors and Subcontractors: Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, material men, and other persons or entities performing work or providing materials in connection with Attaching Party's performance under this Agreement. In the event any lien, claim, or demand is made on **AT&T-CALIFORNIA** by any such employee, contractor, subcontractor, mechanics, material man, or other person or entity providing such materials or performing such work, **AT&T-CALIFORNIA** may require, in addition to any security provided under Section 30.1 of this Agreement, that Attaching Party execute payment or performance bonds, letter of credit or provide cash deposits or such other security as **AT&T-CALIFORNIA** may deem reasonable.

## 31. NOTICES

31.1 Notices to Attaching Party. All written notices required to be given to a Party shall be delivered or mailed to the Party's duly authorized agent or attorney, as designated in this section.

31.1.1 Such notice may be delivered to the Party's duly authorized agent or attorney in person or by agent or courier receipted delivery.

31.1.2 Such notice may be mailed to the Party's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.

31.1.3 Notices to Attaching Party and **AT&T-CALIFORNIA** shall be sent to the authorized agent or attorney designated below:

<b>NOTICE CONTACT</b>	<b>ATTACHING PARTY</b>	<b>AT&amp;T</b>
NAME/TITLE	Raul Alcaraz	AT&T Structure Access Manager
STREET ADDRESS	101 Haskins Way	5555 E. Olive Ave. Rm 450WW
CITY, STATE, ZIP CODE	South San Francisco, CA 94080	Fresno, CA 93727
TELEPHONE NUMBER	415-376-3314	559-454-4101
FACSIMILE NUMBER	650-246-8901	

31.2 Changes in Notice requirements: Either Party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other Party. Such notice shall state, at a minimum, the name, title and full address of the new addressee.

Race Telecommunications, Inc.

EXECUTED THIS 13<sup>th</sup> day of August, 2012

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

Signatures

LICENSEE:  
Race Telecommunications, Inc.

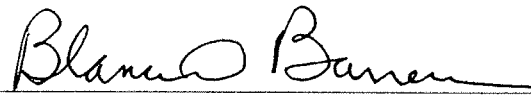
By:   
(SIGNATURE)

NAME: RAUL ALCARAZ

TITLE: CEO

LICENSOR:

Pacific Telephone Company d/b/a AT&T California

By:   
(SIGNATURE)

NAME: BLANCA O. BARRIOS  
(PRINT NAME)

TITLE: DIRECTOR, CTE West





EXHIBIT D / APPENDIX 1

**REVISED**

**AT&T**

**ANNUAL FEES FOR POLE ATTACHMENTS AND CONDUIT OCCUPANCY**

<u>Year</u>	<u>Pole Attachment Rate</u>
2012	\$5.02
<u>Year</u>	<u>Conduit Occupancy Rate</u>
2012 (Inner duct)	\$0.49/linear foot

All pole and conduit license fees are for a period of one year from January 1 through December 31, effective January 1, 2012 and billable semiannually in advance in January and July of each year.

Central Valley Telecom LLC

SW 800



at&t

Your world. Delivered.

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

# Central Valley Telecom LLC

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# Central Valley Telecom LLC

## **STAND-ALONE 22-STATE STRUCTURE ACCESS AGREEMENT FOR POLES, CONDUITS, AND RIGHTS-OF-WAY**

This Agreement dated June 1, 2012, is made by and between the "Parties", identified as the AT&T Inc. owned Incumbent Local Exchange Carrier Pacific Bell Telephone Company d/b/a AT&T California hereinafter referred to as defined below, (only to the extent that the agent for each such AT&T Inc.-owned ILEC executes this Agreement for such AT&T Inc. owned ILEC and only to the extent that such AT&T Inc. owned ILEC and only to the extent, and in the areas where, such AT&T Inc. owned ILEC provides Telephone Exchange Services as an ILEC in California and **Central Valley Telecom LLC** ("CARRIER"), a Limited Liability Company, only to the extent, and in the areas where, Section 224 pole-attachment authority is established through actual or, in fact, planned provision of telecommunications service by as a telecommunications carrier, as defined in the 1934 Communications Act as amended by the 1996 Telecommunications Act, hereinafter referred to as "Attaching Party".

### **Special Provisions**

- A.** This Agreement shall apply only to those certain Structures (as defined below) located within the State of California.

#### **1. INTRODUCTION**

- 1.1 This Agreement sets forth the terms and conditions for Rights-of-Way (ROW), Conduits and Poles provided by the applicable AT&T Inc. (AT&T) owned Incumbent Local Exchange Carrier (ILEC) and Attaching Party.
- 1.2 "AT&T Inc." means the holding company which directly or indirectly owns the following ILECs: Pacific Bell Telephone Company d/b/a AT&T California. As used in this Agreement, AT&T refers to the AT&T Inc. ILECs only. AT&T Inc. is not itself a party to this Agreement.
- 1.3 **AT&T-CALIFORNIA**- As used herein, **AT&T-CALIFORNIA** means Pacific Bell Telephone Company d/b/a **AT&T CALIFORNIA** and (and previously referred to as "SBC-California"), the applicable AT&T-owned ILEC doing business in California.

#### **2. DEFINITIONS**

- 2.1 **Definitions in general.** As used in this Agreement, the terms defined in this article shall have the meanings set forth below in Sections 2.1 to 2.17 except as the context otherwise requires.
- 2.2 **Authorized Contractor.** As used in this Agreement the term "Authorized Contractor" is used when referring to any contractor which is included on a list of contractors mutually approved by Attaching Party and **AT&T-CALIFORNIA** and who subject to Attaching Party's direction and control, and subject to the requirements and policies in each state, perform facilities modification or make-ready work which would ordinarily be performed by **AT&T-CALIFORNIA** or persons acting on **AT&T-CALIFORNIA**'s behalf as more specifically detailed in Section 21.2.
- 2.3 **Conduit.** The term "conduit" refers to tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. As used in this Agreement, the term "conduit" refers only to conduit structures (including ducts, manholes and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other **AT&T-CALIFORNIA** structures (such as huts and cabinets) which branch off from or are connected to **AT&T-CALIFORNIA**'s conduit.

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- 2.4 Conduit system. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Agreement, the term "conduit system" does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other AT&T-CALIFORNIA structures (such as huts and cabinets) which branch off from or are connected to AT&T-CALIFORNIA's conduit.
- 2.5 Duct. The term "duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Agreement, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels, but does not include cables and other telecommunications equipment located within such ducts.
- 2.6 Handhole. The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Agreement, the term "handhole" refers only to handholes, which are part of AT&T-CALIFORNIA's conduit system, and does not refer to handholes, which provide access to buried cables not housed within AT&T-CALIFORNIA ducts or conduits. As used in this Agreement, the term "handhole" refers only to handhole structures owned or controlled by AT&T-CALIFORNIA and does not include cables and other telecommunications equipment located within handhole structures.
- 2.7 Occupancy Permit. The term "occupancy permit" refers to a written instrument confirming that AT&T-CALIFORNIA has granted the structure access request of Attaching Party or a Third Party for access to pole, duct, conduit, or rights-of-way space.
- 2.8 Maintenance Duct. The term "maintenance duct" generally refers to a full-sized duct (typically three inches in diameter or larger) for use, on a short-term basis, for maintenance, repair, or emergency restoration activities. The term "maintenance duct" does not include ducts and conduits extending from an AT&T-CALIFORNIA manhole to customer premises. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.
- 2.9 Make-ready work. The term "make-ready work" refers to all work performed or to be performed to prepare AT&T-CALIFORNIA's poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Attaching Party's facilities.
- 2.10 Manhole. The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in ducts or conduits, which are parts of AT&T-CALIFORNIA's conduit system. As used in this Agreement, the term "manhole" does not include cables and other telecommunications equipment located within manhole structures.
- 2.11 Other User. The term "Other User" refers to entities, other than the Attaching Party, with facilities on an AT&T-CALIFORNIA pole, duct, conduit or rights-of-way to which the Attaching Party has obtained access. Other Users may include AT&T-CALIFORNIA, other attaching Parties, municipalities or other governmental entities, and electric utilities (which may own interests in AT&T-CALIFORNIA's poles, ducts, conduits or rights-of-ways).
- 2.12 Overlashing. The term "Overlashing" refers to the practice of placing an additional cable by lashing such cable with spinning wire over an existing cable and strand.
- 2.13 Periodic Inspections. The term "periodic inspections" refers to inspections that are planned and scheduled by AT&T-CALIFORNIA, for the purpose of inspecting the facilities of CARRIER's attached to AT&T-CALIFORNIA structure, (poles, conduits, and rights-of-way).
- 2.14 Pole. The term "pole" refers to poles (and associated anchors) which are owned or controlled by AT&T-CALIFORNIA and does not include cables and other telecommunications equipment attached to pole structures.
- 2.15 Rights-of-way. The term "rights-of-way" refers to AT&T-CALIFORNIA owned or controlled legal rights to pass over or through property of another Party and used by AT&T-CALIFORNIA for its

## Central Valley Telecom LLC

telecommunications distribution system. For purposes of this Agreement, "rights-of-way" includes property owned by AT&T-CALIFORNIA and used by AT&T-CALIFORNIA for its telecommunications distribution facilities. Rights-of-way do not include:

- 2.15.1 cables and other telecommunications equipment buried or located on such rights-of-way;
  - 2.15.2 public rights-of-way (which are owned by and subject to the control of governmental entities); or
  - 2.15.3 any space which is owned and controlled by a Third Party property owner and occupied by AT&T-CALIFORNIA with permission from such owner rather than as a matter of legal right.
- 2.16 Spot Inspections. The term "spot inspections" refers to spontaneous inspections done by AT&T-CALIFORNIA, which may be initiated, at AT&T-CALIFORNIA's discretion for the purpose of ensuring safety and compliance with AT&T-CALIFORNIA standards.
- 2.17 Structure. The term "Structure" refers collectively to poles, ducts, conduits and rights-of-way.

### 3. SCOPE OF AGREEMENT

- 3.1 This Agreement establishes the rates, terms, conditions, and procedures by which AT&T-CALIFORNIA shall provide non-discriminatory access to AT&T-CALIFORNIA's Structure. Separate tariffs, appendix, or agreements shall govern Attaching Party's access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Agreement:
- 3.1.1 AT&T-CALIFORNIA's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from AT&T-CALIFORNIA's central offices;
  - 3.1.2 controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
  - 3.1.3 ducts and conduits located within buildings owned by AT&T-CALIFORNIA; and
  - 3.1.4 ducts, conduits, equipment rooms, and similar spaces located in space leased by AT&T-CALIFORNIA from Third Party property owners for purposes other than to house cables and other equipment in active service as part of AT&T-CALIFORNIA's network distribution operations.
- 3.2 No Transfer of Property Rights to Attaching Party. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall create or vest (or be construed as creating or vesting) in either Party any right, title, or interest in or to any real or personal property owned by the other.
- 3.3 No Effect on AT&T-CALIFORNIA's Right to Abandon, Convey or Transfer Structure. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall in any way affect AT&T-CALIFORNIA's right to abandon, convey, or transfer to any other person or entity AT&T-CALIFORNIA's interest in any of AT&T-CALIFORNIA's Structure. AT&T-CALIFORNIA shall give Attaching Party at least 60 days written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or rights-of-way is to be conveyed or transferred.

### 4. EFFECTIVE DATE, TERM AND ELECTIVE TERMINATION

- 4.1 Effective Date. This Agreement shall be effective as of the latest date of execution on the signature page(s) of this Agreement.
- 4.2 Initial Term. Unless sooner terminated as herein provided, the initial term of this Agreement shall run from the effective date until the end of the calendar year, which includes the effective date.

## Central Valley Telecom LLC

- 4.3 Automatic Renewal. Unless sooner terminated as herein provided, this Agreement shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year which includes the effective date.
- 4.4 Elective Termination. Either Party may terminate this Agreement by giving the other Party at least six months prior written notice as provided in this section. The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current term of this Agreement or six months after the date the notice is given.
- 4.5 Elective Termination by AT&T-CALIFORNIA. Attaching Party shall, within 60 days after the effective date of the elective termination by AT&T-CALIFORNIA either initiate negotiations for continued access to AT&T-CALIFORNIA's poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Section 28 of this Agreement.
- 4.6 Effect of Elective Termination. Elective termination of this Agreement by Attaching Party, as permitted under Section 4 of this Agreement, shall not affect Attaching Party's liabilities and obligations incurred under this Agreement prior to the effective date of termination and shall not entitle Attaching Party to the refund of any advance payment made to AT&T-CALIFORNIA under this Agreement. Elective termination of this Agreement by AT&T-CALIFORNIA shall not affect AT&T-CALIFORNIA's obligations to afford access to AT&T-CALIFORNIA's poles, ducts, conduits, and rights-of-way owned or controlled by AT&T-CALIFORNIA as required by the Pole Attachment Act, the Telecommunications Act of 1996, and other applicable laws, regulations, and commission orders.

### 5. GENERAL PROVISIONS

- 5.1 Entire Agreement. This Agreement and the Guidelines for Access to Structure, attached hereto and incorporated herein by reference, set forth the entire understanding and agreement of the Parties. The attached Guidelines are designated AT&T, but for purposes of this Agreement, they are applicable for AT&T-CALIFORNIA. In the event of a conflict between this Agreement and the Guidelines, the terms of this Agreement shall control.
- 5.2 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Attaching Party and AT&T-CALIFORNIA relating to the placement and maintenance of Attaching Party's facilities on and within AT&T-CALIFORNIA's poles, ducts, and conduits within this State.
- 5.3 Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both Parties.
- 5.4 Survival of Obligations. Any liabilities or obligations of either Party for acts or omissions prior to the termination of this Agreement, any obligations of either Party under provisions of this Agreement relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, will survive the termination of this Agreement.
- 5.5 Effect on Licenses or Occupancy Permits Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy permits granted to Attaching Party shall, on the effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.
- 5.6 Force Majeure. Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform; provided, however, that Force Majeure will not include acts of any governmental authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs, the Party whose performance fails or is delayed

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because of such Force Majeure condition will give prompt notice to the other Party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

- 5.7 Severability. If any article, section, subsection, or other provision or portion of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement as to either Party, the invalidity of such provision shall not render this entire Agreement unenforceable and this Agreement shall be administered as if it did not contain the invalid provision.
- 5.8 Choice of Law. Except to the extent that federal law controls any aspect of this Agreement, the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of this State, applied without regard to the provisions of this State's laws relating to conflicts-of-laws.
- 5.9 Changes in the Law. The Parties agree to negotiate in good faith changes to this Agreement to conform to changes applicable law pertaining to access to poles, ducts, conduits and rights-of-way, including the Pole Attachment Act.
- 5.10 Applicable Laws. The Parties shall at all times observe and comply with, and the provisions of this Agreement are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the Parties.
- 5.11 Dispute Resolution

Unless otherwise provided elsewhere in this Agreement, Attaching Party shall pay all rates and charges, as specified in the Agreement, within thirty (30) days from the dates of billing thereof. If Attaching Party disputes any amount invoiced by **AT&T-CALIFORNIA**, Attaching Party shall make payment of the invoice in full and shall notify **AT&T-CALIFORNIA** in writing of the disputed amount. Attaching Party may dispute any amount within ninety (90) days after the date that payment has been made. Attaching Party shall include any documentation supporting its position in such written notification. The Parties shall work together to resolve the dispute in an expeditious manner. In the event the dispute is resolved in the favor of the Attaching Party, or **AT&T-CALIFORNIA** then the other Party shall include interest calculated at the rate set forth in the Rates, Fees, Charges and Billing section of this Agreement.

## 6. DISCLAIMER OF WARRANTIES

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

## 7. INTENTIONALLY LEFT BLANK

## 8. INDEMNIFICATION

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



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

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person acting on the Indemnifying Party's behalf, while present on, within, or in the vicinity of any AT&T-CALIFORNIA pole, duct, conduit, or rights-of-way.

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

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## 9. LIABILITIES AND LIMITATIONS OF LIABILITY

- 9.1 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2 AT&T-CALIFORNIA Not Liable to Attaching Party for Acts of Third Parties or Acts of God. By affording Attaching Party access to AT&T-CALIFORNIA Structure AT&T-CALIFORNIA does not warrant, guarantee, or insure the uninterrupted use of such facilities by Attaching Party. Except as specifically provided in Section 9.4 of this Agreement, Attaching Party assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to Attaching Party's facilities attached to AT&T-CALIFORNIA's poles or placed in AT&T-CALIFORNIA's Structure and AT&T-CALIFORNIA shall not be liable to Attaching Party for any damages to Attaching Party's facilities other than as provided in Section 9.4. In no event shall AT&T-CALIFORNIA be liable to Attaching Party under this Agreement for any death of person or injury, loss, or damage resulting from the acts or omissions of (1) any Other User or any person acting on behalf of an Other User, (2) any governmental body or governmental employee, (3) any Third Party property owner or persons acting on behalf of such property owner, or (4) any permit, invitee, trespasser, or other person present at the site or in the vicinity of any AT&T-CALIFORNIA pole, duct, conduit, or rights-of-way in any capacity other than as a AT&T-CALIFORNIA employee or person acting on AT&T-CALIFORNIA's behalf. In no event shall AT&T-CALIFORNIA be liable to Attaching Party under this Agreement for injuries, losses, or damages resulting from acts of God (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on AT&T-CALIFORNIA's behalf, cable cuts by persons other than AT&T-CALIFORNIA's employees or persons acting on AT&T-CALIFORNIA's behalf, or other causes beyond AT&T-CALIFORNIA's control which occur at sites subject to this Agreement.
- 9.3 Damage to Facilities. Each Party shall exercise due care to avoid damaging the facilities of the other or of Other Users and hereby assumes all responsibility for any and all loss from damage caused by the Party and persons acting on the Party's behalf. A Party shall make an immediate report to the other of the occurrence of any damage and hereby agrees to reimburse the other Party, and/or Other Users for any property damaged caused by the Party or persons acting on the Party's behalf.
- 9.4 No Limitations of Liability in Contravention of Federal or State Law. Nothing contained in this article shall be construed as exempting either Party from any liability, or limiting such Party's liability, in contravention of federal law or in contravention of the laws of this State.

## 10. INSURANCE

- 10.1 At all times in which the Attaching Party has attachments to AT&T-CALIFORNIA poles, or is occupying AT&T-CALIFORNIA conduit or rights-of-way, Attaching Party shall keep and maintain in force, at its own expense, the minimum insurance coverage and limits set forth below. Such insurance and coverage shall not only cover the Attaching Party, but it must cover all contractors, subcontractors and/or any other person acting on Attaching Party's behalf, that are providing services under this Agreement.
- 10.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee. To the fullest extent allowable by law, the policy must include a waiver of subrogation in favor of AT&T, its affiliates, and their directors, officers and employees.

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- 10.1.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations; Fire Legal Liability sub-limits a minimum of \$1,000,000 are also required. **AT&T, its affiliates, officers, agents and employees shall be listed as additional insured** on the Commercial General Liability policy. A waiver of subrogation shall be in favor of AT&T. The liability policies shall be primary and non-contributory from any insurance that is maintained by AT&T.
- 10.1.3 Umbrella/Excess Liability insurance with limits of at least \$5,000,000 each occurrence with terms and conditions at least as broad as the underlying Commercial General Liability, Business Automobile Liability and Employers Liability policies. Umbrella/Excess Liability limits will be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T.
- 10.1.4 Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired and non-owned vehicles.
- 10.2 Attaching Party agrees to name **AT&T-CALIFORNIA** as an Additional Insured on the Commercial General Liability policy and Commercial Automobile Liability Policy.
- 10.3 **AT&T-CALIFORNIA** agrees to accept the Attaching Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
- 10.3.1 Workers' Compensation and Employers Liability: Attaching Party submit to **AT&T-CALIFORNIA** its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and
- 10.3.2 Automobile liability: Attaching Party shall submit to **AT&T-CALIFORNIA** a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
- 10.3.3 General liability: Attaching Party must provide evidence acceptable to **AT&T-CALIFORNIA** that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 10.4 All insurance required in accordance with this section must be in effect before **AT&T-CALIFORNIA** will issue pole attachment or conduit occupancy permits under this Agreement.
- 10.5 Attaching Party agrees to provide **AT&T-CALIFORNIA** with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

## 11. ASSIGNMENT OF RIGHTS

- 11.1 Assignment Permitted. Neither Party may assign, or otherwise transfer its rights or obligations, under this Agreement except as provided in this section.
- 11.1.1 **AT&T-CALIFORNIA** may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with **AT&T-CALIFORNIA** or which acquires or succeeds to ownership of substantially all of **AT&T-CALIFORNIA**'s assets.
- 11.1.2 Overlapping of Attaching Party's facilities on **AT&T-CALIFORNIA** poles by a third Party will be allowed under the following conditions:

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- 11.1.2.1 The Overlapping entity must enter into an agreement with AT&T-CALIFORNIA for access to AT&T-CALIFORNIA Structures and abide by the terms and conditions of such an Occupancy Permit.
- 11.1.2.2 The Overlapping entity must obtain written approval from the Attaching Party and provide a copy to AT&T-CALIFORNIA prior to submitting a request for access to structure.
- 11.1.2.3 The Overlapping Party must submit a written request for access to structure, and indicate on the request that the request is for Overlapping of an existing attachment of the Attaching Party in order to ensure that pole loadings are not exceeded.
- 11.1.2.4 The Overlapping entity is responsible for paying the fees for Overlapping in Pricing Appendix, which are separate, and in addition to the fees paid by the Attaching Party, (e.g. the application fees and all make ready fees, etc.).
- 11.1.3 Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without AT&T-CALIFORNIA's consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Agreement, subject to the express terms of this Agreement. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third Party to acquire Attaching Party's assets through public or private sale or through an Agreement with Attaching Party, Attaching Party's lender or the third Party acquiring Attaching Party's rights under this Agreement shall assume all outstanding obligations of Attaching Party under the agreement and provide proof satisfactory to AT&T-CALIFORNIA that such lender or third Party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third Party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third Party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Attaching Party under the Agreement, including liability to AT&T-CALIFORNIA for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third Party succeeds to the rights of Attaching Party under the Agreement, as applicable.
- 11.1.4 Except as provided in Section 11.2 below, no assignment or transfer by Attaching Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this article, secured AT&T-CALIFORNIA's prior written consent to the assignment or transfer, if necessary, and given AT&T-CALIFORNIA notice of the assignment or transfer pursuant to Section 11.3.
- 11.2 Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article. However, if Attaching Party provides sixty (60) days written notice to AT&T-CALIFORNIA of its intent to assign its rights, delegate its benefits and delegate its duties and obligations under this Agreement to any entity controlling, controlled by, or under common control with Attaching Party, or to any entity which acquires or succeeds to ownership of substantially all of Attaching Party's assets, such assignment and delegations shall be deemed approved if AT&T-CALIFORNIA has not indicated otherwise by the end of this sixty (60) day notice period. AT&T-CALIFORNIA shall not unreasonably withhold or deny consent.

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- 11.3 Assignment Shall Not Relieve Attaching Party of Prior Obligations. Except as otherwise expressly agreed by **AT&T-CALIFORNIA** in writing, no assignment permitted by **AT&T-CALIFORNIA** under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 8 of this Agreement.
- 11.4 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. **AT&T-CALIFORNIA** may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Attaching Party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement.
- 11.5 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting Attaching Party the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or occupancy permits subject to this Agreement to any third Party. Except as otherwise expressly permitted in this Agreement, Attaching Party shall not allow third Party to attach or place facilities to or in pole or conduit space occupied by or assigned to Attaching Party or to utilize such space.

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

- 12.1 Termination Due to Non-Use of Facilities or Loss of Required Authority. Subject to notice and the opportunity to cure as provided in Sections 12.4, 12.5 and 12.6 below, this Agreement and all occupancy permits subject to this Agreement shall terminate if Attaching Party ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if Attaching Party is cable television system having access to **AT&T-CALIFORNIA**'s poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in this State (if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in this State), or ceases to make active use of **AT&T-CALIFORNIA**'s poles, ducts, conduits, and rights-of-way.
- 12.2 Subject to notice and the opportunity to cure as provided in Sections 12.4, 12.5 and 12.6 below, individual occupancy permits subject to this Agreement shall terminate if (a) Attaching Party ceases to utilize the pole attachment or conduit or rights-of-way space subject to such occupancy permit or (b) Attaching Party's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated, or local governmental authority or third-Party property owner having authority to revoke, deny, or terminate such use or access.
- 12.3 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Attaching Party's access to **AT&T-CALIFORNIA**'s Structure shall not materially interfere with or impair service over any facilities of **AT&T-CALIFORNIA** or any Other User, cause material damage to **AT&T-CALIFORNIA**'s plant or the plant of any Other User, impair the privacy of communications carried over the facilities of **AT&T-CALIFORNIA** or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of **AT&T-CALIFORNIA**'s poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, **AT&T-CALIFORNIA** may limit, terminate or refuse access if Attaching Party violates this provision.
- 12.4 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either Party, the aggrieved Party may give written notice of such claimed breach.
- 12.5 The complaining Party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given; and
  - 12.5.1 the breaching Party fails to cure the breach within thirty (30) days of such notice, if the breach is one which can be cured within thirty (30) days; or
  - 12.5.2 the breaching Party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than thirty (30) days will be required to affect such cure.

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- 12.6 Remedies for Breach. Subject to the provisions of this article, either Party may terminate this Agreement in the event of a material breach by the other Party or exercise any other legal or equitable right, which such Party may have to enforce the provisions of this Agreement. In any action based on an alleged breach of this Agreement, the prevailing Party shall be entitled to recover all costs and expenses incurred by such Party, including but not limited to reasonable attorneys' fees.

### 13. FAILURE TO ENFORCE

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

### 14. CONFIDENTIALITY OF INFORMATION

- 14.1 Information Provided by Attaching Party to AT&T-CALIFORNIA. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Attaching Party to AT&T-CALIFORNIA in connection with this Agreement (including but not limited to information submitted in connection with Attaching Party's applications for occupancy permit shall be deemed to be "confidential" or "proprietary" information of Attaching Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for review of records or its inquiry about AT&T-CALIFORNIA facilities. This article does not limit the use by AT&T-CALIFORNIA of aggregate information relating to the occupancy and use of AT&T-CALIFORNIA's Structure by firms other than AT&T-CALIFORNIA (that is, information submitted by Attaching Party and aggregated by AT&T-CALIFORNIA in a manner that does not directly or indirectly identify Attaching Party).
- 14.2 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Attaching Party to AT&T-CALIFORNIA in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons other than those who have a need to know such information for the limited purposes set forth in Sections 14.3-14.6.
- 14.3 Permitted Uses of Attaching Party's Confidential Information. Notwithstanding the provisions of Sections 14.1 and 14.2 above, AT&T-CALIFORNIA and persons acting on AT&T-CALIFORNIA's behalf may utilize Attaching Party's confidential or proprietary information for the following purposes (and on a need to know basis):
- 14.3.1 posting information, as necessary, to AT&T-CALIFORNIA's outside plant records;
  - 14.3.2 placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing AT&T-CALIFORNIA's Structure and any AT&T-CALIFORNIA facilities located on, within, or in the vicinity of such Structure;
  - 14.3.3 performing AT&T-CALIFORNIA's obligations under this Agreement and similar agreements with Third Parties;
  - 14.3.4 determining which of AT&T-CALIFORNIA's Structure are (or may in the future be) available for AT&T-CALIFORNIA's own use, and making planning, engineering, construction, and budgeting decisions relating to AT&T-CALIFORNIA's Structure;
  - 14.3.5 preparing cost studies;
  - 14.3.6 responding to regulatory requests for information;
  - 14.3.7 maintaining AT&T-CALIFORNIA's financial accounting records; and
  - 14.3.8 complying with other legal requirements relating to Structure.

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- 14.4 Defense of Claims. In the event of a dispute between AT&T-CALIFORNIA and any person or entity, including Attaching Party, concerning AT&T-CALIFORNIA's performance of this Agreement, satisfaction of obligations under similar agreements with Third Parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, AT&T-CALIFORNIA may utilize confidential or proprietary information submitted by Attaching Party in connection with this Agreement as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that AT&T-CALIFORNIA shall not disclose Attaching Party's proprietary or confidential information without first, at AT&T-CALIFORNIA's option ( in an individual market if practicable):
- 14.4.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
  - 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
  - 14.4.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.
- 14.5 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding AT&T-CALIFORNIA from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that AT&T-CALIFORNIA shall not disclose Attaching Party's proprietary or confidential information without first, at AT&T-CALIFORNIA's option:
- 14.5.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
  - 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
  - 14.5.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

## 15. ACCESS TO RIGHTS-OF-WAY

- 15.1 To the extent, AT&T-CALIFORNIA has the authority to do so, AT&T-CALIFORNIA grants Attaching Party a right to use any rights-of-way for AT&T-CALIFORNIA poles, ducts, or conduits to which Attaching Party may attach its facilities for the purposes of constructing, operating and maintaining such Attaching Party's facilities on AT&T-CALIFORNIA's poles, ducts or conduits. Notwithstanding the foregoing, Attaching Party shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, rights-of-way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the AT&T-CALIFORNIA pole, duct or conduit to which Attaching Party seeks to attach its facilities. Attaching Party shall furnish proof of any such easement, rights-of-way, license, permit, permission, certification, or franchise within thirty (30) days of request by AT&T-CALIFORNIA. AT&T-CALIFORNIA does not warrant the validity or apportionability of any rights it may hold to place facilities on private property. At Attaching Party's sole reasonable cost and expense, AT&T-CALIFORNIA agrees to work in good faith to provide copies of applicable easement and other right-of-way documents, if AT&T-CALIFORNIA has the legal right to do so and has the documents readily available for copying, to help enable Attaching Party to attach to the pole
- 15.2 Private Rights-of-Way Not Owned or Controlled by Either Party. Neither Party shall restrict or interfere with the other Party's access to or right to occupy property owned by Third Parties which is not subject to the other Party's control, including property as to which either Party has access subject to non-exclusive rights-of-way. Each Party shall make its own, independent legal assessment of its right to



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enter upon or use the property of Third Party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.

- 15.3 Access to Rights-of-Way Generally. At locations where **AT&T-CALIFORNIA** has access to third-Party property pursuant to non-exclusive rights-of-way, **AT&T-CALIFORNIA** shall not interfere with Attaching Party's negotiations with third-Party property owners for similar access; nor with Attaching Party's access to such property pursuant to easements or other rights-of-ways obtained by Attaching Party from the property owner. At locations where **AT&T-CALIFORNIA** has obtained exclusive rights-of-way from third-Party property owners or otherwise controls the rights-of-way, **AT&T-CALIFORNIA** shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Attaching Party on a nondiscriminatory basis, provided that the underlying agreement with the property owner permits **AT&T-CALIFORNIA** to provide such access, and provided further that if **AT&T-CALIFORNIA** has available space that it shares with Attaching Party in **AT&T-CALIFORNIA** non-aerial rights-of-way or easements (e.g., for cabinets placed on or under ground), which have not been accounted for in rates determined in accordance with the Pole Attachment Act (i.e., aerial, linear rights of way for pole lines are so accounted for), **AT&T-CALIFORNIA** shall include Attaching Party's pro rata portion of the charges, if any, paid by **AT&T-CALIFORNIA** to obtain such non-aerial rights-of-way or easements, plus any other documented legal, administrative, and engineering costs incurred by **AT&T-CALIFORNIA** in obtaining such rights-of-way or easements and processing Attaching Party's requests for such access.

## 16. SPECIFICATIONS

- 16.1 Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities attached to **AT&T-CALIFORNIA**'s poles or occupying space in **AT&T-CALIFORNIA**'s ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Agreement and the Guidelines.
- 16.2 Published Standards. Attaching Party's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:
- 16.2.1 the Blue Book Manual of Construction Procedures, Special Report SR-1421, published by Bell Communications Research, Inc., and sometimes referred to as the "Blue Book";
  - 16.2.2 the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE");
  - 16.2.3 the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA");
  - 16.2.4 California Public Utility Commission's General Orders 95 and 128 for attachments to Pacific Bell Telephone Company poles, ducts, conduits and rights of way; and,
  - 16.2.5 the Structure Access Guidelines as identified in section 5.1.
- 16.3 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of **AT&T-CALIFORNIA**'s manholes and access to **AT&T-CALIFORNIA**'s conduit system.
- 16.3.1 Attaching Party will notify **AT&T-CALIFORNIA** not less than 5 business days in advance before entering **AT&T-CALIFORNIA**'s conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the Parties. The notice shall state the general nature of the work to be performed.

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16.3.2 An authorized employee or representative of AT&T-CALIFORNIA may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within AT&T-CALIFORNIA's conduit system. Attaching Party must notify AT&T-CALIFORNIA when Attaching Party has completed such work in the conduit system. If AT&T-CALIFORNIA has not had the opportunity to complete the review, AT&T-CALIFORNIA will attempt to meet with Attaching Party's contractors to finalize the review. If AT&T-CALIFORNIA is not available when Attaching Party notifies AT&T-CALIFORNIA of their notice of completion then AT&T-CALIFORNIA will perform a post-construction inspection as described in section 26.1. Attaching Party shall reimburse AT&T-CALIFORNIA for costs associated with the presence of AT&T-CALIFORNIA's authorized employee or representative.

16.3.3 Each Party must obtain any necessary authorization from appropriate authorities to open manholes.

### 17. ACCESS TO RECORDS

17.1 AT&T-CALIFORNIA will, upon request and at the expense of the Attaching Party, provide Attaching Party access to and copies of redacted maps, records and additional information relating to the location, capacity and utilization of AT&T-CALIFORNIA's Structure. Upon request, AT&T-CALIFORNIA will meet with the Attaching Party to clarify matters relating to maps, records or additional information. AT&T-CALIFORNIA does not warrant the accuracy or completeness of information on any maps or records.

17.2 Maps, records or information are and remain the proprietary property of AT&T-CALIFORNIA, are provided to the Attaching Party solely for the pursue of enabling the Attaching Party to obtain access to AT&T-CALIFORNIA's Structure, and may not be resold, reproduced or disseminated by the Attaching Party.

17.3 AT&T-CALIFORNIA will provide information currently available on the AT&T-CALIFORNIA's maps and/or records regarding:

17.3.1 the location of Structure and street addresses for manholes and poles as shown on AT&T-CALIFORNIA's maps;

17.3.2 the footage between manholes or lateral ducts lengths, as shown on AT&T-CALIFORNIA's maps;

17.3.3 the footage between poles, if shown on AT&T-CALIFORNIA's maps;

17.3.4 the total capacity of the Structure;

17.3.5 the existing utilization of the Structure.

17.4 AT&T-CALIFORNIA will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by AT&T-CALIFORNIA.

17.5 AT&T-CALIFORNIA will expunge any confidential or proprietary information from its maps and records prior to providing access to the Attaching Party.

17.6 AT&T-CALIFORNIA will:

17.6.1 Within five (5) business days after attaching Party submits Billing Authorization to AT&T-CALIFORNIA, AT&T-CALIFORNIA will notify attaching Party of the place and time that attaching Party may view the Structure Records.

17.6.2 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-CALIFORNIA may not be able to provide attaching Party with unscheduled additional time for viewing AT&T-CALIFORNIA Structure Records on the viewing date, but if unable will immediately make alternative

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arrangements that are mutually acceptable for the viewing of records as soon thereafter as possible.

17.6.3 AT&T-CALIFORNIA may make available at the Attaching Party's expense, an AT&T-CALIFORNIA representative with sufficient knowledge about AT&T-CALIFORNIA Structure Records to clarify matters relating to such Structure Records and to assist Attaching Party during their viewing.

17.7 Charges associated with map preparation, viewing and assistance will be on a Time and Material basis as set forth in the following Applicable Tariffs:

### 18. APPLICATIONS AND PRE-OCCUPANCY PERMIT SURVEYS

18.1 Occupancy Permits Required. Attaching Party shall apply in writing for and receive an occupancy permit before attaching facilities to specified AT&T-CALIFORNIA poles or placing facilities within specified AT&T-CALIFORNIA ducts, conduits, or rights-of-way.

18.2 Structure Access Request Form. To apply for an occupancy permit under this Agreement, Attaching Party shall submit to AT&T-CALIFORNIA the appropriate AT&T-CALIFORNIA request forms. Attaching Party shall promptly withdraw or amend its request if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific AT&T-CALIFORNIA Structure. In addition, Attaching Party shall also:

18.2.1 submit payment for the estimate authorizing AT&T-CALIFORNIA or its contractor to complete the make-ready survey; or

18.2.2 advise AT&T-CALIFORNIA of its willingness to perform the proposed make-ready work itself or an Authorized Contractor if permissible in the application area.

18.2.3 confirm that Attaching Party has calculated storm loadings, guying, or pole class to ensure pole loadings are not exceeded and indicate if additional holding or loading capacity is required.

18.2.4 provide sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to AT&T-CALIFORNIA's poles or placed in AT&T-CALIFORNIA's conduit system.

18.3 Make-Ready Survey. A Make-Ready survey must be completed by AT&T-CALIFORNIA or, subject to the requirements and policies in each state, the Attaching Party before an occupancy permit is issued. The primary purposes of the make ready survey will be to enable AT&T-CALIFORNIA to:

18.3.1 confirm or determine the modifications, capacity expansion, and make-ready work, if any, necessary to accommodate Attaching Party's attachment of facilities to AT&T-CALIFORNIA structures;

18.3.2 plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare AT&T-CALIFORNIA's poles, ducts, conduits, rights-of-way, and associated facilities for Attaching Party's proposed attachments or occupancy; and

18.3.3 estimate the costs associated with such facilities modification, capacity expansion, or make-ready work; and

18.3.4 identify the owner of the pole.

### 19. POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

19.1 Selection of Space. AT&T-CALIFORNIA will select or approve the Attaching Party's selection of the space Applicant will occupy on AT&T-CALIFORNIA's poles or in AT&T-CALIFORNIA's conduit systems. Maintenance ducts shall not be considered available for Attaching Party's use except as specifically provided elsewhere in this Agreement. Where required by law or franchise agreement, ducts and attachment space on poles reserved for municipal use shall not be considered available for the Attaching Party's use. All other ducts, inner ducts, space on poles or space in rights-of-ways, which

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are not assigned or occupied, shall be deemed available for use by AT&T-CALIFORNIA Attaching Party, and other Parties entitled to access under applicable law.

### 19.2 Pole, Duct, and Conduit Space Assignments.

19.2.1 After Attaching Party's application for a pole attachment or conduit occupancy permit has been approved by AT&T-CALIFORNIA, the pole, duct, and conduit space selected and/or approved by AT&T-CALIFORNIA in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed twelve (12) months.

19.2.2 AT&T CALIFORNIA: The pole, duct, and conduit space selected and/or approved by AT&T-CALIFORNIA in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed nine (9) months in AT&T CALIFORNIA only as detailed by the California Public Utility Commission.

19.2.3 AT&T-CALIFORNIA may assign space to itself by making appropriate entries in the same records used to log assignments to Attaching Party and Third Parties. If AT&T-CALIFORNIA assigns pole, duct, or conduit space to itself, such assignment will automatically lapse twelve (12) months after the date the assignment has been entered into the appropriate AT&T-CALIFORNIA record if AT&T-CALIFORNIA has not occupied such assigned space within such twelve (12) month period.

19.2.4 Notices and applications, including assignment requests, will be date and time stamped on receipt.

## 20. **ISSUANCE OF OCCUPANCY PERMITS (INCLUDING MAKE-READY WORK)**

20.1 Response Within 45 Days. Within forty-five (45) days of Attaching Party's submission of a request for access to AT&T-CALIFORNIA Structure, AT&T-CALIFORNIA 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-CALIFORNIA 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-CALIFORNIA will schedule the meeting within ten (10) business days of receipt of the Attaching Party's written request for a meeting.

20.2 If access is granted the response will further advise Attaching Party in writing of:

20.2.1 what modifications, capacity expansions, or make-ready work, if any, will be required to prepare AT&T-CALIFORNIA's Structure, and

20.2.2 an estimate of charges for such modifications, capacity expansions, or make-ready work.

20.3 Make-ready Work. If it is determined that make ready work will be necessary to accommodate Attaching Party's facilities, Attaching Party shall have forty-five (45) days (the "acceptance period") to either:

20.3.1 submit payment for the estimate authorizing AT&T-CALIFORNIA or its contractor to complete the make-ready work; or

20.3.2 advise AT&T-CALIFORNIA of its willingness to perform the proposed make-ready work itself if permissible in the application area.

20.3.2.1 Make-ready work performed by Attaching Party, or by an Authorized Contractor selected by Attaching Party, shall be performed in accordance with AT&T-CALIFORNIA's specifications and in accordance with the same standards and practices, which would be followed if such work were being performed by AT&T-CALIFORNIA or AT&T-CALIFORNIA'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-CALIFORNIA's Structures or interferes

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with any existing use of AT&T-CALIFORNIA's facilities or the facilities of any Other User.

- 20.4 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. Attaching Party shall make arrangements with the Other Users with facilities attached to AT&T-CALIFORNIA's poles or occupying space in AT&T-CALIFORNIA's conduit system regarding reimbursement for any expenses incurred by the Other Users in transferring or rearranging the Other Users' facilities to accommodate the attachment or placement of Attaching Party's facilities to or in AT&T-CALIFORNIA's poles, ducts, conduits and rights of ways.
- 20.5 Reimbursement for the Creation or Use of Additional Capacity. If any additional capacity is created as a result of make-ready work performed to accommodate Attaching Party's facilities, Attaching Party shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to AT&T-CALIFORNIA for the use of such additional capacity. If AT&T-CALIFORNIA utilizes additional space or capacity created at Attaching Party's expense, AT&T-CALIFORNIA will reimburse Attaching Party on a pro-rata basis for AT&T-CALIFORNIA's share, if any, of Attaching Party's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. AT&T-CALIFORNIA will notify the Attaching Party if AT&T-CALIFORNIA attaches facilities to additional capacity on AT&T-CALIFORNIA's Structure created at the Attaching Party's expense. AT&T-CALIFORNIA shall not be required to collect or remit any such amounts to Attaching Party, to resolve or adjudicate disputes over reimbursement between Attaching Party and Other Users.
- 20.6 If Attaching Party utilizes space or capacity on any AT&T-CALIFORNIA Structure created at AT&T-CALIFORNIA's expense after February of 1996, the Attaching Party will reimburse Attaching Party on a pro-rata basis for the Attaching Party's share, if any, of AT&T-CALIFORNIA's capacity creation costs.
- 20.7 Occupancy Permit and Attachment. After all required make-ready work is completed; AT&T-CALIFORNIA will issue an occupancy permit confirming that Attaching Party may attach specified facilities to AT&T-CALIFORNIA's Structure.
- 20.8 The Attaching Party must occupy the assigned space within a period not to exceed twelve (12) months from the issuance of the occupancy permit. If the Attaching Party does not occupy the assigned space within the twelve (12) month period, the Occupancy Permit will lapse and the space will be considered available for use by AT&T-CALIFORNIA or Other User. Notwithstanding anything to the contrary, prior to the expiration of the twelve (12) month period, the Attaching Party may submit a request for an extension of time based on the need to receive zoning or other approvals and consents, setting forth an explanation of the need and the basis for the amount of time requested. Attaching Party shall diligently pursue needed zoning and other approvals and consents and include facts showing such diligence in any request for an extension of time. If another telecommunications carrier, including an AT&T-CALIFORNIA carrier, requests the same space after the initial twelve (12) month period has passed, and other sufficient space is not available, any such extension shall be limited to three months. AT&T-CALIFORNIA will not unreasonably withhold or deny an extension.
- 20.9 The Attaching Party's obligation to pay semiannual pole attachment or conduit occupancy fees will commence on the date the Occupancy Permit is provided by AT&T-CALIFORNIA to the Attaching Party.

## 21. CONSTRUCTION OF ATTACHING PARTY'S FACILITIES

- 21.1 Responsibility for Attaching and Placing Facilities. The Attaching Party shall be responsible for the actual attachment of its facilities to AT&T-CALIFORNIA's poles and the placement of such facilities in AT&T-CALIFORNIA's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities.
- 21.2 Responsibilities of Attaching Party. Attaching Party is responsible for the Authorized Contractors or contractors it selects.

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- 21.2.1 As used in this Agreement, the term "Authorized Contractor" does not refer to contractors performing routine installation, maintenance, or repair work on Attaching Party's behalf or other contractors who may be selected by Attaching Party to perform work on Attaching Party's behalf without AT&T-CALIFORNIA's approval.
- 21.2.2 Subject to state specific requirements, Authorized Contractors have received certification from AT&T-CALIFORNIA to perform one or more of the following tasks within a specified AT&T-CALIFORNIA construction district, as applicable:
- (a) installation of those sections of Attaching Party's ducts or facilities, which connect to AT&T-CALIFORNIA's conduit system;
  - (b) installation of inner duct;
  - (c) excavation work in connection with the removal of retired or inactive (dead) cables; or
  - (d) Make-Ready work.
- 21.2.3 A person or entity approved as an Authorized Contractor is only an Authorized Contractor with respect to those tasks for which such person or entity has been approved by both Parties and is an Authorized Contractor only in those AT&T-CALIFORNIA construction districts agreed to by both Parties.
- 21.2.4 Designation of an Authorized Contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an Authorized Contractor for other purposes, nor shall approval of an Authorized Contractor by one AT&T-CALIFORNIA's construction district constitute approval of such Authorized Contractor for the area served by a different AT&T-CALIFORNIA construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an Authorized Contractor shall, for the purposes of that job, be deemed to have been approved by all AT&T-CALIFORNIA construction districts in which the work is to be performed.
- 21.3 Construction Schedule. After the issuance of an occupancy permit, Attaching Party shall provide AT&T-CALIFORNIA with a construction schedule and thereafter keep AT&T-CALIFORNIA informed of anticipated changes in the construction schedule.

## 22. USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY'S FACILITIES

- 22.1 Routine Maintenance of Attaching Party's Facilities. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within AT&T-CALIFORNIA's poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner, which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party's occupancy permit.
- 22.2 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed thirty (30) days) non-emergency maintenance or repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by AT&T-CALIFORNIA. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify AT&T-CALIFORNIA of such use and must either vacate the maintenance duct within thirty (30) days or, with AT&T-CALIFORNIA's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within thirty (30) days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies, which may occur while the maintenance duct is occupied.

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### 23. MODIFICATION OF ATTACHING PARTY'S FACILITIES

- 23.1 Notification of Planned Modifications. Attaching Party shall notify AT&T-CALIFORNIA in writing at least thirty (30) days before adding to, relocating, replacing or otherwise modifying its facilities already attached to an AT&T-CALIFORNIA Structure. The notice shall contain sufficient information to enable AT&T-CALIFORNIA to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Attaching Party's present occupancy permit or requires a new or amended occupancy permit.
- 23.2 Replacement of Facilities and Overlapping Additional Cables. Attaching Party may replace existing facilities with new facilities occupying the same AT&T-CALIFORNIA Structure, and may overlap additional cables to its own existing facilities; provided, however, that such activities shall not be considered to be routine maintenance and shall be subject to the requirements of this article.

### 24. REQUIRED REARRANGEMENTS OF ATTACHING PARTY'S FACILITIES

- 24.1 Required Rearrangement of Attaching Party's Facilities. Attaching Party agrees that Attaching Party will cooperate with AT&T-CALIFORNIA and other users in making rearrangements to AT&T-CALIFORNIA Structure as may be necessary, and that costs incurred by Attaching Party in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the Parties in accordance with then applicable law.
- 24.2 Whenever feasible, AT&T-CALIFORNIA shall give Attaching Party not less than thirty (30) days prior written notice of the need for Attaching Party to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Attaching Party shall complete such rearrangements within the time prescribed in the notice. If Attaching Party does not rearrange facilities within noted time, AT&T-CALIFORNIA will rearrange at Attaching Party's expense.

### 25. EMERGENCY REPAIRS AND POLE REPLACEMENTS

- 25.1 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each Party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such Party to make such repairs.
- 25.1.1 Nothing contained in this Agreement shall be construed as requiring either Party to perform any repair or service restoration work of any kind with respect to the other Party's facilities or the facilities of joint users.
- 25.1.2 Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that an entity using the maintenance duct for emergency repair activities will notify AT&T-CALIFORNIA 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-CALIFORNIA conduit system and using the maintenance duct for emergency restoration purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance ducts will be used to restore the highest priority services, as defined in Section 25.3, first. Existing spare ducts may be used for restoration purposes providing the spare ducts are restored after restoration work is complete. Any spare ducts not returned will be included be assigned to the user of the duct and an occupancy permit issued.
- 25.1.3 The Attaching Party shall either vacate the maintenance duct within thirty (30) days or, with AT&T-CALIFORNIA's consent, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner-duct, a suitable replacement inner-duct) is available for use by all occupants in the conduit section within thirty (30) days after such Attaching Party occupies the maintenance ducts. If Attaching Party fails to vacate the maintenance duct as described above, AT&T-CALIFORNIA may install a maintenance conduit at the Attaching Party's expense.

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- 25.2 Designation of Emergency Repair Coordinators and Other Information. For each **AT&T-CALIFORNIA** construction district, Attaching Party shall provide **AT&T-CALIFORNIA** 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-CALIFORNIA** of changes to such information.
- 25.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, **AT&T-CALIFORNIA**, Attaching Party, and other affected Parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected Parties present in accordance with the following principles.
- 25.3.1 Emergency service restoration work requirements shall take precedence over other work operations.
- 25.3.2 Except as otherwise agreed upon by the Parties, restoration of lines for emergency services providers (e.g., 911, fire, police, national security and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The Parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.
- 25.3.3 **AT&T-CALIFORNIA** shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected Parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by **AT&T-CALIFORNIA** on a nondiscriminatory basis in accordance with the principles set forth in this section.
- 25.4 Emergency Pole Replacements.
- 25.4.1 When emergency pole replacements are required, **AT&T-CALIFORNIA** shall promptly make a good faith effort to contact Attaching Party to notify Attaching Party of the emergency and to determine whether Attaching Party will respond to the emergency in a timely manner.
- 25.4.2 If notified by **AT&T-CALIFORNIA** 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-CALIFORNIA** replacement pole, the transfer shall be in accordance with **AT&T-CALIFORNIA**'s placement instructions.
- 25.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise **AT&T-CALIFORNIA** and thereby authorize **AT&T-CALIFORNIA** (or any Other User sharing the pole with **AT&T-CALIFORNIA**) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on Attaching Party's behalf at the Attaching Party's expense.
- 25.5 Expenses Associated with Emergency Repairs. Each Party shall bear all reasonable expenses arising out of or in connection with emergency repairs of its own facilities and transfers or rearrangements of such facilities associated with emergency pole replacements made in accordance with the provisions of this article.
- 25.5.1 Each Party shall be solely responsible for paying all persons and entities that provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such Party's facilities.
- 25.5.2 Attaching Party shall reimburse **AT&T-CALIFORNIA** for the costs incurred by **AT&T-CALIFORNIA** for work performed by **AT&T-CALIFORNIA** on Attaching Party's behalf in accordance with the provisions of this article.



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

- 26.1 Post-Construction Inspections. AT&T-CALIFORNIA will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of facilities to AT&T-CALIFORNIA 22's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. AT&T-CALIFORNIA 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-CALIFORNIA on the post-construction inspection.
- 26.2 Right to Make Periodic or Spot Inspections. AT&T-CALIFORNIA shall have the right, but not the obligation, to make Periodic or Spot Inspections of all facilities attached to AT&T-CALIFORNIA Structure. Periodic Inspections will not be made more often than once every two (2) years unless in AT&T-CALIFORNIA's judgment such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Agreement.
- 26.3 If Attaching Party's facilities are in compliance with this Agreement, 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 Agreement, AT&T-CALIFORNIA 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.
- 26.4 If the inspection reflects that Attaching Party's facilities are not in compliance with the terms of this Agreement, Attaching Party shall bring its facilities into compliance within thirty (30) days after being notified of such noncompliance. If any make ready or modification work to AT&T-CALIFORNIA's Structures is required to bring Attaching Party's facilities into compliance, the Attaching Party shall provide notice to AT&T-CALIFORNIA and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment. If the violation creates a hazardous condition, facilities must be brought into compliance upon notification.
- 26.5 Notice of Noncompliance. If, at any time, AT&T-CALIFORNIA determines that Attaching Party's facilities or any part thereof have not been placed or maintained or are not being used in accordance with the requirements of this Agreement, AT&T-CALIFORNIA 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-CALIFORNIA's assertion that such facilities are not in compliance, Attaching Party agrees to provide AT&T-CALIFORNIA with a schedule for bringing such facilities into compliance, to bring the facilities into compliance within a reasonable time, and to notify AT&T-CALIFORNIA in writing when the facilities have been brought into compliance.
- 26.6 Disputes over Alleged Noncompliance. If Attaching Party disputes AT&T-CALIFORNIA's assertion that Attaching Party's facilities are not in compliance, Attaching Party shall notify AT&T-CALIFORNIA in writing of the basis for Attaching Party's assertion that its facilities are in compliance.
- 26.7 Failure to Bring Facilities into Compliance. If Attaching Party has not brought the facilities into compliance within a reasonable time or provided AT&T-CALIFORNIA with proof sufficient to persuade AT&T-CALIFORNIA that AT&T-CALIFORNIA erred in asserting that the facilities were not in compliance, and if AT&T-CALIFORNIA determines in good faith that the alleged noncompliance causes or is likely to cause material damage to AT&T-CALIFORNIA's facilities or those of other users, AT&T-CALIFORNIA may, at its option and Attaching Party's expense, take such non-service affecting steps as may be required to bring Attaching Party's facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this Agreement.
- 26.8 Correction of Conditions by AT&T-CALIFORNIA. If AT&T-CALIFORNIA elects to bring Attaching Party's facilities into compliance, the provisions of this Section shall apply.

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- 26.8.1 AT&T-CALIFORNIA will, whenever practicable, notify Licensee in writing before performing such work. The written notice shall describe the nature of the work to be performed and AT&T-CALIFORNIA's schedule for performing the work.
- 26.8.2 If Attaching Party's facilities have become detached or partially detached from supporting racks or wall supports located within a AT&T-CALIFORNIA manhole, AT&T-CALIFORNIA may, at Attaching Party's expense, reattach them but shall not be obligated to do so. If AT&T-CALIFORNIA does not reattach Attaching Party's facilities, AT&T-CALIFORNIA shall endeavor to arrange with Attaching Party for the reattachment of any facilities affected.
- 26.8.3 AT&T-CALIFORNIA 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.
- 26.9 Attaching Party to Bear Expenses. Attaching Party shall bear all expenses arising out of or in connection with any work performed to bring Attaching Party's facilities into compliance with this Section; provided, however that nothing contained in this Section or any license issued hereunder shall be construed as requiring Attaching Party to bear any expenses which, under applicable federal or state laws or regulations, must be borne by persons or entities other than Attaching Party.

### 27. TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

- 27.1 Facilities to Be Marked. Attaching Party shall tag or otherwise mark all of Attaching Party's facilities placed on or in AT&T-CALIFORNIA's Structure in a manner sufficient to identify the facilities as those belonging to the Attaching Party.
- 27.2 Removal of Untagged Facilities. AT&T-CALIFORNIA may, without notice to any person or entity, remove from AT&T-CALIFORNIA's poles or any part of AT&T-CALIFORNIA's conduit system the Attaching Party's facilities, if AT&T-CALIFORNIA determines that such facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on AT&T-CALIFORNIA's poles or in AT&T-CALIFORNIA's conduit system.
- 27.3 Notice to Attaching Party. If any of Attaching Party's facilities for which no occupancy permit is presently in effect are found attached to AT&T-CALIFORNIA's poles or anchors or within any part of AT&T-CALIFORNIA's conduit system, AT&T-CALIFORNIA, without prejudice to other rights or remedies available to AT&T-CALIFORNIA under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Attaching Party advising Attaching Party that no occupancy permit is presently in effect with respect to the facilities and that Attaching Party must, within 30 days, respond to the notice as provided in Section 27.4 of this Agreement.
- 27.4 Attaching Party's Response. Within thirty (30) days after receiving a notice under Section 27.3 of this Agreement, Attaching Party shall acknowledge receipt of the notice and submit to AT&T-CALIFORNIA, in writing, an application for a new or amended occupancy permit with respect to such facilities.
- 27.5 Approval of Request and Retroactive Charges. If AT&T-CALIFORNIA approves Attaching Party's application for a new or amended occupancy permit, Attaching Party shall be liable to AT&T-CALIFORNIA for all fees and charges associated with the unauthorized attachments as specified in Section 27.10 of this Agreement. The issuance of a new or amended occupancy permit as provided by this article shall not operate retroactively or constitute a waiver by AT&T-CALIFORNIA of any of its rights or privileges under this Agreement or otherwise.
- 27.6 Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from AT&T-CALIFORNIA's poles, conduit system or rights of way or until a new or amended occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party and its predecessors had continuously complied with all applicable AT&T-CALIFORNIA licensing requirements. Such fees and charges shall be due

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and payable 30 days after the date of the bill or invoice stating such fees and charges. In addition, the Attaching Party shall be liable for an unauthorized attachment and/or occupancy fee as specified in Section 29 of this Agreement. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Attaching Party shall rearrange or remove its unauthorized facilities at AT&T-CALIFORNIA's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to AT&T-CALIFORNIA or another Other User, and shall pay AT&T-CALIFORNIA for all costs incurred by AT&T-CALIFORNIA in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities.

- 27.7 Removal of Unauthorized Attachments. If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized facilities within the specified period of time, AT&T-CALIFORNIA shall by written notice advise Attaching Party to remove its unauthorized facilities not less than 60 days from the date of notice and Attaching Party shall remove the facilities within the time specified in the notice. If the facilities have not been removed within the time specified in the notice, AT&T-CALIFORNIA may, at AT&T-CALIFORNIA's option, remove Attaching Party's facilities at Attaching Party's expense.
- 27.8 No Ratification of Unpermitted Attachments or Unauthorized Use of AT&T-CALIFORNIA's Facilities. No act or failure to act by AT&T-CALIFORNIA with regard to any unauthorized attachment or occupancy or unauthorized use of AT&T-CALIFORNIA's Structure shall be deemed to constitute a ratification by AT&T-CALIFORNIA of the unauthorized attachment or occupancy or use, nor shall the payment by Attaching Party of fees and charges for unauthorized pole attachments or conduit occupancy exonerate Attaching Party from liability for any trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities.

## 28. REMOVAL OF ATTACHING PARTY'S FACILITIES

- 28.1 When Attaching Party no longer intends to occupy space on an AT&T-CALIFORNIA pole or in an AT&T-CALIFORNIA duct or conduit, Attaching Party will provide written notification to AT&T-CALIFORNIA that it wishes to terminate the occupancy permit with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Attaching Party's facilities, the occupancy permit shall terminate and the space shall be available for reassignment.
- 28.1.1 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from AT&T-CALIFORNIA's Structure.
- 28.1.2 Except as otherwise agreed upon in writing by the Parties, Attaching Party must, after removing its facilities, plug all previously occupied ducts at the entrances to AT&T-CALIFORNIA's manholes.
- 28.1.3 Attaching Party shall be solely responsible for the removal of its own facilities from AT&T-CALIFORNIA's Structure.
- 28.2 At AT&T-CALIFORNIA's request, Attaching Party shall remove from AT&T-CALIFORNIA'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-CALIFORNIA's Structure.
- 28.3 Removal Following Termination of Occupancy permit. Attaching Party shall remove its facilities from AT&T-CALIFORNIA's poles, ducts, conduits, or rights-of-way within thirty (30) days after termination of the occupancy permit.
- 28.4 Removal Following Replacement of Facilities. Attaching Party shall remove facilities no longer in service from AT&T-CALIFORNIA's Structures within thirty (30) 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.

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- 28.5 Removal to Avoid Forfeiture. If the presence of Attaching Party's facilities on or in AT&T-CALIFORNIA's Structure would cause a forfeiture of the rights of AT&T-CALIFORNIA to occupy the property where such Structure is located, AT&T-CALIFORNIA 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-CALIFORNIA will give Attaching Party not less than thirty (30) days from the date of notice to remove Attaching Party's facilities unless prior removal is required to prevent the forfeiture of AT&T-CALIFORNIA's rights. At Attaching Party's request, the Parties will engage in good faith negotiations with each other, with Other Users, and with third-Party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of Attaching Party's facilities.
- 28.6 Removal of Facilities by AT&T-CALIFORNIA; Notice of Intent to Remove. If Attaching Party fails to remove its facilities from AT&T-CALIFORNIA's Structure in accordance with the provisions of Sections 28.1-28.6 of this Agreement, AT&T-CALIFORNIA 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-CALIFORNIA shall give Attaching Party not less than thirty (30) days prior written notice of its intent to remove Attaching Party's facilities pursuant to this section.
- 28.7 Removal of Facilities by AT&T-CALIFORNIA. If AT&T-CALIFORNIA removes any of Attaching Party's facilities pursuant to this article, Attaching Party shall reimburse AT&T-CALIFORNIA for AT&T-CALIFORNIA's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.
- 28.8 Removal of CLEC's Facilities. AT&T- CALIFORNIA retains the authority and right to remove any abandoned equipment left on or in AT&T structures or buildings and to sell, at salvage value, any abandoned equipment to recover removal costs.

## 29. RATES, FEES, CHARGES, AND BILLING

- 29.1 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees outlined in this Agreement will be set forth in Pricing Appendix to this Agreement. All rates, charges and fees, and changes thereto, shall be subject to all applicable federal and state laws, rules, regulations, and commission orders. AT&T-CALIFORNIA may accordingly change rates, charges and fees and will provide at least sixty (60) days notice to Attaching Party prior to making rate changes. Pole top space will be charged based on the number of vertical feet of space occupied, at the rates that will be in Pricing Appendix, except that in no case shall the charge be for less than one (1) vertical foot regardless of the amount of vertical space actually occupied.
- Attaching Party agrees that in the event Attaching Party fails to pay an amount due and payable within the period of time set forth for payment in this Agreement, interest shall accrue on the unpaid balance thereof at the rate of 1 ½% per month for each month from the expiration of such period until payment is received by Licensor or the maximum interest rate permitted by law, whichever is the lesser amount.
- 29.2 Changes to Rates, Charges and Fees. Subject to applicable federal and state laws, rules, regulations and orders, AT&T-CALIFORNIA shall have the right to change the rates, charges and fees outlined in this Agreement. AT&T-CALIFORNIA will provide the Attaching Party 60 day's 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 Agreement, (2) terminate this Agreement, or (3) seek relief through the dispute resolution process in the General Provisions section of this Agreement.

## 30.0 PERFORMANCE AND PAYMENT BONDS, LETTERS OF CREDIT, OR CASH DEPOSITS

- 30.1 Bonds, Letters of Credit, or Cash Deposits May Be Required. AT&T-CALIFORNIA may require Attaching Party, Authorized Contractors and other persons acting on Attaching Party's behalf to

## Central Valley Telecom LLC

execute performance and payment bonds, letters of credit or cash deposits ( or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of the Attaching Party's obligations arising out of or in connection with this Agreement.

30.1.1 If a bond or similar form of assurance is required of the Attaching Party, an Authorized Contractor, or other person acting on Attaching Party's behalf. Attaching Party shall promptly submit to **AT&T-CALIFORNIA** adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing **AT&T-CALIFORNIA** 60 days written notice.

30.1.2 Upon request by **AT&T-CALIFORNIA**, Attaching Party will provide **AT&T-CALIFORNIA** with the **AT&T-CALIFORNIA** Credit Profile form and provide information to **AT&T- CALIFORNIA** regarding Attaching Party's credit and financial condition.

Payment and Performance Bonds in Favor of Contractors and Subcontractors: Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, material men, and other persons or entities performing work or providing materials in connection with Attaching Party's performance under this Agreement. In the event any lien, claim, or demand is made on **AT&T-CALIFORNIA** by any such employee, contractor, subcontractor, mechanics, material man, or other person or entity providing such materials or performing such work, **AT&T-CALIFORNIA** may require, in addition to any security provided under Section 30.1 of this Agreement, that Attaching Party execute payment or performance bonds, letter of credit or provide cash deposits or such other security as **AT&T-CALIFORNIA** may deem reasonable.

### 31. NOTICES

31.1 Notices to Attaching Party. All written notices required to be given to a Party shall be delivered or mailed to the Party's duly authorized agent or attorney, as designated in this section.

31.1.1 Such notice may be delivered to the Party's duly authorized agent or attorney in person or by agent or courier receipted delivery.

31.1.2 Such notice may be mailed to the Party's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.

31.1.3 Notices to Attaching Party and **AT&T-CALIFORNIA** shall be sent to the authorized agent or attorney designated below:

<b>NOTICE CONTACT</b>	<b>ATTACHING PARTY</b>	<b>AT&amp;T</b>
NAME/TITLE	David Nelson	AT&T Structure Access Manager
STREET ADDRESS	9479 N. Ft. Washington, Ste.105	5555 E. Olive Rd, Rm 100WW
CITY, STATE, ZIP CODE	Fresno, CA 93730	Fresno, CA 93727
TELEPHONE NUMBER	559-554-9100	559-454-4101
FACSIMILE NUMBER	559-442-6047	

31.2 Changes in Notice requirements: Either Party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other Party. Such notice shall state, at a minimum, the name, title and full address of the new addressee.


**Central Valley Telecom LLC**

EXECUTED THIS 12<sup>th</sup> day of July, 2012

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

**Signatures**

**LICENSEE:**  
Central Valley Telecom, LLC

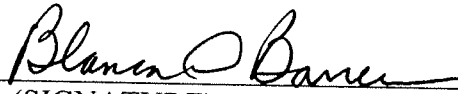
By:   
(SIGNATURE)

NAME: DAVID S. NELSON

TITLE: CEO

**LICENSOR:**

Pacific Telephone Company d/b/a AT&T California

By:   
(SIGNATURE)

NAME: BLANCA O. BARRERA  
(PRINT NAME)

TITLE: DIRECTOR - CTE WEST



EXHIBIT D / APPENDIX 1

**REVISED**

**AT&T**

**ANNUAL FEES FOR POLE ATTACHMENTS AND CONDUIT OCCUPANCY**

<u>Year</u>	<u>Pole Attachment Rate</u>
2012	\$5.02
<u>Year</u>	<u>Conduit Occupancy Rate</u>
2012 (Inner duct)	\$0.49/linear foot

All pole and conduit license fees are for a period of one year from January 1 through December 31, effective January 1, 2012 and billable semiannually in advance in January and July of each year.

X2 Telecom LLC



**at&t**

Your world. Delivered.

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



# X2 Telecom LLC

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# X2 Telecom LLC

## **STAND-ALONE 22-STATE STRUCTURE ACCESS AGREEMENT FOR POLES, CONDUITS, AND RIGHTS-OF-WAY**

This Agreement dated 9-12-2011 is made by and between the "Parties", identified as the AT&T Inc. owned Incumbent Local Exchange Carrier Pacific Bell Telephone Company d/b/a AT&T California hereinafter referred to as defined below, (only to the extent that the agent for each such AT&T Inc.-owned ILEC executes this Agreement for such AT&T Inc. owned ILEC, and in the areas where, such AT&T Inc. owned ILEC provides Telephone Exchange Services as an ILEC in the State listed below) and **X2 Telecom LLC**, a **Nevada Limited Liability Company**("CARRIER"), only to the extent, and in the areas where, Section 224 pole-attachment authority is established through actual or, in fact, planned provision of telecommunications service by a telecommunications carrier, as defined in the 1934 Communications Act as amended by the 1996 Telecommunications Act, hereinafter referred to as "Attaching Party".

### **Special Provisions**

- A. This Agreement shall apply only to those certain structures (as defined below) located within the State of California.

## **1. INTRODUCTION**

- 1.1 This Agreement sets forth the terms and conditions for Rights-of-Way (ROW), Conduits and Poles provided by the applicable AT&T Inc. (AT&T) owned Incumbent Local Exchange Carrier (ILEC) and Attaching Party.
- 1.2 "AT&T Inc." means the holding company which directly or indirectly owns the following ILECs: Pacific Bell Telephone Company d/b/a AT&T California. As used in this Agreement, AT&T refers to the AT&T Inc. ILECs only. AT&T Inc. is not itself a party to this Agreement.
- 1.3 **AT&T-CALIFORNIA**- As used herein, **AT&T-CALIFORNIA** means Pacific Bell Telephone Company d/b/a **AT&T CALIFORNIA** and (and previously referred to as "SBC-California"), the applicable AT&T-owned ILEC doing business in California.

## **2. DEFINITIONS**

- 2.1 **Definitions in general.** As used in this Agreement, the terms defined in this article shall have the meanings set forth below in Sections 2.1 to 2.17 except as the context otherwise requires.
- 2.2 **Authorized Contractor.** As used in this Agreement the term "Authorized Contractor" is used when referring to any contractor which is included on a list of contractors mutually approved by Attaching Party and **AT&T-CALIFORNIA** and who subject to Attaching Party's direction and control, and subject to the requirements and policies in each state, perform facilities modification or make-ready work which would ordinarily be performed by **AT&T-CALIFORNIA** or persons acting on **AT&T-CALIFORNIA**'s behalf as more specifically detailed in Section 21.2.
- 2.3 **Conduit.** The term "conduit" refers to tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. As used in this Agreement, the term "conduit" refers only to conduit structures (including ducts, manholes and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled

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environment vaults, or other **AT&T-CALIFORNIA** structures (such as huts and cabinets) which branch off from or are connected to **AT&T-CALIFORNIA**'s conduit.

- 2.4 **Conduit system**. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Agreement, the term "conduit system" does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other **AT&T-CALIFORNIA** structures (such as huts and cabinets) which branch off from or are connected to **AT&T-CALIFORNIA**'s conduit.
- 2.5 **Duct**. The term "duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Agreement, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels, but does not include cables and other telecommunications equipment located within such ducts.
- 2.6 **Handhole**. The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Agreement, the term "handhole" refers only to handholes, which are part of **AT&T-CALIFORNIA**'s conduit system, and does not refer to handholes, which provide access to buried cables not housed within **AT&T-CALIFORNIA** ducts or conduits. As used in this Agreement, the term "handhole" refers only to handhole structures owned or controlled by **AT&T-CALIFORNIA** and does not include cables and other telecommunications equipment located within handhole structures.
- 2.7 **Occupancy Permit**. The term "occupancy permit" refers to a written instrument confirming that **AT&T-CALIFORNIA** has granted the structure access request of Attaching Party or a Third Party for access to pole, duct, conduit, or rights-of-way space.
- 2.8 **Maintenance Duct**. The term "maintenance duct" generally refers to a full-sized duct (typically three inches in diameter or larger) for use, on a short-term basis, for maintenance, repair, or emergency restoration activities. The term "maintenance duct" does not include ducts and conduits extending from an **AT&T-CALIFORNIA** manhole to customer premises. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.
- 2.9 **Make-ready work**. The term "make-ready work" refers to all work performed or to be performed to prepare **AT&T-CALIFORNIA**'s poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Attaching Party's facilities.
- 2.10 **Manhole**. The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in ducts or conduits, which are parts of **AT&T-CALIFORNIA**'s conduit system. As used in this Agreement, the term "manhole" does not include cables and other telecommunications equipment located within manhole structures.
- 2.11 **Other User**. The term "Other User" refers to entities, other than the Attaching Party, with facilities on an **AT&T-CALIFORNIA** pole, duct, conduit or rights-of-way to which the Attaching Party has obtained access. Other Users may include **AT&T-CALIFORNIA**, other attaching Parties, municipalities or other governmental entities, and electric utilities (which may own interests in **AT&T-CALIFORNIA**'s poles, ducts, conduits or rights-of-ways).
- 2.12 **Overlashing**. The term "Overlashing" refers to the practice of placing an additional cable by lashing such cable with spinning wire over an existing cable and strand.
- 2.13 **Periodic Inspections**. The term "periodic inspections" refers to inspections that are planned and scheduled by **AT&T-CALIFORNIA**, for the purpose of inspecting the facilities of CARRIER's attached to **AT&T-CALIFORNIA** structure, (poles, conduits, and rights-of-way).
- 2.14 **Pole**. The term "pole" refers to poles (and associated anchors) which are owned or controlled by **AT&T-CALIFORNIA** and does not include cables and other telecommunications equipment attached to pole structures.

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- 2.15 Rights-of-way. The term “rights-of-way” refers to **AT&T-CALIFORNIA** owned or controlled legal rights to pass over or through property of another Party and used by **AT&T-CALIFORNIA** for its telecommunications distribution system. For purposes of this Agreement, “rights-of-way” includes property owned by **AT&T-CALIFORNIA** and used by **AT&T-CALIFORNIA** for its telecommunications distribution facilities. Rights-of-way do not include:
- 2.15.1 cables and other telecommunications equipment buried or located on such rights-of-way;
  - 2.15.2 public rights-of-way (which are owned by and subject to the control of governmental entities); or
  - 2.15.3 any space which is owned and controlled by a Third Party property owner and occupied by **AT&T-CALIFORNIA** with permission from such owner rather than as a matter of legal right.
- 2.16 Spot Inspections. The term “spot inspections” refers to spontaneous inspections done by **AT&T-CALIFORNIA**, which may be initiated, at **AT&T-CALIFORNIA**'s discretion for the purpose of ensuring safety and compliance with **AT&T-CALIFORNIA** standards.
- 2.17 Structure. The term “Structure” refers collectively to poles, ducts, conduits and rights-of-way.

## 3. SCOPE OF AGREEMENT

- 3.1 This Agreement establishes the rates, terms, conditions, and procedures by which **AT&T-CALIFORNIA** shall provide non-discriminatory access to **AT&T-CALIFORNIA**'s Structure. Separate tariffs, appendix, or agreements shall govern Attaching Party's access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Agreement:
- 3.1.1 **AT&T-CALIFORNIA**'s central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from **AT&T-CALIFORNIA**'s central offices;
  - 3.1.2 controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
  - 3.1.3 ducts and conduits located within buildings owned by **AT&T-CALIFORNIA**; and
  - 3.1.4 ducts, conduits, equipment rooms, and similar spaces located in space leased by **AT&T-CALIFORNIA** from Third Party property owners for purposes other than to house cables and other equipment in active service as part of **AT&T-CALIFORNIA**'s network distribution operations.
- 3.2 No Transfer of Property Rights to Attaching Party. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall create or vest (or be construed as creating or vesting) in either Party any right, title, or interest in or to any real or personal property owned by the other.
- 3.3 No Effect on AT&T-CALIFORNIA's Right to Abandon, Convey or Transfer Structure. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall in any way affect **AT&T-CALIFORNIA**'s right to abandon, convey, or transfer to any other person or entity **AT&T-CALIFORNIA**'s interest in any of **AT&T-CALIFORNIA**'s Structure. **AT&T-CALIFORNIA** shall give Attaching Party at least 60 days written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or rights-of-way is to be conveyed or transferred.

## 4. EFFECTIVE DATE, TERM AND ELECTIVE TERMINATION

- 4.1 Effective Date. This Agreement shall be effective as of the latest date of execution on the signature page(s) of this Agreement.
- 4.2 Initial Term. Unless sooner terminated as herein provided, the initial term of this Agreement shall run from the effective date until the end of the calendar year, which includes the effective date.

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- 4.3 Automatic Renewal. Unless sooner terminated as herein provided, this Agreement shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year which includes the effective date.
- 4.4 Elective Termination. Either Party may terminate this Agreement by giving the other Party at least six months prior written notice as provided in this section. The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current term of this Agreement or six months after the date the notice is given.
- 4.5 Elective Termination by AT&T-CALIFORNIA. Attaching Party shall, within 60 days after the effective date of the elective termination by AT&T-CALIFORNIA either initiate negotiations for continued access to AT&T-CALIFORNIA's poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Section 28 of this Agreement.
- 4.6 Effect of Elective Termination. Elective termination of this Agreement by Attaching Party, as permitted under Section 4 of this Agreement, shall not affect Attaching Party's liabilities and obligations incurred under this Agreement prior to the effective date of termination and shall not entitle Attaching Party to the refund of any advance payment made to AT&T-CALIFORNIA under this Agreement. Elective termination of this Agreement by AT&T-CALIFORNIA shall not affect AT&T-CALIFORNIA's obligations to afford access to AT&T-CALIFORNIA's poles, ducts, conduits, and rights-of-way owned or controlled by AT&T-CALIFORNIA as required by the Pole Attachment Act, the Telecommunications Act of 1996, and other applicable laws, regulations, and commission orders.

## 5. GENERAL PROVISIONS

- 5.1 Entire Agreement. This Agreement and the Guidelines for Access to Structure, attached hereto and incorporated herein by reference, set forth the entire understanding and agreement of the Parties. The attached Guidelines are designated AT&T, but for purposes of this Agreement, they are applicable for AT&T-CALIFORNIA. In the event of a conflict between this Agreement and the Guidelines, the terms of this Agreement shall control.
- 5.2 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Attaching Party and AT&T-CALIFORNIA relating to the placement and maintenance of Attaching Party's facilities on and within AT&T-CALIFORNIA's poles, ducts, and conduits within this State.
- 5.3 Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both Parties.
- 5.4 Survival of Obligations. Any liabilities or obligations of either Party for acts or omissions prior to the termination of this Agreement, any obligations of either Party under provisions of this Agreement relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, will survive the termination of this Agreement.
- 5.5 Effect on Licenses or Occupancy Permits Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy permits granted to Attaching Party shall, on the effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.
- 5.6 Force Majeure. Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform; provided, however, that Force Majeure will not include acts of any governmental authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs, the Party whose performance fails or is delayed

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because of such Force Majeure condition will give prompt notice to the other Party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

- 5.7 Severability. If any article, section, subsection, or other provision or portion of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement as to either Party, the invalidity of such provision shall not render this entire Agreement unenforceable and this Agreement shall be administered as if it did not contain the invalid provision.
- 5.8 Choice of Law. Except to the extent that federal law controls any aspect of this Agreement, the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of this State, applied without regard to the provisions of this State's laws relating to conflicts-of-laws.
- 5.9 Changes in the Law. The Parties agree to negotiate in good faith changes to this Agreement to conform to changes applicable law pertaining to access to poles, ducts, conduits and rights-of-way, including the Pole Attachment Act.
- 5.10 Applicable Laws. The Parties shall at all times observe and comply with, and the provisions of this Agreement are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the Parties.
- 5.11 Dispute Resolution

Unless otherwise provided elsewhere in this Agreement, Attaching Party shall pay all rates and charges, as specified in the Agreement, within thirty (30) days from the dates of billing thereof. If Attaching Party disputes any amount invoiced by **AT&T-CALIFORNIA**, Attaching Party shall make payment of the invoice in full and shall notify **AT&T-CALIFORNIA** in writing of the disputed amount. Attaching Party may dispute any amount within ninety (90) days after the date that payment has been made. Attaching Party shall include any documentation supporting its position in such written notification. The Parties shall work together to resolve the dispute in an expeditious manner. In the event the dispute is resolved in the favor of the Attaching Party, or **AT&T-CALIFORNIA** then the other Party shall include interest calculated at the rate set forth in the Rates, Fees, Charges and Billing section of this Agreement.

## 6. **DISCLAIMER OF WARRANTIES**

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

## 7. **INTENTIONALLY LEFT BLANK**

## 8. **INDEMNIFICATION**

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

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

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person acting on the Indemnifying Party's behalf, while present on, within, or in the vicinity of any **AT&T-CALIFORNIA** pole, duct, conduit, or rights-of-way.

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



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## 9. LIABILITIES AND LIMITATIONS OF LIABILITY

- 9.1 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2 AT&T-CALIFORNIA Not Liable to Attaching Party for Acts of Third Parties or Acts of God. By affording Attaching Party access to AT&T-CALIFORNIA Structure AT&T-CALIFORNIA does not warrant, guarantee, or insure the uninterrupted use of such facilities by Attaching Party. Except as specifically provided in Section 9.4 of this Agreement, Attaching Party assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to Attaching Party's facilities attached to AT&T-CALIFORNIA's poles or placed in AT&T-CALIFORNIA's Structure and AT&T-CALIFORNIA shall not be liable to Attaching Party for any damages to Attaching Party's facilities other than as provided in Section 9.4. In no event shall AT&T-CALIFORNIA be liable to Attaching Party under this Agreement for any death of person or injury, loss, or damage resulting from the acts or omissions of (1) any Other User or any person acting on behalf of an Other User, (2) any governmental body or governmental employee, (3) any Third Party property owner or persons acting on behalf of such property owner, or (4) any permit, invitee, trespasser, or other person present at the site or in the vicinity of any AT&T-CALIFORNIA pole, duct, conduit, or rights-of-way in any capacity other than as a AT&T-CALIFORNIA employee or person acting on AT&T-CALIFORNIA's behalf. In no event shall AT&T-CALIFORNIA be liable to Attaching Party under this Agreement for injuries, losses, or damages resulting from acts of God (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on AT&T-CALIFORNIA's behalf, cable cuts by persons other than AT&T-CALIFORNIA's employees or persons acting on AT&T-CALIFORNIA's behalf, or other causes beyond AT&T-CALIFORNIA's control which occur at sites subject to this Agreement.
- 9.3 Damage to Facilities. Each Party shall exercise due care to avoid damaging the facilities of the other or of Other Users and hereby assumes all responsibility for any and all loss from damage caused by the Party and persons acting on the Party's behalf. A Party shall make an immediate report to the other of the occurrence of any damage and hereby agrees to reimburse the other Party, and/or Other Users for any property damaged caused by the Party or persons acting on the Party's behalf.
- 9.4 No Limitations of Liability in Contravention of Federal or State Law. Nothing contained in this article shall be construed as exempting either Party from any liability, or limiting such Party's liability, in contravention of federal law or in contravention of the laws of this State.

## 10. INSURANCE

- 10.1 At all times in which the Attaching Party has attachments to AT&T-CALIFORNIA poles, or is occupying AT&T-CALIFORNIA conduit or rights-of-way, Attaching Party shall keep and maintain in force, at its own expense, the minimum insurance coverage and limits set forth below. Such insurance and coverage shall not only cover the Attaching Party, but it must cover all contractors, subcontractors and/or any other person acting on Attaching Party's behalf, that are providing services under this Agreement.
- 10.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee. To the fullest extent allowable by law, the policy must include a waiver of subrogation in favor of AT&T, its affiliates, and their directors, officers and employees.

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- 10.1.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations; Fire Legal Liability sub-limits a minimum of \$1,000,000 are also required. **AT&T, its affiliates, officers, agents and employees shall be listed as additional insured** on the Commercial General Liability policy. A waiver of subrogation shall be in favor of AT&T. The liability policies shall be primary and non-contributory from any insurance that is maintained by AT&T.
- 10.1.3 Umbrella/Excess Liability insurance with limits of at least \$5,000,000 each occurrence with terms and conditions at least as broad as the underlying Commercial General Liability, Business Automobile Liability and Employers Liability policies. Umbrella/Excess Liability limits will be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T.
- 10.1.4 Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired and non-owned vehicles.
- 10.2 Attaching Party agrees to name **AT&T-CALIFORNIA** as an Additional Insured on the Commercial General Liability policy and Commercial Automobile Liability Policy.
- 10.3 **AT&T-CALIFORNIA** agrees to accept the Attaching Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
  - 10.3.1 Workers' Compensation and Employers Liability: Attaching Party submit to **AT&T-CALIFORNIA** its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and
  - 10.3.2 Automobile liability: Attaching Party shall submit to **AT&T-CALIFORNIA** a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
  - 10.3.3 General liability: Attaching Party must provide evidence acceptable to **AT&T-CALIFORNIA** that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 10.4 All insurance required in accordance with this section must be in effect before **AT&T-CALIFORNIA** will issue pole attachment or conduit occupancy permits under this Agreement.
- 10.5 Attaching Party agrees to provide **AT&T-CALIFORNIA** with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

## 11. ASSIGNMENT OF RIGHTS

- 11.1 Assignment Permitted. Neither Party may assign, or otherwise transfer its rights or obligations, under this Agreement except as provided in this section.
  - 11.1.1 **AT&T-CALIFORNIA** may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with **AT&T-CALIFORNIA** or which acquires or succeeds to ownership of substantially all of **AT&T-CALIFORNIA**'s assets.
  - 11.1.2 Overlapping of Attaching Party's facilities on **AT&T-CALIFORNIA** poles by a third Party will be allowed under the following conditions:

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- 11.1.2.1 The Overlashing entity must enter into an agreement with **AT&T-CALIFORNIA** for access to **AT&T-CALIFORNIA** Structures and abide by the terms and conditions of such an Occupancy Permit.
  - 11.1.2.2 The Overlashing entity must obtain written approval from the Attaching Party and provide a copy to **AT&T-CALIFORNIA** prior to submitting a request for access to structure.
  - 11.1.2.3 The Overlashing Party must submit a written request for access to structure, and indicate on the request that the request is for Overlashing of an existing attachment of the Attaching Party in order to ensure that pole loadings are not exceeded.
  - 11.1.2.4 The Overlashing entity is responsible for paying the fees for Overlashing in Pricing Appendix, which are separate, and in addition to the fees paid by the Attaching Party, (e.g. the application fees and all make ready fees, etc.).
- 11.1.3 Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without **AT&T-CALIFORNIA**'s consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Agreement, subject to the express terms of this Agreement. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third Party to acquire Attaching Party's assets through public or private sale or through an Agreement with Attaching Party, Attaching Party's lender or the third Party acquiring Attaching Party's rights under this Agreement shall assume all outstanding obligations of Attaching Party under the agreement and provide proof satisfactory to **AT&T-CALIFORNIA** that such lender or third Party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third Party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third Party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Attaching Party under the Agreement, including liability to **AT&T-CALIFORNIA** for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third Party succeeds to the rights of Attaching Party under the Agreement, as applicable.
- 11.1.4 Except as provided in Section 11.2 below, no assignment or transfer by Attaching Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this article, secured **AT&T-CALIFORNIA**'s prior written consent to the assignment or transfer, if necessary, and given **AT&T-CALIFORNIA** notice of the assignment or transfer pursuant to Section 11.3.
- 11.2 Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article. However, if Attaching Party provides sixty (60) days written notice to **AT&T-CALIFORNIA** of its intent to assign its rights, delegate its benefits and delegate its duties and obligations under this Agreement to any entity controlling, controlled by, or under common control with Attaching Party, or to any entity which acquires or succeeds to ownership of substantially all of Attaching Party's assets, such assignment and delegations shall be deemed approved if **AT&T-CALIFORNIA** has not indicated otherwise by the end of this sixty (60) day notice period. **AT&T-CALIFORNIA** shall not unreasonably withhold or deny consent.

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- 11.3 Assignment Shall Not Relieve Attaching Party of Prior Obligations. Except as otherwise expressly agreed by **AT&T-CALIFORNIA** in writing, no assignment permitted by **AT&T-CALIFORNIA** under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 8 of this Agreement.
- 11.4 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. **AT&T-CALIFORNIA** may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Attaching Party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement.
- 11.5 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting Attaching Party the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or occupancy permits subject to this Agreement to any third Party. Except as otherwise expressly permitted in this Agreement, Attaching Party shall not allow third Party to attach or place facilities to or in pole or conduit space occupied by or assigned to Attaching Party or to utilize such space.

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

- 12.1 Termination Due to Non-Use of Facilities or Loss of Required Authority. Subject to notice and the opportunity to cure as provided in Sections 12.4, 12.5 and 12.6 below, this Agreement and all occupancy permits subject to this Agreement shall terminate if Attaching Party ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if Attaching Party is cable television system having access to **AT&T-CALIFORNIA**'s poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in this State (if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in this State), or ceases to make active use of **AT&T-CALIFORNIA**'s poles, ducts, conduits, and rights-of-way.
- 12.2 Subject to notice and the opportunity to cure as provided in Sections 12.4, 12.5 and 12.6 below, individual occupancy permits subject to this Agreement shall terminate if (a) Attaching Party ceases to utilize the pole attachment or conduit or rights-of-way space subject to such occupancy permit or (b) Attaching Party's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated, or local governmental authority or third-Party property owner having authority to revoke, deny, or terminate such use or access.
- 12.3 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Attaching Party's access to **AT&T-CALIFORNIA**'s Structure shall not materially interfere with or impair service over any facilities of **AT&T-CALIFORNIA** or any Other User, cause material damage to **AT&T-CALIFORNIA**'s plant or the plant of any Other User, impair the privacy of communications carried over the facilities of **AT&T-CALIFORNIA** or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of **AT&T-CALIFORNIA**'s poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, **AT&T-CALIFORNIA** may limit, terminate or refuse access if Attaching Party violates this provision.
- 12.4 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either Party, the aggrieved Party may give written notice of such claimed breach.
- 12.5 The complaining Party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given; and
  - 12.5.1 the breaching Party fails to cure the breach within thirty (30) days of such notice, if the breach is one which can be cured within thirty (30) days; or
  - 12.5.2 the breaching Party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than thirty (30) days will be required to affect such cure.

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- 12.6 Remedies for Breach. Subject to the provisions of this article, either Party may terminate this Agreement in the event of a material breach by the other Party or exercise any other legal or equitable right, which such Party may have to enforce the provisions of this Agreement. In any action based on an alleged breach of this Agreement, the prevailing Party shall be entitled to recover all costs and expenses incurred by such Party, including but not limited to reasonable attorneys' fees.

## 13. FAILURE TO ENFORCE

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

## 14. CONFIDENTIALITY OF INFORMATION

- 14.1 Information Provided by Attaching Party to AT&T-CALIFORNIA. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Attaching Party to AT&T-CALIFORNIA in connection with this Agreement (including but not limited to information submitted in connection with Attaching Party's applications for occupancy permit shall be deemed to be "confidential" or "proprietary" information of Attaching Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for review of records or its inquiry about AT&T-CALIFORNIA facilities. This article does not limit the use by AT&T-CALIFORNIA of aggregate information relating to the occupancy and use of AT&T-CALIFORNIA's Structure by firms other than AT&T-CALIFORNIA (that is, information submitted by Attaching Party and aggregated by AT&T-CALIFORNIA in a manner that does not directly or indirectly identify Attaching Party).
- 14.2 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Attaching Party to AT&T-CALIFORNIA in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons other than those who have a need to know such information for the limited purposes set forth in Sections 14.3-14.6.
- 14.3 Permitted Uses of Attaching Party's Confidential Information. Notwithstanding the provisions of Sections 14.1 and 14.2 above, AT&T-CALIFORNIA and persons acting on AT&T-CALIFORNIA's behalf may utilize Attaching Party's confidential or proprietary information for the following purposes (and on a need to know basis):
- 14.3.1 posting information, as necessary, to AT&T-CALIFORNIA's outside plant records;
  - 14.3.2 placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing AT&T-CALIFORNIA's Structure and any AT&T-CALIFORNIA facilities located on, within, or in the vicinity of such Structure;
  - 14.3.3 performing AT&T-CALIFORNIA's obligations under this Agreement and similar agreements with Third Parties;
  - 14.3.4 determining which of AT&T-CALIFORNIA's Structure are (or may in the future be) available for AT&T-CALIFORNIA's own use, and making planning, engineering, construction, and budgeting decisions relating to AT&T-CALIFORNIA's Structure;
  - 14.3.5 preparing cost studies;
  - 14.3.6 responding to regulatory requests for information;
  - 14.3.7 maintaining AT&T-CALIFORNIA's financial accounting records; and
  - 14.3.8 complying with other legal requirements relating to Structure.

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- 14.4 Defense of Claims. In the event of a dispute between **AT&T-CALIFORNIA** and any person or entity, including Attaching Party, concerning **AT&T-CALIFORNIA**'s performance of this Agreement, satisfaction of obligations under similar agreements with Third Parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, **AT&T-CALIFORNIA** may utilize confidential or proprietary information submitted by Attaching Party in connection with this Agreement as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that **AT&T-CALIFORNIA** shall not disclose Attaching Party's proprietary or confidential information without first, at **AT&T-CALIFORNIA**'s option ( in an individual market if practicable):
- 14.4.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
  - 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
  - 14.4.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.
- 14.5 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding **AT&T-CALIFORNIA** from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that **AT&T-CALIFORNIA** shall not disclose Attaching Party's proprietary or confidential information without first, at **AT&T-CALIFORNIA**'s option:
- 14.5.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
  - 14.5.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
  - 14.5.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

### 15. ACCESS TO RIGHTS-OF-WAY

- 15.1 To the extent, **AT&T-CALIFORNIA** has the authority to do so, **AT&T-CALIFORNIA** grants Attaching Party a right to use any rights-of-way for **AT&T-CALIFORNIA** poles, ducts, or conduits to which Attaching Party may attach its facilities for the purposes of constructing, operating and maintaining such Attaching Party's facilities on **AT&T-CALIFORNIA**'s poles, ducts or conduits. Notwithstanding the foregoing, Attaching Party shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, rights-of-way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the **AT&T-CALIFORNIA** pole, duct or conduit to which Attaching Party seeks to attach its facilities. Attaching Party shall furnish proof of any such easement, rights-of-way, license, permit, permission, certification, or franchise within thirty (30) days of request by **AT&T-CALIFORNIA**. **AT&T-CALIFORNIA** does not warrant the validity or apportionability of any rights it may hold to place facilities on private property. At Attaching Party's sole reasonable cost and expense, **AT&T-CALIFORNIA** agrees to work in good faith to provide copies of applicable easement and other right-of-way documents, if **AT&T-CALIFORNIA** has the legal right to do so and has the documents readily available for copying, to help enable Attaching Party to attach to the pole
- 15.2 Private Rights-of-Way Not Owned or Controlled by Either Party. Neither Party shall restrict or interfere with the other Party's access to or right to occupy property owned by Third Parties which is not subject to the other Party's control, including property as to which either Party has access subject to non-exclusive rights-of-way. Each Party shall make its own, independent legal assessment of its right to

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enter upon or use the property of Third Party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.

- 15.3 Access to Rights-of-Way Generally. At locations where **AT&T-CALIFORNIA** has access to third-Party property pursuant to non-exclusive rights-of-way, **AT&T-CALIFORNIA** shall not interfere with Attaching Party's negotiations with third-Party property owners for similar access; nor with Attaching Party's access to such property pursuant to easements or other rights-of-ways obtained by Attaching Party from the property owner. At locations where **AT&T-CALIFORNIA** has obtained exclusive rights-of-way from third-Party property owners or otherwise controls the rights-of-way, **AT&T-CALIFORNIA** shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Attaching Party on a nondiscriminatory basis, provided that the underlying agreement with the property owner permits **AT&T-CALIFORNIA** to provide such access, and provided further that if **AT&T-CALIFORNIA** has available space that it shares with Attaching Party in **AT&T-CALIFORNIA** non-aerial rights-of-way or easements (e.g., for cabinets placed on or under ground), which have not been accounted for in rates determined in accordance with the Pole Attachment Act (i.e., aerial, linear rights of way for pole lines are so accounted for), **AT&T-CALIFORNIA** shall include Attaching Party's pro rata portion of the charges, if any, paid by **AT&T-CALIFORNIA** to obtain such non-aerial rights-of-way or easements, plus any other documented legal, administrative, and engineering costs incurred by **AT&T-CALIFORNIA** in obtaining such rights-of-way or easements and processing Attaching Party's requests for such access.

## 16. SPECIFICATIONS

- 16.1 Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities attached to **AT&T-CALIFORNIA**'s poles or occupying space in **AT&T-CALIFORNIA**'s ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Agreement and the Guidelines.
- 16.2 Published Standards. Attaching Party's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:
- 16.2.1 the Blue Book Manual of Construction Procedures, Special Report SR-1421, published by Bell Communications Research, Inc., and sometimes referred to as the "Blue Book";
  - 16.2.2 the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE");
  - 16.2.3 the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA");
  - 16.2.4 California Public Utility Commission's General Orders 95 and 128 for attachments to Pacific Bell Telephone Company poles, ducts, conduits and rights of way; and,
  - 16.2.5 the Structure Access Guidelines as identified in section 5.1.
- 16.3 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of **AT&T-CALIFORNIA**'s manholes and access to **AT&T-CALIFORNIA**'s conduit system.
- 16.3.1 Attaching Party will notify **AT&T-CALIFORNIA** not less than 5 business days in advance before entering **AT&T-CALIFORNIA**'s conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the Parties. The notice shall state the general nature of the work to be performed.

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16.3.2 An authorized employee or representative of AT&T-CALIFORNIA may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within AT&T-CALIFORNIA's conduit system. Attaching Party must notify AT&T-CALIFORNIA when Attaching Party has completed such work in the conduit system. If AT&T-CALIFORNIA has not had the opportunity to complete the review, AT&T-CALIFORNIA will attempt to meet with Attaching Party's contractors to finalize the review. If AT&T-CALIFORNIA is not available when Attaching Party notifies AT&T-CALIFORNIA of their notice of completion then AT&T-CALIFORNIA will perform a post-construction inspection as described in section 26.1. Attaching Party shall reimburse AT&T-CALIFORNIA for costs associated with the presence of AT&T-CALIFORNIA's authorized employee or representative.

16.3.3 Each Party must obtain any necessary authorization from appropriate authorities to open manholes.

## 17. ACCESS TO RECORDS

- 17.1 AT&T-CALIFORNIA will, upon request and at the expense of the Attaching Party, provide Attaching Party access to and copies of redacted maps, records and additional information relating to the location, capacity and utilization of AT&T-CALIFORNIA's Structure. Upon request, AT&T-CALIFORNIA will meet with the Attaching Party to clarify matters relating to maps, records or additional information. AT&T-CALIFORNIA does not warrant the accuracy or completeness of information on any maps or records.
- 17.2 Maps, records or information are and remain the proprietary property of AT&T-CALIFORNIA, are provided to the Attaching Party solely for the pursue of enabling the Attaching Party to obtain access to AT&T-CALIFORNIA's Structure, and may not be resold, reproduced or disseminated by the Attaching Party.
- 17.3 AT&T-CALIFORNIA will provide information currently available on the AT&T-CALIFORNIA's maps and/or records regarding:
- 17.3.1 the location of Structure and street addresses for manholes and poles as shown on AT&T-CALIFORNIA's maps;
  - 17.3.2 the footage between manholes or lateral ducts lengths, as shown on AT&T-CALIFORNIA's maps;
  - 17.3.3 the footage between poles, if shown on AT&T-CALIFORNIA's maps;
  - 17.3.4 the total capacity of the Structure;
  - 17.3.5 the existing utilization of the Structure.
- 17.4 AT&T-CALIFORNIA will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by AT&T-CALIFORNIA.
- 17.5 AT&T-CALIFORNIA will expunge any confidential or proprietary information from its maps and records prior to providing access to the Attaching Party.
- 17.6 AT&T-CALIFORNIA will:
- 17.6.1 Within five (5) business days after attaching Party submits Billing Authorization to AT&T-CALIFORNIA, AT&T-CALIFORNIA will notify attaching Party of the place and time that attaching Party may view the Structure Records.
  - 17.6.2 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-CALIFORNIA may not be able to provide attaching Party with unscheduled additional time for viewing AT&T-CALIFORNIA Structure Records on the viewing date, but if unable will immediately make alternative



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arrangements that are mutually acceptable for the viewing of records as soon thereafter as possible.

17.6.3 **AT&T-CALIFORNIA** may make available at the Attaching Party's expense, an **AT&T-CALIFORNIA** representative with sufficient knowledge about **AT&T-CALIFORNIA** Structure Records to clarify matters relating to such Structure Records and to assist Attaching Party during their viewing.

17.7 Charges associated with map preparation, viewing and assistance will be on a Time and Material basis as set forth in the following Applicable Tariffs:

## 18. APPLICATIONS AND PRE-OCCUPANCY PERMIT SURVEYS

18.1 Occupancy Permits Required. Attaching Party shall apply in writing for and receive an occupancy permit before attaching facilities to specified **AT&T-CALIFORNIA** poles or placing facilities within specified **AT&T-CALIFORNIA** ducts, conduits, or rights-of-way.

18.2 Structure Access Request Form. To apply for an occupancy permit under this Agreement, Attaching Party shall submit to **AT&T-CALIFORNIA** the appropriate **AT&T-CALIFORNIA** request forms. Attaching Party shall promptly withdraw or amend its request if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific **AT&T-CALIFORNIA** Structure. In addition, Attaching Party shall also:

18.2.1 submit payment for the estimate authorizing **AT&T-CALIFORNIA** or its contractor to complete the make-ready survey; or

18.2.2 advise **AT&T-CALIFORNIA** of its willingness to perform the proposed make-ready work itself or an Authorized Contractor if permissible in the application area.

18.2.3 confirm that Attaching Party has calculated storm loadings, guying, or pole class to ensure pole loadings are not exceeded and indicate if additional holding or loading capacity is required.

18.2.4 provide sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to **AT&T-CALIFORNIA**'s poles or placed in **AT&T-CALIFORNIA**'s conduit system.

18.3 Make-Ready Survey. A Make-Ready survey must be completed by **AT&T-CALIFORNIA** or, subject to the requirements and policies in each state, the Attaching Party before an occupancy permit is issued. The primary purposes of the make ready survey will be to enable **AT&T-CALIFORNIA** to:

18.3.1 confirm or determine the modifications, capacity expansion, and make-ready work, if any, necessary to accommodate Attaching Party's attachment of facilities to **AT&T-CALIFORNIA** structures;

18.3.2 plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare **AT&T-CALIFORNIA**'s poles, ducts, conduits, rights-of-way, and associated facilities for Attaching Party's proposed attachments or occupancy; and

18.3.3 estimate the costs associated with such facilities modification, capacity expansion, or make-ready work; and

18.3.4 identify the owner of the pole.

## 19. POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

19.1 Selection of Space. **AT&T-CALIFORNIA** will select or approve the Attaching Party's selection of the space Applicant will occupy on **AT&T-CALIFORNIA**'s poles or in **AT&T-CALIFORNIA**'s conduit systems. Maintenance ducts shall not be considered available for Attaching Party's use except as specifically provided elsewhere in this Agreement. Where required by law or franchise agreement, ducts and attachment space on poles reserved for municipal use shall not be considered available for the Attaching Party's use. All other ducts, inner ducts, space on poles or space in rights-of-ways, which

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are not assigned or occupied, shall be deemed available for use by **AT&T-CALIFORNIA** Attaching Party, and other Parties entitled to access under applicable law.

### 19.2 Pole, Duct, and Conduit Space Assignments.

19.2.1 After Attaching Party's application for a pole attachment or conduit occupancy permit has been approved by **AT&T-CALIFORNIA**, the pole, duct, and conduit space selected and/or approved by **AT&T-CALIFORNIA** in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed twelve (12) months.

19.2.2 **AT&T CALIFORNIA**: The pole, duct, and conduit space selected and/or approved by **AT&T-CALIFORNIA** in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed nine (9) months in **AT&T CALIFORNIA** only as detailed by the California Public Utility Commission.

19.2.3 **AT&T-CALIFORNIA** may assign space to itself by making appropriate entries in the same records used to log assignments to Attaching Party and Third Parties. If **AT&T-CALIFORNIA** assigns pole, duct, or conduit space to itself, such assignment will automatically lapse twelve (12) months after the date the assignment has been entered into the appropriate **AT&T-CALIFORNIA** record if **AT&T-CALIFORNIA** has not occupied such assigned space within such twelve (12) month period.

19.2.4 Notices and applications, including assignment requests, will be date and time stamped on receipt.

## 20. ISSUANCE OF OCCUPANCY PERMITS (INCLUDING MAKE-READY WORK)

20.1 Response Within 45 Days. Within forty-five (45) days of Attaching Party's submission of a request for access to **AT&T-CALIFORNIA** Structure, **AT&T-CALIFORNIA** 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-CALIFORNIA** 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-CALIFORNIA** will schedule the meeting within ten (10) business days of receipt of the Attaching Party's written request for a meeting.

20.2 If access is granted the response will further advise Attaching Party in writing of:

20.2.1 what modifications, capacity expansions, or make-ready work, if any, will be required to prepare **AT&T-CALIFORNIA**'s Structure, and

20.2.2 an estimate of charges for such modifications, capacity expansions, or make-ready work.

20.3 Make-ready Work. If it is determined that make ready work will be necessary to accommodate Attaching Party's facilities, Attaching Party shall have forty-five (45) days (the "acceptance period") to either:

20.3.1 submit payment for the estimate authorizing **AT&T-CALIFORNIA** or its contractor to complete the make-ready work; or

20.3.2 advise **AT&T-CALIFORNIA** of its willingness to perform the proposed make-ready work itself if permissible in the application area.

20.3.2.1 Make-ready work performed by Attaching Party, or by an Authorized Contractor selected by Attaching Party, shall be performed in accordance with **AT&T-CALIFORNIA**'s specifications and in accordance with the same standards and practices, which would be followed if such work were being performed by **AT&T-CALIFORNIA** or **AT&T-CALIFORNIA**'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-CALIFORNIA**'s Structures or interferes

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with any existing use of AT&T-CALIFORNIA's facilities or the facilities of any Other User.

- 20.4 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. Attaching Party shall make arrangements with the Other Users with facilities attached to AT&T-CALIFORNIA's poles or occupying space in AT&T-CALIFORNIA's conduit system regarding reimbursement for any expenses incurred by the Other Users in transferring or rearranging the Other Users' facilities to accommodate the attachment or placement of Attaching Party's facilities to or in AT&T-CALIFORNIA's poles, ducts, conduits and rights of ways.
- 20.5 Reimbursement for the Creation or Use of Additional Capacity. If any additional capacity is created as a result of make-ready work performed to accommodate Attaching Party's facilities, Attaching Party shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to AT&T-CALIFORNIA for the use of such additional capacity. If AT&T-CALIFORNIA utilizes additional space or capacity created at Attaching Party's expense, AT&T-CALIFORNIA will reimburse Attaching Party on a pro-rata basis for AT&T-CALIFORNIA's share, if any, of Attaching Party's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. AT&T-CALIFORNIA will notify the Attaching Party if AT&T-CALIFORNIA attaches facilities to additional capacity on AT&T-CALIFORNIA's Structure created at the Attaching Party's expense. AT&T-CALIFORNIA shall not be required to collect or remit any such amounts to Attaching Party, to resolve or adjudicate disputes over reimbursement between Attaching Party and Other Users.
- 20.6 If Attaching Party utilizes space or capacity on any AT&T-CALIFORNIA Structure created at AT&T-CALIFORNIA's expense after February of 1996, the Attaching Party will reimburse Attaching Party on a pro-rata basis for the Attaching Party's share, if any, of AT&T-CALIFORNIA's capacity creation costs.
- 20.7 Occupancy Permit and Attachment. After all required make-ready work is completed; AT&T-CALIFORNIA will issue an occupancy permit confirming that Attaching Party may attach specified facilities to AT&T-CALIFORNIA's Structure.
- 20.8 The Attaching Party must occupy the assigned space within a period not to exceed twelve (12) months from the issuance of the occupancy permit. If the Attaching Party does not occupy the assigned space within the twelve (12) month period, the Occupancy Permit will lapse and the space will be considered available for use by AT&T-CALIFORNIA or Other User. Notwithstanding anything to the contrary, prior to the expiration of the twelve (12) month period, the Attaching Party may submit a request for an extension of time based on the need to receive zoning or other approvals and consents, setting forth an explanation of the need and the basis for the amount of time requested. Attaching Party shall diligently pursue needed zoning and other approvals and consents and include facts showing such diligence in any request for an extension of time. If another telecommunications carrier, including an AT&T-CALIFORNIA carrier, requests the same space after the initial twelve (12) month period has passed, and other sufficient space is not available, any such extension shall be limited to three months. AT&T-CALIFORNIA will not unreasonably withhold or deny an extension.
- 20.9 The Attaching Party's obligation to pay semiannual pole attachment or conduit occupancy fees will commence on the date the Occupancy Permit is provided by AT&T-CALIFORNIA to the Attaching Party.

### 21. CONSTRUCTION OF ATTACHING PARTY'S FACILITIES

- 21.1 Responsibility for Attaching and Placing Facilities. The Attaching Party shall be responsible for the actual attachment of its facilities to AT&T-CALIFORNIA's poles and the placement of such facilities in AT&T-CALIFORNIA's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities.
- 21.2 Responsibilities of Attaching Party. Attaching Party is responsible for the Authorized Contractors or contractors it selects.

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- 21.2.1 As used in this Agreement, the term “Authorized Contractor” does not refer to contractors performing routine installation, maintenance, or repair work on Attaching Party’s behalf or other contractors who may be selected by Attaching Party to perform work on Attaching Party’s behalf without **AT&T-CALIFORNIA**’s approval.
- 21.2.2 Subject to state specific requirements, Authorized Contractors have received certification from **AT&T-CALIFORNIA** to perform one or more of the following tasks within a specified **AT&T-CALIFORNIA** construction district, as applicable:
- (a) installation of those sections of Attaching Party’s ducts or facilities, which connect to **AT&T-CALIFORNIA**’s conduit system;
  - (b) installation of inner duct;
  - (c) excavation work in connection with the removal of retired or inactive (dead) cables; or
  - (d) Make-Ready work.
- 21.2.3 A person or entity approved as an Authorized Contractor is only an Authorized Contractor with respect to those tasks for which such person or entity has been approved by both Parties and is an Authorized Contractor only in those **AT&T-CALIFORNIA** construction districts agreed to by both Parties.
- 21.2.4 Designation of an Authorized Contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an Authorized Contractor for other purposes, nor shall approval of an Authorized Contractor by one **AT&T-CALIFORNIA**’s construction district constitute approval of such Authorized Contractor for the area served by a different **AT&T-CALIFORNIA** construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an Authorized Contractor shall, for the purposes of that job, be deemed to have been approved by all **AT&T-CALIFORNIA** construction districts in which the work is to be performed.
- 21.3 **Construction Schedule**. After the issuance of an occupancy permit, Attaching Party shall provide **AT&T-CALIFORNIA** with a construction schedule and thereafter keep **AT&T-CALIFORNIA** informed of anticipated changes in the construction schedule.

## 22. USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY’S FACILITIES

- 22.1 **Routine Maintenance of Attaching Party’s Facilities**. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within **AT&T-CALIFORNIA**’s poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Attaching Party’s facilities in any manner, which results in Attaching Party’s facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party’s occupancy permit.
- 22.2 **Short-term Use of Maintenance Ducts for Repair and Maintenance Activities**. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed thirty (30) days) non-emergency maintenance or repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by **AT&T-CALIFORNIA**. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify **AT&T-CALIFORNIA** of such use and must either vacate the maintenance duct within thirty (30) days or, with **AT&T-CALIFORNIA**’s consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within thirty (30) days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies, which may occur while the maintenance duct is occupied.

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## 23. MODIFICATION OF ATTACHING PARTY'S FACILITIES

- 23.1 Notification of Planned Modifications. Attaching Party shall notify **AT&T-CALIFORNIA** in writing at least thirty (30) days before adding to, relocating, replacing or otherwise modifying its facilities already attached to an **AT&T-CALIFORNIA** Structure. The notice shall contain sufficient information to enable **AT&T-CALIFORNIA** to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Attaching Party's present occupancy permit or requires a new or amended occupancy permit.
- 23.2 Replacement of Facilities and Overlapping Additional Cables. Attaching Party may replace existing facilities with new facilities occupying the same **AT&T-CALIFORNIA** Structure, and may overlap additional cables to its own existing facilities; provided, however, that such activities shall not be considered to be routine maintenance and shall be subject to the requirements of this article.

## 24. REQUIRED REARRANGEMENTS OF ATTACHING PARTY'S FACILITIES

- 24.1 Required Rearrangement of Attaching Party's Facilities. Attaching Party agrees that Attaching Party will cooperate with **AT&T-CALIFORNIA** and other users in making rearrangements to **AT&T-CALIFORNIA** Structure as may be necessary, and that costs incurred by Attaching Party in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the Parties in accordance with then applicable law.
- 24.2 Whenever feasible, **AT&T-CALIFORNIA** shall give Attaching Party not less than thirty (30) days prior written notice of the need for Attaching Party to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Attaching Party shall complete such rearrangements within the time prescribed in the notice. If Attaching Party does not rearrange facilities within noted time, **AT&T-CALIFORNIA** will rearrange at Attaching Party's expense.

## 25. EMERGENCY REPAIRS AND POLE REPLACEMENTS

- 25.1 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each Party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such Party to make such repairs.
- 25.1.1 Nothing contained in this Agreement shall be construed as requiring either Party to perform any repair or service restoration work of any kind with respect to the other Party's facilities or the facilities of joint users.
- 25.1.2 Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that an entity using the maintenance duct for emergency repair activities will notify **AT&T-CALIFORNIA** 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-CALIFORNIA** conduit system and using the maintenance duct for emergency restoral purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance ducts will be used to restore the highest priority services, as defined in Section 25.3, first. Existing spare ducts may be used for restoration purposes providing the spare ducts are restored after restoration work is complete. Any spare ducts not returned will be included be assigned to the user of the duct and an occupancy permit issued.
- 25.1.3 The Attaching Party shall either vacate the maintenance duct within thirty (30) days or, with **AT&T-CALIFORNIA**'s consent, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner-duct, a suitable replacement inner-duct) is available for use by all occupants in the conduit section within thirty (30) days after such Attaching Party occupies the maintenance ducts. If Attaching Party fails to vacate the maintenance duct as described above, **AT&T-CALIFORNIA** may install a maintenance conduit at the Attaching Party's expense.

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- 25.2 Designation of Emergency Repair Coordinators and Other Information. For each **AT&T-CALIFORNIA** construction district, Attaching Party shall provide **AT&T-CALIFORNIA** 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-CALIFORNIA** of changes to such information.
- 25.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, **AT&T-CALIFORNIA**, Attaching Party, and other affected Parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected Parties present in accordance with the following principles.
- 25.3.1 Emergency service restoration work requirements shall take precedence over other work operations.
- 25.3.2 Except as otherwise agreed upon by the Parties, restoration of lines for emergency services providers (e.g., 911, fire, police, national security and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The Parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.
- 25.3.3 **AT&T-CALIFORNIA** shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected Parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by **AT&T-CALIFORNIA** on a nondiscriminatory basis in accordance with the principles set forth in this section.
- 25.4 Emergency Pole Replacements.
- 25.4.1 When emergency pole replacements are required, **AT&T-CALIFORNIA** shall promptly make a good faith effort to contact Attaching Party to notify Attaching Party of the emergency and to determine whether Attaching Party will respond to the emergency in a timely manner.
- 25.4.2 If notified by **AT&T-CALIFORNIA** 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-CALIFORNIA** replacement pole, the transfer shall be in accordance with **AT&T-CALIFORNIA**'s placement instructions.
- 25.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise **AT&T-CALIFORNIA** and thereby authorize **AT&T-CALIFORNIA** (or any Other User sharing the pole with **AT&T-CALIFORNIA**) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on Attaching Party's behalf at the Attaching Party's expense.
- 25.5 Expenses Associated with Emergency Repairs. Each Party shall bear all reasonable expenses arising out of or in connection with emergency repairs of its own facilities and transfers or rearrangements of such facilities associated with emergency pole replacements made in accordance with the provisions of this article.
- 25.5.1 Each Party shall be solely responsible for paying all persons and entities that provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such Party's facilities.
- 25.5.2 Attaching Party shall reimburse **AT&T-CALIFORNIA** for the costs incurred by **AT&T-CALIFORNIA** for work performed by **AT&T-CALIFORNIA** on Attaching Party's behalf in accordance with the provisions of this article.

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

- 26.1 Post-Construction Inspections. **AT&T-CALIFORNIA** will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of facilities to **AT&T-CALIFORNIA 22's** Structures for the purpose of determining the conformance of the attachments to the occupancy permit. **AT&T-CALIFORNIA** 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-CALIFORNIA** on the post-construction inspection.
- 26.2 Right to Make Periodic or Spot Inspections. **AT&T-CALIFORNIA** shall have the right, but not the obligation, to make Periodic or Spot Inspections of all facilities attached to **AT&T-CALIFORNIA** Structure. Periodic Inspections will not be made more often than once every two (2) years unless in **AT&T-CALIFORNIA's** judgment such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Agreement.
- 26.3 If Attaching Party's facilities are in compliance with this Agreement, 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 Agreement, **AT&T-CALIFORNIA** 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.
- 26.4 If the inspection reflects that Attaching Party's facilities are not in compliance with the terms of this Agreement, Attaching Party shall bring its facilities into compliance within thirty (30) days after being notified of such noncompliance. If any make ready or modification work to **AT&T-CALIFORNIA's** Structures is required to bring Attaching Party's facilities into compliance, the Attaching Party shall provide notice to **AT&T-CALIFORNIA** and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment. If the violation creates a hazardous condition, facilities must be brought into compliance upon notification.
- 26.5 Notice of Noncompliance. If, at any time, **AT&T-CALIFORNIA** determines that Attaching Party's facilities or any part thereof have not been placed or maintained or are not being used in accordance with the requirements of this Agreement, **AT&T-CALIFORNIA** 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-CALIFORNIA's** assertion that such facilities are not in compliance, Attaching Party agrees to provide **AT&T-CALIFORNIA** with a schedule for bringing such facilities into compliance, to bring the facilities into compliance within a reasonable time, and to notify **AT&T-CALIFORNIA** in writing when the facilities have been brought into compliance.
- 26.6 Disputes over Alleged Noncompliance. If Attaching Party disputes **AT&T-CALIFORNIA's** assertion that Attaching Party's facilities are not in compliance, Attaching Party shall notify **AT&T-CALIFORNIA** in writing of the basis for Attaching Party's assertion that its facilities are in compliance.
- 26.7 Failure to Bring Facilities into Compliance. If Attaching Party has not brought the facilities into compliance within a reasonable time or provided **AT&T-CALIFORNIA** with proof sufficient to persuade **AT&T-CALIFORNIA** that **AT&T-CALIFORNIA** erred in asserting that the facilities were not in compliance, and if **AT&T-CALIFORNIA** determines in good faith that the alleged noncompliance causes or is likely to cause material damage to **AT&T-CALIFORNIA's** facilities or those of other users, **AT&T-CALIFORNIA** may, at its option and Attaching Party's expense, take such non-service affecting steps as may be required to bring Attaching Party's facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this Agreement.
- 26.8 Correction of Conditions by AT&T-CALIFORNIA. If **AT&T-CALIFORNIA** elects to bring Attaching Party's facilities into compliance, the provisions of this Section shall apply.

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- 26.8.1 **AT&T-CALIFORNIA** will, whenever practicable, notify Licensee in writing before performing such work. The written notice shall describe the nature of the work to be performed and **AT&T-CALIFORNIA's** schedule for performing the work.
- 26.8.2 If Attaching Party's facilities have become detached or partially detached from supporting racks or wall supports located within a **AT&T-CALIFORNIA** manhole, **AT&T-CALIFORNIA** may, at Attaching Party's expense, reattach them but shall not be obligated to do so. If **AT&T-CALIFORNIA** does not reattach Attaching Party's facilities, **AT&T-CALIFORNIA** shall endeavor to arrange with Attaching Party for the reattachment of any facilities affected.
- 26.8.3 **AT&T-CALIFORNIA** 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.
- 26.9 Attaching Party to Bear Expenses. Attaching Party shall bear all expenses arising out of or in connection with any work performed to bring Attaching Party's facilities into compliance with this Section; provided, however that nothing contained in this Section or any license issued hereunder shall be construed as requiring Attaching Party to bear any expenses which, under applicable federal or state laws or regulations, must be borne by persons or entities other than Attaching Party.

### 27. TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

- 27.1 Facilities to Be Marked. Attaching Party shall tag or otherwise mark all of Attaching Party's facilities placed on or in **AT&T-CALIFORNIA's** Structure in a manner sufficient to identify the facilities as those belonging to the Attaching Party.
- 27.2 Removal of Untagged Facilities. **AT&T-CALIFORNIA** may, without notice to any person or entity, remove from **AT&T-CALIFORNIA's** poles or any part of **AT&T-CALIFORNIA's** conduit system the Attaching Party's facilities, if **AT&T-CALIFORNIA** determines that such facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on **AT&T-CALIFORNIA's** poles or in **AT&T-CALIFORNIA's** conduit system.
- 27.3 Notice to Attaching Party. If any of Attaching Party's facilities for which no occupancy permit is presently in effect are found attached to **AT&T-CALIFORNIA's** poles or anchors or within any part of **AT&T-CALIFORNIA's** conduit system, **AT&T-CALIFORNIA**, without prejudice to other rights or remedies available to **AT&T-CALIFORNIA** under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Attaching Party advising Attaching Party that no occupancy permit is presently in effect with respect to the facilities and that Attaching Party must, within 30 days, respond to the notice as provided in Section 27.4 of this Agreement.
- 27.4 Attaching Party's Response. Within thirty (30) days after receiving a notice under Section 27.3 of this Agreement, Attaching Party shall acknowledge receipt of the notice and submit to **AT&T-CALIFORNIA**, in writing, an application for a new or amended occupancy permit with respect to such facilities.
- 27.5 Approval of Request and Retroactive Charges. If **AT&T-CALIFORNIA** approves Attaching Party's application for a new or amended occupancy permit, Attaching Party shall be liable to **AT&T-CALIFORNIA** for all fees and charges associated with the unauthorized attachments as specified in Section 27.10 of this Agreement. The issuance of a new or amended occupancy permit as provided by this article shall not operate retroactively or constitute a waiver by **AT&T-CALIFORNIA** of any of its rights or privileges under this Agreement or otherwise.
- 27.6 Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from **AT&T-CALIFORNIA's** poles, conduit system or rights of way or until a new or amended occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party and its predecessors had continuously complied with all applicable **AT&T-CALIFORNIA** licensing requirements. Such fees and charges shall be due



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and payable 30 days after the date of the bill or invoice stating such fees and charges. In addition, the Attaching Party shall be liable for an unauthorized attachment and/or occupancy fee as specified in Section 29 of this Agreement. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Attaching Party shall rearrange or remove its unauthorized facilities at **AT&T-CALIFORNIA**'s request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to **AT&T-CALIFORNIA** or another Other User, and shall pay **AT&T-CALIFORNIA** for all costs incurred by **AT&T-CALIFORNIA** in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities.

- 27.7 Removal of Unauthorized Attachments. If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized facilities within the specified period of time, **AT&T-CALIFORNIA** shall by written notice advise Attaching Party to remove its unauthorized facilities not less than 60 days from the date of notice and Attaching Party shall remove the facilities within the time specified in the notice. If the facilities have not been removed within the time specified in the notice, **AT&T-CALIFORNIA** may, at **AT&T-CALIFORNIA**'s option, remove Attaching Party's facilities at Attaching Party's expense.
- 27.8 No Ratification of Unpermitted Attachments or Unauthorized Use of AT&T-CALIFORNIA's Facilities. No act or failure to act by **AT&T-CALIFORNIA** with regard to any unauthorized attachment or occupancy or unauthorized use of **AT&T-CALIFORNIA**'s Structure shall be deemed to constitute a ratification by **AT&T-CALIFORNIA** of the unauthorized attachment or occupancy or use, nor shall the payment by Attaching Party of fees and charges for unauthorized pole attachments or conduit occupancy exonerate Attaching Party from liability for any trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities.

### 28. REMOVAL OF ATTACHING PARTY'S FACILITIES

- 28.1 When Attaching Party no longer intends to occupy space on an **AT&T-CALIFORNIA** pole or in an **AT&T-CALIFORNIA** duct or conduit, Attaching Party will provide written notification to **AT&T-CALIFORNIA** that it wishes to terminate the occupancy permit with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Attaching Party's facilities, the occupancy permit shall terminate and the space shall be available for reassignment.
- 28.1.1 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from **AT&T-CALIFORNIA**'s Structure.
- 28.1.2 Except as otherwise agreed upon in writing by the Parties, Attaching Party must, after removing its facilities, plug all previously occupied ducts at the entrances to **AT&T-CALIFORNIA**'s manholes.
- 28.1.3 Attaching Party shall be solely responsible for the removal of its own facilities from **AT&T-CALIFORNIA**'s Structure.
- 28.2 At **AT&T-CALIFORNIA**'s request, Attaching Party shall remove from **AT&T-CALIFORNIA**'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-CALIFORNIA**'s Structure.
- 28.3 Removal Following Termination of Occupancy permit. Attaching Party shall remove its facilities from **AT&T-CALIFORNIA**'s poles, ducts, conduits, or rights-of-way within thirty (30) days after termination of the occupancy permit.
- 28.4 Removal Following Replacement of Facilities. Attaching Party shall remove facilities no longer in service from **AT&T-CALIFORNIA**'s Structures within thirty (30) 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.

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- 28.5 Removal to Avoid Forfeiture. If the presence of Attaching Party's facilities on or in **AT&T-CALIFORNIA**'s Structure would cause a forfeiture of the rights of **AT&T-CALIFORNIA** to occupy the property where such Structure is located, **AT&T-CALIFORNIA** 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-CALIFORNIA** will give Attaching Party not less than thirty (30) days from the date of notice to remove Attaching Party's facilities unless prior removal is required to prevent the forfeiture of **AT&T-CALIFORNIA**'s rights. At Attaching Party's request, the Parties will engage in good faith negotiations with each other, with Other Users, and with third-Party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of Attaching Party's facilities.
- 28.6 Removal of Facilities by **AT&T-CALIFORNIA**; Notice of Intent to Remove. If Attaching Party fails to remove its facilities from **AT&T-CALIFORNIA**'s Structure in accordance with the provisions of Sections 28.1-28.6 of this Agreement, **AT&T-CALIFORNIA** 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-CALIFORNIA** shall give Attaching Party not less than thirty (30) days prior written notice of its intent to remove Attaching Party's facilities pursuant to this section.
- 28.7 Removal of Facilities by **AT&T-CALIFORNIA**. If **AT&T-CALIFORNIA** removes any of Attaching Party's facilities pursuant to this article, Attaching Party shall reimburse **AT&T-CALIFORNIA** for **AT&T-CALIFORNIA**'s costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.
- 28.8 Removal of CLEC's Facilities. **AT&T- CALIFORNIA** retains the authority and right to remove any abandoned equipment left on or in AT&T structures or buildings and to sell, at salvage value, any abandoned equipment to recover removal costs.

### 29. RATES, FEES, CHARGES, AND BILLING

- 29.1 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees outlined in this Agreement will be set forth in Pricing Appendix to this Agreement. All rates, charges and fees, and changes thereto, shall be subject to all applicable federal and state laws, rules, regulations, and commission orders. **AT&T-CALIFORNIA** may accordingly change rates, charges and fees and will provide at least sixty (60) days notice to Attaching Party prior to making rate changes. Pole top space will be charged based on the number of vertical feet of space occupied, at the rates that will be in Pricing Appendix, except that in no case shall the charge be for less than one (1) vertical foot regardless of the amount of vertical space actually occupied.

Attaching Party agrees that in the event Attaching Party fails to pay an amount due and payable within the period of time set forth for payment in this Agreement, interest shall accrue on the unpaid balance thereof at the rate of 1 ½% per month for each month from the expiration of such period until payment is received by Licensor or the maximum interest rate permitted by law, whichever is the lesser amount.

- 29.2 Changes to Rates, Charges and Fees. Subject to applicable federal and state laws, rules, regulations and orders, **AT&T-CALIFORNIA** shall have the right to change the rates, charges and fees outlined in this Agreement. **AT&T-CALIFORNIA** will provide the Attaching Party 60 day's 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 Agreement, (2) terminate this Agreement, or (3) seek relief through the dispute resolution process in the General Provisions section of this Agreement.

### 30.0 PERFORMANCE AND PAYMENT BONDS, LETTERS OF CREDIT, OR CASH DEPOSITS

- 30.1 Bonds, Letters of Credit, or Cash Deposits May Be Required. **AT&T-CALIFORNIA** may require Attaching Party, Authorized Contractors and other persons acting on Attaching Party's behalf to

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execute performance and payment bonds, letters of credit or cash deposits ( or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of the Attaching Party's obligations arising out of or in connection with this Agreement.

30.1.1 If a bond or similar form of assurance is required of the Attaching Party, an Authorized Contractor, or other person acting on Attaching Party's behalf. Attaching Party shall promptly submit to **AT&T-CALIFORNIA** adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing **AT&T-CALIFORNIA** 60 days written notice.

30.1.2 Upon request by **AT&T-CALIFORNIA**, Attaching Party will provide **AT&T-CALIFORNIA** with the **AT&T-CALIFORNIA** Credit Profile form and provide information to **AT&T- CALIFORNIA** regarding Attaching Party's credit and financial condition.

Payment and Performance Bonds in Favor of Contractors and Subcontractors: Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, material men, and other persons or entities performing work or providing materials in connection with Attaching Party's performance under this Agreement. In the event any lien, claim, or demand is made on **AT&T-CALIFORNIA** by any such employee, contractor, subcontractor, mechanics, material man, or other person or entity providing such materials or performing such work, **AT&T-CALIFORNIA** may require, in addition to any security provided under Section 30.1 of this Agreement, that Attaching Party execute payment or performance bonds, letter of credit or provide cash deposits or such other security as **AT&T-CALIFORNIA** may deem reasonable.

## 31. NOTICES

31.1 Notices to Attaching Party. All written notices required to be given to a Party shall be delivered or mailed to the Party's duly authorized agent or attorney, as designated in this section.

31.1.1 Such notice may be delivered to the Party's duly authorized agent or attorney in person or by agent or courier receipted delivery.

31.1.2 Such notice may be mailed to the Party's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.

31.1.3 Notices to Attaching Party and **AT&T-CALIFORNIA** shall be sent to the authorized agent or attorney designated below:

<b>NOTICE CONTACT</b>	<b>ATTACHING PARTY</b>	<b>AT&amp;T</b>
NAME/TITLE	Jeff Yount	AT&T Structure Access Manager
STREET ADDRESS	533 Airport Blvd. Ste. 400	870 N. McCarthy Blvd
CITY, STATE, ZIP CODE	Burlingame, CA 94010	Milpitas, CA 95035
TELEPHONE NUMBER	650-401-2230	Tel 408-635-8820
FACSIMILE NUMBER	831-855-5849	

31.2 Changes in Notice requirements: Either Party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other Party. Such notice shall state, at a minimum, the name, title and full address of the new addressee.

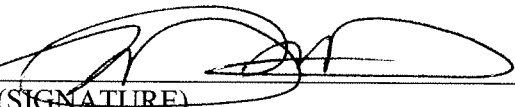
X2 Telecom LLC

EXECUTED THIS 12<sup>th</sup> day of SEPTEMBER, 2012

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

Signatures

**LICENSEE:**  
X2 Telecom LLC

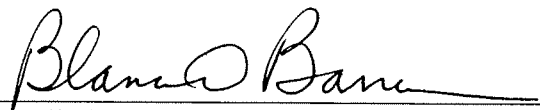
By:   
(SIGNATURE)

NAME: JEFFREY YOUNG

TITLE: COO

**LICENSOR:**

Pacific Telephone Company d/b/a AT&T California

By:   
(SIGNATURE)

NAME: BLANCA O. BARRERA  
(PRINT NAME)

TITLE: DIRECTOR C&E WEST



EXHIBIT D / APPENDIX 1

**REVISED**

**AT&T**

**ANNUAL FEES FOR POLE ATTACHMENTS AND CONDUIT OCCUPANCY**

<u>Year</u>	<u>Pole Attachment Rate</u>
2012	\$5.02
<u>Year</u>	<u>Conduit Occupancy Rate</u>
2012 (Inner duct)	\$0.49/linear foot

All pole and conduit license fees are for a period of one year from January 1 through December 31, effective January 1, 2012 and billable semiannually in advance in January and July of each year.

Ponderosa Cablevision

VC 725



at&t

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

# Ponderosa Cablevision

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# Ponderosa Cablevision

## STAND-ALONE 22-STATE STRUCTURE ACCESS AGREEMENT FOR POLES, CONDUITS, AND RIGHTS-OF-WAY

This Agreement dated June 1, 2012, is made by and between the "Parties", identified as the AT&T Inc. owned Incumbent Local Exchange Carrier Pacific Bell Telephone Company d/b/a AT&T California hereinafter referred to as defined below, (only to the extent that the agent for each such AT&T Inc.-owned ILEC executes this Agreement for such AT&T Inc. owned ILEC and only to the extent that such AT&T Inc. owned ILEC and only to the extent, and in the areas where, such AT&T Inc. owned ILEC provides Telephone Exchange Services as an ILEC in California and **Ponderosa Cablevision** ("CARRIER"), a **California** corporation, only to the extent, and in the areas where, Section 224 pole-attachment authority is established through actual or, in fact, planned provision of telecommunications service by as a telecommunications carrier, as defined in the 1934 Communications Act as amended by the 1996 Telecommunications Act, hereinafter referred to as "Attaching Party".

### Special Provisions

- A. This Agreement shall apply to the **County of Fresno in the State of California**.

## 1. INTRODUCTION

- 1.1 This Agreement sets forth the terms and conditions for Rights-of-Way (ROW), Conduits and Poles provided by the applicable AT&T Inc. (AT&T) owned Incumbent Local Exchange Carrier (ILEC) and Attaching Party.
- 1.2 "AT&T Inc." means the holding company which directly or indirectly owns the following ILECs: Pacific Bell Telephone Company d/b/a AT&T California. As used in this Agreement, AT&T refers to the AT&T Inc. ILECs only. AT&T Inc. is not itself a party to this Agreement.
- 1.3 **AT&T-CALIFORNIA**- As used herein, **AT&T-CALIFORNIA** means Pacific Bell Telephone Company d/b/a **AT&T CALIFORNIA** and (and previously referred to as "SBC-California"), the applicable AT&T-owned ILEC doing business in California.

## 2. DEFINITIONS

- 2.1 Definitions in general. As used in this Agreement, the terms defined in this article shall have the meanings set forth below in Sections 2.1 to 2.17 except as the context otherwise requires.
- 2.2 Authorized Contractor. As used in this Agreement the term "Authorized Contractor" is used when referring to any contractor which is included on a list of contractors mutually approved by Attaching Party and **AT&T-CALIFORNIA** and who subject to Attaching Party's direction and control, and subject to the requirements and policies in each state, perform facilities modification or make-ready work which would ordinarily be performed by **AT&T-CALIFORNIA** or persons acting on **AT&T-CALIFORNIA's** behalf as more specifically detailed in Section 21.2.
- 2.3 Conduit. The term "conduit" refers to tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. As used in this Agreement, the term "conduit" refers only to conduit structures (including ducts, manholes and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other **AT&T-CALIFORNIA** structures (such as huts and cabinets) which branch off from or are connected to **AT&T-CALIFORNIA's** conduit.
- 2.4 Conduit system. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Agreement, the term "conduit system" does not include (a) cables and other telecommunications equipment located within conduit



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- structures or (b) central office vaults, controlled environment vaults, or other AT&T-CALIFORNIA structures (such as huts and cabinets) which branch off from or are connected to AT&T-CALIFORNIA's conduit.
- 2.5 Duct. The term "duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Agreement, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels, but does not include cables and other telecommunications equipment located within such ducts.
- 2.6 Handhole. The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Agreement, the term "handhole" refers only to handholes, which are part of AT&T-CALIFORNIA's conduit system, and does not refer to handholes, which provide access to buried cables not housed within AT&T-CALIFORNIA ducts or conduits. As used in this Agreement, the term "handhole" refers only to handhole structures owned or controlled by AT&T-CALIFORNIA and does not include cables and other telecommunications equipment located within handhole structures.
- 2.7 Occupancy Permit. The term "occupancy permit" refers to a written instrument confirming that AT&T-CALIFORNIA has granted the structure access request of Attaching Party or a Third Party for access to pole, duct, conduit, or rights-of-way space.
- 2.8 Maintenance Duct. The term "maintenance duct" generally refers to a full-sized duct (typically three inches in diameter or larger) for use, on a short-term basis, for maintenance, repair, or emergency restoration activities. The term "maintenance duct" does not include ducts and conduits extending from an AT&T-CALIFORNIA manhole to customer premises. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.
- 2.9 Make-ready work. The term "make-ready work" refers to all work performed or to be performed to prepare AT&T-CALIFORNIA's poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Attaching Party's facilities.
- 2.10 Manhole. The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in ducts or conduits, which are parts of AT&T-CALIFORNIA's conduit system. As used in this Agreement, the term "manhole" does not include cables and other telecommunications equipment located within manhole structures.
- 2.11 Other User. The term "Other User" refers to entities, other than the Attaching Party, with facilities on an AT&T-CALIFORNIA pole, duct, conduit or rights-of-way to which the Attaching Party has obtained access. Other Users may include AT&T-CALIFORNIA, other attaching Parties, municipalities or other governmental entities, and electric utilities (which may own interests in AT&T-CALIFORNIA's poles, ducts, conduits or rights-of-ways).
- 2.12 Overlashing. The term "Overlashing" refers to the practice of placing an additional cable by lashing such cable with spinning wire over an existing cable and strand.
- 2.13 Periodic Inspections. The term "periodic inspections" refers to inspections that are planned and scheduled by AT&T-CALIFORNIA, for the purpose of inspecting the facilities of CARRIER's attached to AT&T-CALIFORNIA structure, (poles, conduits, and rights-of-way).
- 2.14 Pole. The term "pole" refers to poles (and associated anchors) which are owned or controlled by AT&T-CALIFORNIA and does not include cables and other telecommunications equipment attached to pole structures.
- 2.15 Rights-of-way. The term "rights-of-way" refers to AT&T-CALIFORNIA owned or controlled legal rights to pass over or through property of another Party and used by AT&T-CALIFORNIA for its telecommunications distribution system. For purposes of this Agreement, "rights-of-way" includes property owned by AT&T-CALIFORNIA and used by AT&T-CALIFORNIA for its telecommunications distribution facilities. Rights-of-way do not include:

## Ponderosa Cablevision

- 2.15.1 cables and other telecommunications equipment buried or located on such rights-of-way;
  - 2.15.2 public rights-of-way (which are owned by and subject to the control of governmental entities); or
  - 2.15.3 any space which is owned and controlled by a Third Party property owner and occupied by AT&T-CALIFORNIA with permission from such owner rather than as a matter of legal right.
- 2.16 Spot Inspections. The term "spot inspections" refers to spontaneous inspections done by AT&T-CALIFORNIA, which may be initiated, at AT&T-CALIFORNIA's discretion for the purpose of ensuring safety and compliance with AT&T-CALIFORNIA standards.
- 2.17 Structure. The term "Structure" refers collectively to poles, ducts, conduits and rights-of-way.

### 3. SCOPE OF AGREEMENT

- 3.1 This Agreement establishes the rates, terms, conditions, and procedures by which AT&T-CALIFORNIA shall provide non-discriminatory access to AT&T-CALIFORNIA's Structure. Separate tariffs, appendix, or agreements shall govern Attaching Party's access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Agreement:
- 3.1.1 AT&T-CALIFORNIA's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from AT&T-CALIFORNIA's central offices;
  - 3.1.2 controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
  - 3.1.3 ducts and conduits located within buildings owned by AT&T-CALIFORNIA; and
  - 3.1.4 ducts, conduits, equipment rooms, and similar spaces located in space leased by AT&T-CALIFORNIA from Third Party property owners for purposes other than to house cables and other equipment in active service as part of AT&T-CALIFORNIA's network distribution operations.
- 3.2 No Transfer of Property Rights to Attaching Party. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall create or vest (or be construed as creating or vesting) in either Party any right, title, or interest in or to any real or personal property owned by the other.
- 3.3 No Effect on AT&T-CALIFORNIA's Right to Abandon, Convey or Transfer Structure. Nothing contained in this Agreement, or any occupancy permit subject to this Agreement, shall in any way affect AT&T-CALIFORNIA's right to abandon, convey, or transfer to any other person or entity AT&T-CALIFORNIA's interest in any of AT&T-CALIFORNIA's Structure. AT&T-CALIFORNIA shall give Attaching Party at least 60 days written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or rights-of-way is to be conveyed or transferred.

### 4. EFFECTIVE DATE, TERM AND ELECTIVE TERMINATION

- 4.1 Effective Date. This Agreement shall be effective as of the latest date of execution on the signature page(s) of this Agreement.
- 4.2 Initial Term. Unless sooner terminated as herein provided, the initial term of this Agreement shall run from the effective date until the end of the calendar year, which includes the effective date.
- 4.3 Automatic Renewal. Unless sooner terminated as herein provided, this Agreement shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year which includes the effective date.
- 4.4 Elective Termination. Either Party may terminate this Agreement by giving the other Party at least six months prior written notice as provided in this section. The notice of termination shall state the effective

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date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current term of this Agreement or six months after the date the notice is given.

- 4.5 Elective Termination by AT&T-CALIFORNIA. Attaching Party shall, within 60 days after the effective date of the elective termination by AT&T-CALIFORNIA either initiate negotiations for continued access to AT&T-CALIFORNIA's poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Section 28 of this Agreement.
- 4.6 Effect of Elective Termination. Elective termination of this Agreement by Attaching Party, as permitted under Section 4 of this Agreement, shall not affect Attaching Party's liabilities and obligations incurred under this Agreement prior to the effective date of termination and shall not entitle Attaching Party to the refund of any advance payment made to AT&T-CALIFORNIA under this Agreement. Elective termination of this Agreement by AT&T-CALIFORNIA shall not affect AT&T-CALIFORNIA's obligations to afford access to AT&T-CALIFORNIA's poles, ducts, conduits, and rights-of-way owned or controlled by AT&T-CALIFORNIA as required by the Pole Attachment Act, the Telecommunications Act of 1996, and other applicable laws, regulations, and commission orders.

### 5. GENERAL PROVISIONS

- 5.1 Entire Agreement. This Agreement and the Guidelines for Access to Structure, attached hereto and incorporated herein by reference, set forth the entire understanding and agreement of the Parties. The attached Guidelines are designated AT&T, but for purposes of this Agreement, they are applicable for AT&T-CALIFORNIA. In the event of a conflict between this Agreement and the Guidelines, the terms of this Agreement shall control.
- 5.2 Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, whether written or oral, between Attaching Party and AT&T-CALIFORNIA relating to the placement and maintenance of Attaching Party's facilities on and within AT&T-CALIFORNIA's poles, ducts, and conduits within this State.
- 5.3 Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both Parties.
- 5.4 Survival of Obligations. Any liabilities or obligations of either Party for acts or omissions prior to the termination of this Agreement, any obligations of either Party under provisions of this Agreement relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, will survive the termination of this Agreement.
- 5.5 Effect on Licenses or Occupancy Permits Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy permits granted to Attaching Party shall, on the effective date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.
- 5.6 Force Majeure. Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform; provided, however, that Force Majeure will not include acts of any governmental authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs, the Party whose performance fails or is delayed because of such Force Majeure condition will give prompt notice to the other Party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.
- 5.7 Severability. If any article, section, subsection, or other provision or portion of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter

## Ponderosa Cablevision

the essence of this Agreement as to either Party, the invalidity of such provision shall not render this entire Agreement unenforceable and this Agreement shall be administered as if it did not contain the invalid provision.

- 5.8 Choice of Law. Except to the extent that federal law controls any aspect of this Agreement, the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of this State, applied without regard to the provisions of this State's laws relating to conflicts-of-laws.
- 5.9 Changes in the Law. The Parties agree to negotiate in good faith changes to this Agreement to conform to changes applicable law pertaining to access to poles, ducts, conduits and rights-of-way, including the Pole Attachment Act.
- 5.10 Applicable Laws. The Parties shall at all times observe and comply with, and the provisions of this Agreement are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the Parties.
- 5.11 Dispute Resolution

Unless otherwise provided elsewhere in this Agreement, Attaching Party shall pay all rates and charges, as specified in the Agreement, within thirty (30) days from the dates of billing thereof. If Attaching Party disputes any amount invoiced by AT&T-CALIFORNIA, Attaching Party shall make payment of the invoice in full and shall notify AT&T-CALIFORNIA in writing of the disputed amount. Attaching Party may dispute any amount within ninety (90) days after the date that payment has been made. Attaching Party shall include any documentation supporting its position in such written notification. The Parties shall work together to resolve the dispute in an expeditious manner. In the event the dispute is resolved in the favor of the Attaching Party, or AT&T-CALIFORNIA then the other Party shall include interest calculated at the rate set forth in the Rates, Fees, Charges and Billing section of this Agreement.

### 6. DISCLAIMER OF WARRANTIES

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

### 7. INTENTIONALLY LEFT BLANK

### 8. INDEMNIFICATION

- 8.1 Definitions. The term "Claims" as used in Section 8 shall mean any suit, claim, demand, loss, damage, liability, fee, fine, penalty, or expense, of every kind and character.
- 8.2 Indemnities Excluded. Except as otherwise specifically provided in this article, neither Party (as an "Indemnifying Party") shall be required to indemnify or defend the other Party (as an "Indemnified Party") against, or hold the Indemnified Party harmless from, any Claims arising out of:
- 8.2.1 any breach by the Indemnified Party of any provision of this Agreement;
  - 8.2.2 the violation of any law by any employee of the Indemnified Party or other person acting on the Indemnified Party's behalf;
  - 8.2.3 willful or intentional misconduct or gross negligence committed by any employee of the Indemnified Party or by any other person acting on the Indemnified Party's behalf; or
  - 8.2.4 any negligent act or acts committed by any employee of the Indemnified Party or other person acting on the Indemnified Party's behalf, if such negligent act or acts are the sole producing cause of the injury, loss, or damage giving rise to the Claim for which indemnity is requested.

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

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

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

## 9. LIABILITIES AND LIMITATIONS OF LIABILITY

- 9.1 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT,

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EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES.

- 9.2 AT&T-CALIFORNIA Not Liable to Attaching Party for Acts of Third Parties or Acts of God. By affording Attaching Party access to AT&T-CALIFORNIA Structure AT&T-CALIFORNIA does not warrant, guarantee, or insure the uninterrupted use of such facilities by Attaching Party. Except as specifically provided in Section 9.4 of this Agreement, Attaching Party assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to Attaching Party's facilities attached to AT&T-CALIFORNIA's poles or placed in AT&T-CALIFORNIA's Structure and AT&T-CALIFORNIA shall not be liable to Attaching Party for any damages to Attaching Party's facilities other than as provided in Section 9.4. In no event shall AT&T-CALIFORNIA be liable to Attaching Party under this Agreement for any death of person or injury, loss, or damage resulting from the acts or omissions of (1) any Other User or any person acting on behalf of an Other User, (2) any governmental body or governmental employee, (3) any Third Party property owner or persons acting on behalf of such property owner, or (4) any permit, invitee, trespasser, or other person present at the site or in the vicinity of any AT&T-CALIFORNIA pole, duct, conduit, or rights-of-way in any capacity other than as a AT&T-CALIFORNIA employee or person acting on AT&T-CALIFORNIA's behalf. In no event shall AT&T-CALIFORNIA be liable to Attaching Party under this Agreement for injuries, losses, or damages resulting from acts of God (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on AT&T-CALIFORNIA's behalf, cable cuts by persons other than AT&T-CALIFORNIA's employees or persons acting on AT&T-CALIFORNIA's behalf, or other causes beyond AT&T-CALIFORNIA's control which occur at sites subject to this Agreement.
- 9.3 Damage to Facilities. Each Party shall exercise due care to avoid damaging the facilities of the other or of Other Users and hereby assumes all responsibility for any and all loss from damage caused by the Party and persons acting on the Party's behalf. A Party shall make an immediate report to the other of the occurrence of any damage and hereby agrees to reimburse the other Party, and/or Other Users for any property damaged caused by the Party or persons acting on the Party's behalf.
- 9.4 No Limitations of Liability in Contravention of Federal or State Law. Nothing contained in this article shall be construed as exempting either Party from any liability, or limiting such Party's liability, in contravention of federal law or in contravention of the laws of this State.

## 10. INSURANCE

- 10.1 At all times in which the Attaching Party has attachments to AT&T-CALIFORNIA poles, or is occupying AT&T-CALIFORNIA conduit or rights-of-way, Attaching Party shall keep and maintain in force, at its own expense, the minimum insurance coverage and limits set forth below. Such insurance and coverage shall not only cover the Attaching Party, but it must cover all contractors, subcontractors and/or any other person acting on Attaching Party's behalf, that are providing services under this Agreement.
- 10.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee. To the fullest extent allowable by law, the policy must include a waiver of subrogation in favor of AT&T, its affiliates, and their directors, officers and employees.
- 10.1.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations; Fire Legal Liability sub-limits a minimum of \$1,000,000 are also required. **AT&T, its affiliates, officers, agents and employees shall be listed as additional insured** on the Commercial General Liability policy. A waiver of

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subrogation shall be in favor of AT&T. The liability policies shall be primary and non-contributory from any insurance that is maintained by AT&T.

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

## 11. ASSIGNMENT OF RIGHTS

- 11.1 Assignment Permitted. Neither Party may assign, or otherwise transfer its rights or obligations, under this Agreement except as provided in this section.
  - 11.1.1 AT&T-CALIFORNIA may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with AT&T-CALIFORNIA or which acquires or succeeds to ownership of substantially all of AT&T-CALIFORNIA's assets.
  - 11.1.2 Overlapping of Attaching Party's facilities on AT&T-CALIFORNIA poles by a third Party will be allowed under the following conditions:
    - 11.1.2.1 The Overlapping entity must enter into an agreement with AT&T-CALIFORNIA for access to AT&T-CALIFORNIA Structures and abide by the terms and conditions of such an Occupancy Permit.
    - 11.1.2.2 The Overlapping entity must obtain written approval from the Attaching Party and provide a copy to AT&T-CALIFORNIA prior to submitting a request for access to structure.



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- 11.1.2.3 The Overlapping Party must submit a written request for access to structure, and indicate on the request that the request is for Overlapping of an existing attachment of the Attaching Party in order to ensure that pole loadings are not exceeded.
- 11.1.2.4 The Overlapping entity is responsible for paying the fees for Overlapping in Pricing Appendix, which are separate, and in addition to the fees paid by the Attaching Party, (e.g. the application fees and all make ready fees, etc.).
- 11.1.3 Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without **AT&T-CALIFORNIA**'s consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Agreement, subject to the express terms of this Agreement. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third Party to acquire Attaching Party's assets through public or private sale or through an Agreement with Attaching Party, Attaching Party's lender or the third Party acquiring Attaching Party's rights under this Agreement shall assume all outstanding obligations of Attaching Party under the agreement and provide proof satisfactory to **AT&T-CALIFORNIA** that such lender or third Party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third Party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third Party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Attaching Party under the Agreement, including liability to **AT&T-CALIFORNIA** for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third Party succeeds to the rights of Attaching Party under the Agreement, as applicable.
- 11.1.4 Except as provided in Section 11.2 below, no assignment or transfer by Attaching Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this article, secured **AT&T-CALIFORNIA**'s prior written consent to the assignment or transfer, if necessary, and given **AT&T-CALIFORNIA** notice of the assignment or transfer pursuant to Section 11.3.
- 11.2 Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article. However, if Attaching Party provides sixty (60) days written notice to **AT&T-CALIFORNIA** of its intent to assign its rights, delegate its benefits and delegate its duties and obligations under this Agreement to any entity controlling, controlled by, or under common control with Attaching Party, or to any entity which acquires or succeeds to ownership of substantially all of Attaching Party's assets, such assignment and delegations shall be deemed approved if **AT&T-CALIFORNIA** has not indicated otherwise by the end of this sixty (60) day notice period. **AT&T-CALIFORNIA** shall not unreasonably withhold or deny consent.
- 11.3 Assignment Shall Not Relieve Attaching Party of Prior Obligations. Except as otherwise expressly agreed by **AT&T-CALIFORNIA** in writing, no assignment permitted by **AT&T-CALIFORNIA** under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 8 of this Agreement.
- 11.4 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. **AT&T-CALIFORNIA** may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Attaching Party under this Agreement and the

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assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement.

- 11.5 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting Attaching Party the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or occupancy permits subject to this Agreement to any third Party. Except as otherwise expressly permitted in this Agreement, Attaching Party shall not allow third Party to attach or place facilities to or in pole or conduit space occupied by or assigned to Attaching Party or to utilize such space.

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

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

### 13. FAILURE TO ENFORCE

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

### 14. CONFIDENTIALITY OF INFORMATION

- 14.1 Information Provided by Attaching Party to AT&T-CALIFORNIA. Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Attaching Party to AT&T-CALIFORNIA in connection with this Agreement (including but not limited to information submitted in connection with Attaching Party's applications for occupancy permit shall be deemed to be "confidential" or "proprietary" information of Attaching Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for review of records or its inquiry about AT&T-CALIFORNIA facilities. This article does not limit the use by AT&T-CALIFORNIA of aggregate information relating to the occupancy and use of AT&T-CALIFORNIA's Structure by firms other than AT&T-CALIFORNIA (that is, information submitted by Attaching Party and aggregated by AT&T-CALIFORNIA in a manner that does not directly or indirectly identify Attaching Party).
- 14.2 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Attaching Party to AT&T-CALIFORNIA in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons other than those who have a need to know such information for the limited purposes set forth in Sections 14.3-14.6.
- 14.3 Permitted Uses of Attaching Party's Confidential Information. Notwithstanding the provisions of Sections 14.1 and 14.2 above, AT&T-CALIFORNIA and persons acting on AT&T-CALIFORNIA's behalf may utilize Attaching Party's confidential or proprietary information for the following purposes (and on a need to know basis):
- 14.3.1 posting information, as necessary, to AT&T-CALIFORNIA's outside plant records;
  - 14.3.2 placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing AT&T-CALIFORNIA's Structure and any AT&T-CALIFORNIA facilities located on, within, or in the vicinity of such Structure;
  - 14.3.3 performing AT&T-CALIFORNIA's obligations under this Agreement and similar agreements with Third Parties;
  - 14.3.4 determining which of AT&T-CALIFORNIA's Structure are (or may in the future be) available for AT&T-CALIFORNIA's own use, and making planning, engineering, construction, and budgeting decisions relating to AT&T-CALIFORNIA's Structure;
  - 14.3.5 preparing cost studies;
  - 14.3.6 responding to regulatory requests for information;
  - 14.3.7 maintaining AT&T-CALIFORNIA's financial accounting records; and
  - 14.3.8 complying with other legal requirements relating to Structure.
- 14.4 Defense of Claims. In the event of a dispute between AT&T-CALIFORNIA and any person or entity, including Attaching Party, concerning AT&T-CALIFORNIA's performance of this Agreement, satisfaction of obligations under similar agreements with Third Parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, AT&T-CALIFORNIA may utilize confidential or proprietary information submitted by Attaching Party in connection with this Agreement as may be reasonable or necessary to demonstrate compliance, protect itself from

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allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that AT&T-CALIFORNIA shall not disclose Attaching Party's proprietary or confidential information without first, at AT&T-CALIFORNIA's option ( in an individual market if practicable):

- 14.4.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
  - 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
  - 14.4.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.
- 14.5 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding AT&T-CALIFORNIA from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that AT&T-CALIFORNIA shall not disclose Attaching Party's proprietary or confidential information without first, at AT&T-CALIFORNIA's option:
- 14.5.1 obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
  - 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
  - 14.5.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

### 15. ACCESS TO RIGHTS-OF-WAY

- 15.1 To the extent, AT&T-CALIFORNIA has the authority to do so, AT&T-CALIFORNIA grants Attaching Party a right to use any rights-of-way for AT&T-CALIFORNIA poles, ducts, or conduits to which Attaching Party may attach its facilities for the purposes of constructing, operating and maintaining such Attaching Party's facilities on AT&T-CALIFORNIA's poles, ducts or conduits. Notwithstanding the foregoing, Attaching Party shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, rights-of-way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the AT&T-CALIFORNIA pole, duct or conduit to which Attaching Party seeks to attach its facilities. Attaching Party shall furnish proof of any such easement, rights-of-way, license, permit, permission, certification, or franchise within thirty (30) days of request by AT&T-CALIFORNIA. AT&T-CALIFORNIA does not warrant the validity or apportionability of any rights it may hold to place facilities on private property. At Attaching Party's sole reasonable cost and expense, AT&T-CALIFORNIA agrees to work in good faith to provide copies of applicable easement and other right-of-way documents, if AT&T-CALIFORNIA has the legal right to do so and has the documents readily available for copying, to help enable Attaching Party to attach to the pole
- 15.2 Private Rights-of-Way Not Owned or Controlled by Either Party. Neither Party shall restrict or interfere with the other Party's access to or right to occupy property owned by Third Parties which is not subject to the other Party's control, including property as to which either Party has access subject to non-exclusive rights-of-way. Each Party shall make its own, independent legal assessment of its right to enter upon or use the property of Third Party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.

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15.3 Access to Rights-of-Way Generally. At locations where AT&T-CALIFORNIA has access to third-Party property pursuant to non-exclusive rights-of-way, AT&T-CALIFORNIA shall not interfere with Attaching Party's negotiations with third-Party property owners for similar access; nor with Attaching Party's access to such property pursuant to easements or other rights-of-ways obtained by Attaching Party from the property owner. At locations where AT&T-CALIFORNIA has obtained exclusive rights-of-way from third-Party property owners or otherwise controls the rights-of-way, AT&T-CALIFORNIA shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Attaching Party on a nondiscriminatory basis, provided that the underlying agreement with the property owner permits AT&T-CALIFORNIA to provide such access, and provided further that if AT&T-CALIFORNIA has available space that it shares with Attaching Party in AT&T-CALIFORNIA non-aerial rights-of-way or easements (e.g., for cabinets placed on or under ground), which have not been accounted for in rates determined in accordance with the Pole Attachment Act (i.e., aerial, linear rights of way for pole lines are so accounted for), AT&T-CALIFORNIA shall include Attaching Party's pro rata portion of the charges, if any, paid by AT&T-CALIFORNIA to obtain such non-aerial rights-of-way or easements, plus any other documented legal, administrative, and engineering costs incurred by AT&T-CALIFORNIA in obtaining such rights-of-way or easements and processing Attaching Party's requests for such access.

### 16. SPECIFICATIONS

- 16.1 Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities attached to AT&T-CALIFORNIA's poles or occupying space in AT&T-CALIFORNIA's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Agreement and the Guidelines.
- 16.2 Published Standards. Attaching Party's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:
- 16.2.1 the Blue Book Manual of Construction Procedures, Special Report SR-1421, published by Bell Communications Research, Inc., and sometimes referred to as the "Blue Book";
  - 16.2.2 the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE");
  - 16.2.3 the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA");
  - 16.2.4 California Public Utility Commission's General Orders 95 and 128 for attachments to Pacific Bell Telephone Company poles, ducts, conduits and rights of way; and,
  - 16.2.5 the Structure Access Guidelines as identified in section 5.1.
- 16.3 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of AT&T-CALIFORNIA's manholes and access to AT&T-CALIFORNIA's conduit system.
- 16.3.1 Attaching Party will notify AT&T-CALIFORNIA not less than 5 business days in advance before entering AT&T-CALIFORNIA's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the Parties. The notice shall state the general nature of the work to be performed.
  - 16.3.2 An authorized employee or representative of AT&T-CALIFORNIA may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within AT&T-CALIFORNIA's conduit system. Attaching Party must notify AT&T-CALIFORNIA when Attaching Party has completed such work in the conduit system. If AT&T-CALIFORNIA has not had the opportunity to complete the review, AT&T-CALIFORNIA will attempt to meet with Attaching Party's contractors to finalize the review. If AT&T-CALIFORNIA is not available when Attaching Party notifies AT&T-CALIFORNIA of their notice of completion then AT&T-

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CALIFORNIA will perform a post-construction inspection as described in section 26.1. Attaching Party shall reimburse AT&T-CALIFORNIA for costs associated with the presence of AT&T-CALIFORNIA's authorized employee or representative.

16.3.3 Each Party must obtain any necessary authorization from appropriate authorities to open manholes.

### 17. ACCESS TO RECORDS

- 17.1 AT&T-CALIFORNIA will, upon request and at the expense of the Attaching Party, provide Attaching Party access to and copies of redacted maps, records and additional information relating to the location, capacity and utilization of AT&T-CALIFORNIA's Structure. Upon request, AT&T-CALIFORNIA will meet with the Attaching Party to clarify matters relating to maps, records or additional information. AT&T-CALIFORNIA does not warrant the accuracy or completeness of information on any maps or records.
- 17.2 Maps, records or information are and remain the proprietary property of AT&T-CALIFORNIA, are provided to the Attaching Party solely for the pursue of enabling the Attaching Party to obtain access to AT&T-CALIFORNIA's Structure, and may not be resold, reproduced or disseminated by the Attaching Party.
- 17.3 AT&T-CALIFORNIA will provide information currently available on the AT&T-CALIFORNIA's maps and/or records regarding:
- 17.3.1 the location of Structure and street addresses for manholes and poles as shown on AT&T-CALIFORNIA's maps;
- 17.3.2 the footage between manholes or lateral ducts lengths, as shown on AT&T-CALIFORNIA's maps;
- 17.3.3 the footage between poles, if shown on AT&T-CALIFORNIA's maps;
- 17.3.4 the total capacity of the Structure;
- 17.3.5 the existing utilization of the Structure.
- 17.4 AT&T-CALIFORNIA will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by AT&T-CALIFORNIA.
- 17.5 AT&T-CALIFORNIA will expunge any confidential or proprietary information from its maps and records prior to providing access to the Attaching Party.
- 17.6 AT&T-CALIFORNIA will:
- 17.6.1 Within five (5) business days after attaching Party submits Billing Authorization to AT&T-CALIFORNIA, AT&T-CALIFORNIA will notify attaching Party of the place and time that attaching Party may view the Structure Records.
- 17.6.2 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-CALIFORNIA may not be able to provide attaching Party with unscheduled additional time for viewing AT&T-CALIFORNIA 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.
- 17.6.3 AT&T-CALIFORNIA may make available at the Attaching Party's expense, an AT&T-CALIFORNIA representative with sufficient knowledge about AT&T-CALIFORNIA Structure Records to clarify matters relating to such Structure Records and to assist Attaching Party during their viewing.

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- 17.7 Charges associated with map preparation, viewing and assistance will be on a Time and Material basis as set forth in the following Applicable Tariffs:

### 18. APPLICATIONS AND PRE-OCCUPANCY PERMIT SURVEYS

- 18.1 Occupancy Permits Required. Attaching Party shall apply in writing for and receive an occupancy permit before attaching facilities to specified AT&T-CALIFORNIA poles or placing facilities within specified AT&T-CALIFORNIA ducts, conduits, or rights-of-way.
- 18.2 Structure Access Request Form. To apply for an occupancy permit under this Agreement, Attaching Party shall submit to AT&T-CALIFORNIA the appropriate AT&T-CALIFORNIA request forms. Attaching Party shall promptly withdraw or amend its request if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific AT&T-CALIFORNIA Structure. In addition, Attaching Party shall also:
- 18.2.1 submit payment for the estimate authorizing AT&T-CALIFORNIA or its contractor to complete the make-ready survey; or
  - 18.2.2 advise AT&T-CALIFORNIA of its willingness to perform the proposed make-ready work itself or an Authorized Contractor if permissible in the application area.
  - 18.2.3 confirm that Attaching Party has calculated storm loadings, guying, or pole class to ensure pole loadings are not exceeded and indicate if additional holding or loading capacity is required.
  - 18.2.4 provide sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of apparatus enclosures and other facilities to be attached to AT&T-CALIFORNIA's poles or placed in AT&T-CALIFORNIA's conduit system.
- 18.3 Make-Ready Survey. A Make-Ready survey must be completed by AT&T-CALIFORNIA or, subject to the requirements and policies in each state, the Attaching Party before an occupancy permit is issued. The primary purposes of the make ready survey will be to enable AT&T-CALIFORNIA to:
- 18.3.1 confirm or determine the modifications, capacity expansion, and make-ready work, if any, necessary to accommodate Attaching Party's attachment of facilities to AT&T-CALIFORNIA structures;
  - 18.3.2 plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare AT&T-CALIFORNIA's poles, ducts, conduits, rights-of-way, and associated facilities for Attaching Party's proposed attachments or occupancy; and
  - 18.3.3 estimate the costs associated with such facilities modification, capacity expansion, or make-ready work; and
  - 18.3.4 identify the owner of the pole.

### 19. POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

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

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19.2.2 AT&T CALIFORNIA: The pole, duct, and conduit space selected and/or approved by AT&T-CALIFORNIA in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed nine (9) months in AT&T CALIFORNIA only as detailed by the California Public Utility Commission.

19.2.3 AT&T-CALIFORNIA may assign space to itself by making appropriate entries in the same records used to log assignments to Attaching Party and Third Parties. If AT&T-CALIFORNIA assigns pole, duct, or conduit space to itself, such assignment will automatically lapse twelve (12) months after the date the assignment has been entered into the appropriate AT&T-CALIFORNIA record if AT&T-CALIFORNIA has not occupied such assigned space within such twelve (12) month period.

19.2.4 Notices and applications, including assignment requests, will be date and time stamped on receipt.

### 20. ISSUANCE OF OCCUPANCY PERMITS (INCLUDING MAKE-READY WORK)

20.1 Response Within 45 Days. Within forty-five (45) days of Attaching Party's submission of a request for access to AT&T-CALIFORNIA Structure, AT&T-CALIFORNIA 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-CALIFORNIA 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-CALIFORNIA will schedule the meeting within ten (10) business days of receipt of the Attaching Party's written request for a meeting.

20.2 If access is granted the response will further advise Attaching Party in writing of:

20.2.1 what modifications, capacity expansions, or make-ready work, if any, will be required to prepare AT&T-CALIFORNIA's Structure, and

20.2.2 an estimate of charges for such modifications, capacity expansions, or make-ready work.

20.3 Make-ready Work. If it is determined that make ready work will be necessary to accommodate Attaching Party's facilities, Attaching Party shall have forty-five (45) days (the "acceptance period") to either:

20.3.1 submit payment for the estimate authorizing AT&T-CALIFORNIA or its contractor to complete the make-ready work; or

20.3.2 advise AT&T-CALIFORNIA of its willingness to perform the proposed make-ready work itself if permissible in the application area.

20.3.2.1 Make-ready work performed by Attaching Party, or by an Authorized Contractor selected by Attaching Party, shall be performed in accordance with AT&T-CALIFORNIA's specifications and in accordance with the same standards and practices, which would be followed if such work were being performed by AT&T-CALIFORNIA or AT&T-CALIFORNIA'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-CALIFORNIA's Structures or interferes with any existing use of AT&T-CALIFORNIA's facilities or the facilities of any Other User.

20.4 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. Attaching Party shall make arrangements with the Other Users with facilities attached to AT&T-CALIFORNIA's poles or occupying space in AT&T-CALIFORNIA's conduit system regarding reimbursement for any expenses incurred by the Other Users in transferring or rearranging the Other Users' facilities to accommodate the attachment or placement of Attaching Party's facilities to or in AT&T-CALIFORNIA's poles, ducts, conduits and rights of ways.



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- 20.5 Reimbursement for the Creation or Use of Additional Capacity. If any additional capacity is created as a result of make-ready work performed to accommodate Attaching Party's facilities, Attaching Party shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to AT&T-CALIFORNIA for the use of such additional capacity. If AT&T-CALIFORNIA utilizes additional space or capacity created at Attaching Party's expense, AT&T-CALIFORNIA will reimburse Attaching Party on a pro-rata basis for AT&T-CALIFORNIA's share, if any, of Attaching Party's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. AT&T-CALIFORNIA will notify the Attaching Party if AT&T-CALIFORNIA attaches facilities to additional capacity on AT&T-CALIFORNIA's Structure created at the Attaching Party's expense. AT&T-CALIFORNIA shall not be required to collect or remit any such amounts to Attaching Party, to resolve or adjudicate disputes over reimbursement between Attaching Party and Other Users.
- 20.6 If Attaching Party utilizes space or capacity on any AT&T-CALIFORNIA Structure created at AT&T-CALIFORNIA's expense after February of 1996, the Attaching Party will reimburse Attaching Party on a pro-rata basis for the Attaching Party's share, if any, of AT&T-CALIFORNIA's capacity creation costs.
- 20.7 Occupancy Permit and Attachment. After all required make-ready work is completed; AT&T-CALIFORNIA will issue an occupancy permit confirming that Attaching Party may attach specified facilities to AT&T-CALIFORNIA's Structure.
- 20.8 The Attaching Party must occupy the assigned space within a period not to exceed twelve (12) months from the issuance of the occupancy permit. If the Attaching Party does not occupy the assigned space within the twelve (12) month period, the Occupancy Permit will lapse and the space will be considered available for use by AT&T-CALIFORNIA or Other User. Notwithstanding anything to the contrary, prior to the expiration of the twelve (12) month period, the Attaching Party may submit a request for an extension of time based on the need to receive zoning or other approvals and consents, setting forth an explanation of the need and the basis for the amount of time requested. Attaching Party shall diligently pursue needed zoning and other approvals and consents and include facts showing such diligence in any request for an extension of time. If another telecommunications carrier, including an AT&T-CALIFORNIA carrier, requests the same space after the initial twelve (12) month period has passed, and other sufficient space is not available, any such extension shall be limited to three months. AT&T-CALIFORNIA will not unreasonably withhold or deny an extension.
- 20.9 The Attaching Party's obligation to pay semiannual pole attachment or conduit occupancy fees will commence on the date the Occupancy Permit is provided by AT&T-CALIFORNIA to the Attaching Party.

## 21. CONSTRUCTION OF ATTACHING PARTY'S FACILITIES

- 21.1 Responsibility for Attaching and Placing Facilities. The Attaching Party shall be responsible for the actual attachment of its facilities to AT&T-CALIFORNIA's poles and the placement of such facilities in AT&T-CALIFORNIA's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities.
- 21.2 Responsibilities of Attaching Party. Attaching Party is responsible for the Authorized Contractors or contractors it selects.
- 21.2.1 As used in this Agreement, the term "Authorized Contractor" does not refer to contractors performing routine installation, maintenance, or repair work on Attaching Party's behalf or other contractors who may be selected by Attaching Party to perform work on Attaching Party's behalf without AT&T-CALIFORNIA's approval.
- 21.2.2 Subject to state specific requirements, Authorized Contractors have received certification from AT&T-CALIFORNIA to perform one or more of the following tasks within a specified AT&T-CALIFORNIA construction district, as applicable:
- (a) installation of those sections of Attaching Party's ducts or facilities, which connect to AT&T-CALIFORNIA's conduit system;

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- (b) installation of inner duct;
- (c) excavation work in connection with the removal of retired or inactive (dead) cables; or
- (d) Make-Ready work.

21.2.3 A person or entity approved as an Authorized Contractor is only an Authorized Contractor with respect to those tasks for which such person or entity has been approved by both Parties and is an Authorized Contractor only in those AT&T-CALIFORNIA construction districts agreed to by both Parties.

21.2.4 Designation of an Authorized Contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an Authorized Contractor for other purposes, nor shall approval of an Authorized Contractor by one AT&T-CALIFORNIA's construction district constitute approval of such Authorized Contractor for the area served by a different AT&T-CALIFORNIA construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an Authorized Contractor shall, for the purposes of that job, be deemed to have been approved by all AT&T-CALIFORNIA construction districts in which the work is to be performed.

21.3 Construction Schedule. After the issuance of an occupancy permit, Attaching Party shall provide AT&T-CALIFORNIA with a construction schedule and thereafter keep AT&T-CALIFORNIA informed of anticipated changes in the construction schedule.

## 22. USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY'S FACILITIES

22.1 Routine Maintenance of Attaching Party's Facilities. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within AT&T-CALIFORNIA's poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner, which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party's occupancy permit.

22.2 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed thirty (30) days) non-emergency maintenance or repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by AT&T-CALIFORNIA. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify AT&T-CALIFORNIA of such use and must either vacate the maintenance duct within thirty (30) days or, with AT&T-CALIFORNIA's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within thirty (30) days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies, which may occur while the maintenance duct is occupied.

## 23. MODIFICATION OF ATTACHING PARTY'S FACILITIES

23.1 Notification of Planned Modifications. Attaching Party shall notify AT&T-CALIFORNIA in writing at least thirty (30) days before adding to, relocating, replacing or otherwise modifying its facilities already attached to an AT&T-CALIFORNIA Structure. The notice shall contain sufficient information to enable AT&T-CALIFORNIA to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Attaching Party's present occupancy permit or requires a new or amended occupancy permit.

23.2 Replacement of Facilities and Overlapping Additional Cables. Attaching Party may replace existing facilities with new facilities occupying the same AT&T-CALIFORNIA Structure, and may overlap

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additional cables to its own existing facilities; provided, however, that such activities shall not be considered to be routine maintenance and shall be subject to the requirements of this article.

### 24. REQUIRED REARRANGEMENTS OF ATTACHING PARTY'S FACILITIES

- 24.1 Required Rearrangement of Attaching Party's Facilities. Attaching Party agrees that Attaching Party will cooperate with AT&T-CALIFORNIA and other users in making rearrangements to AT&T-CALIFORNIA Structure as may be necessary, and that costs incurred by Attaching Party in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the Parties in accordance with then applicable law.
- 24.2 Whenever feasible, AT&T-CALIFORNIA shall give Attaching Party not less than thirty (30) days prior written notice of the need for Attaching Party to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Attaching Party shall complete such rearrangements within the time prescribed in the notice. If Attaching Party does not rearrange facilities within noted time, AT&T-CALIFORNIA will rearrange at Attaching Party's expense.

### 25. EMERGENCY REPAIRS AND POLE REPLACEMENTS

- 25.1 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each Party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such Party to make such repairs.
- 25.1.1 Nothing contained in this Agreement shall be construed as requiring either Party to perform any repair or service restoration work of any kind with respect to the other Party's facilities or the facilities of joint users.
- 25.1.2 Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that an entity using the maintenance duct for emergency repair activities will notify AT&T-CALIFORNIA 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-CALIFORNIA conduit system and using the maintenance duct for emergency restoral purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance ducts will be used to restore the highest priority services, as defined in Section 25.3, first. Existing spare ducts may be used for restoration purposes providing the spare ducts are restored after restoration work is complete. Any spare ducts not returned will be included be assigned to the user of the duct and an occupancy permit issued.
- 25.1.3 The Attaching Party shall either vacate the maintenance duct within thirty (30) days or, with AT&T-CALIFORNIA's consent, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner-duct, a suitable replacement inner-duct) is available for use by all occupants in the conduit section within thirty (30) days after such Attaching Party occupies the maintenance ducts. If Attaching Party fails to vacate the maintenance duct as described above, AT&T-CALIFORNIA may install a maintenance conduit at the Attaching Party's expense.
- 25.2 Designation of Emergency Repair Coordinators and Other Information. For each AT&T-CALIFORNIA construction district, Attaching Party shall provide AT&T-CALIFORNIA 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-CALIFORNIA of changes to such information.
- 25.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, AT&T-CALIFORNIA, Attaching Party, and other affected Parties shall coordinate repair and other work operations in emergency

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situations involving service disruptions. Disputes will be immediately resolved at the site by the affected Parties present in accordance with the following principles.

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

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

25.3.3 AT&T-CALIFORNIA shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected Parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by AT&T-CALIFORNIA on a nondiscriminatory basis in accordance with the principles set forth in this section.

### 25.4 Emergency Pole Replacements.

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

25.4.2 If notified by AT&T-CALIFORNIA 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-CALIFORNIA replacement pole, the transfer shall be in accordance with AT&T-CALIFORNIA's placement instructions.

25.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise AT&T-CALIFORNIA and thereby authorize AT&T-CALIFORNIA (or any Other User sharing the pole with AT&T-CALIFORNIA) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on Attaching Party's behalf at the Attaching Party's expense.

25.5 Expenses Associated with Emergency Repairs. Each Party shall bear all reasonable expenses arising out of or in connection with emergency repairs of its own facilities and transfers or rearrangements of such facilities associated with emergency pole replacements made in accordance with the provisions of this article.

25.5.1 Each Party shall be solely responsible for paying all persons and entities that provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such Party's facilities.

25.5.2 Attaching Party shall reimburse AT&T-CALIFORNIA for the costs incurred by AT&T-CALIFORNIA for work performed by AT&T-CALIFORNIA on Attaching Party's behalf in accordance with the provisions of this article.

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

26.1 Post-Construction Inspections. AT&T-CALIFORNIA will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of facilities to AT&T-CALIFORNIA 22's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. AT&T-CALIFORNIA will provide the Attaching Party advance written notice of proposed date

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and time of the post-construction inspection. The Attaching Party may accompany AT&T-CALIFORNIA on the post-construction inspection.

- 26.2 Right to Make Periodic or Spot Inspections. AT&T-CALIFORNIA shall have the right, but not the obligation, to make Periodic or Spot Inspections of all facilities attached to AT&T-CALIFORNIA Structure. Periodic Inspections will not be made more often than once every two (2) years unless in AT&T-CALIFORNIA's judgment such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Agreement.
- 26.3 If Attaching Party's facilities are in compliance with this Agreement, 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 Agreement, AT&T-CALIFORNIA 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.
- 26.4 If the inspection reflects that Attaching Party's facilities are not in compliance with the terms of this Agreement, Attaching Party shall bring its facilities into compliance within thirty (30) days after being notified of such noncompliance. If any make ready or modification work to AT&T-CALIFORNIA's Structures is required to bring Attaching Party's facilities into compliance, the Attaching Party shall provide notice to AT&T-CALIFORNIA and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment. If the violation creates a hazardous condition, facilities must be brought into compliance upon notification.
- 26.5 Notice of Noncompliance. If, at any time, AT&T-CALIFORNIA determines that Attaching Party's facilities or any part thereof have not been placed or maintained or are not being used in accordance with the requirements of this Agreement, AT&T-CALIFORNIA 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-CALIFORNIA's assertion that such facilities are not in compliance, Attaching Party agrees to provide AT&T-CALIFORNIA with a schedule for bringing such facilities into compliance, to bring the facilities into compliance within a reasonable time, and to notify AT&T-CALIFORNIA in writing when the facilities have been brought into compliance.
- 26.6 Disputes over Alleged Noncompliance. If Attaching Party disputes AT&T-CALIFORNIA's assertion that Attaching Party's facilities are not in compliance, Attaching Party shall notify AT&T-CALIFORNIA in writing of the basis for Attaching Party's assertion that its facilities are in compliance.
- 26.7 Failure to Bring Facilities into Compliance. If Attaching Party has not brought the facilities into compliance within a reasonable time or provided AT&T-CALIFORNIA with proof sufficient to persuade AT&T-CALIFORNIA that AT&T-CALIFORNIA erred in asserting that the facilities were not in compliance, and if AT&T-CALIFORNIA determines in good faith that the alleged noncompliance causes or is likely to cause material damage to AT&T-CALIFORNIA's facilities or those of other users, AT&T-CALIFORNIA may, at its option and Attaching Party's expense, take such non-service affecting steps as may be required to bring Attaching Party's facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this Agreement.
- 26.8 Correction of Conditions by AT&T-CALIFORNIA. If AT&T-CALIFORNIA elects to bring Attaching Party's facilities into compliance, the provisions of this Section shall apply.
- 26.8.1 AT&T-CALIFORNIA will, whenever practicable, notify Licensee in writing before performing such work. The written notice shall describe the nature of the work to be performed and AT&T-CALIFORNIA's schedule for performing the work.
- 26.8.2 If Attaching Party's facilities have become detached or partially detached from supporting racks or wall supports located within a AT&T-CALIFORNIA manhole, AT&T-CALIFORNIA may, at Attaching Party's expense, reattach them but shall not be obligated to do so. If AT&T-

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CALIFORNIA does not reattach Attaching Party's facilities, AT&T-CALIFORNIA shall endeavor to arrange with Attaching Party for the reattachment of any facilities affected.

26.8.3 AT&T-CALIFORNIA 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.

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

### 27. TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

27.1 Facilities to Be Marked. Attaching Party shall tag or otherwise mark all of Attaching Party's facilities placed on or in AT&T-CALIFORNIA's Structure in a manner sufficient to identify the facilities as those belonging to the Attaching Party.

27.2 Removal of Untagged Facilities. AT&T-CALIFORNIA may, without notice to any person or entity, remove from AT&T-CALIFORNIA's poles or any part of AT&T-CALIFORNIA's conduit system the Attaching Party's facilities, if AT&T-CALIFORNIA determines that such facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on AT&T-CALIFORNIA's poles or in AT&T-CALIFORNIA's conduit system.

27.3 Notice to Attaching Party. If any of Attaching Party's facilities for which no occupancy permit is presently in effect are found attached to AT&T-CALIFORNIA's poles or anchors or within any part of AT&T-CALIFORNIA's conduit system, AT&T-CALIFORNIA, without prejudice to other rights or remedies available to AT&T-CALIFORNIA under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Attaching Party advising Attaching Party that no occupancy permit is presently in effect with respect to the facilities and that Attaching Party must, within 30 days, respond to the notice as provided in Section 27.4 of this Agreement.

27.4 Attaching Party's Response. Within thirty (30) days after receiving a notice under Section 27.3 of this Agreement, Attaching Party shall acknowledge receipt of the notice and submit to AT&T-CALIFORNIA, in writing, an application for a new or amended occupancy permit with respect to such facilities.

27.5 Approval of Request and Retroactive Charges. If AT&T-CALIFORNIA approves Attaching Party's application for a new or amended occupancy permit, Attaching Party shall be liable to AT&T-CALIFORNIA for all fees and charges associated with the unauthorized attachments as specified in Section 27.10 of this Agreement. The issuance of a new or amended occupancy permit as provided by this article shall not operate retroactively or constitute a waiver by AT&T-CALIFORNIA of any of its rights or privileges under this Agreement or otherwise.

27.6 Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from AT&T-CALIFORNIA's poles, conduit system or rights of way or until a new or amended occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party and its predecessors had continuously complied with all applicable AT&T-CALIFORNIA licensing requirements. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. In addition, the Attaching Party shall be liable for an unauthorized attachment and/or occupancy fee as specified in Section 29 of this Agreement. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Attaching Party shall rearrange or remove its unauthorized facilities at AT&T-CALIFORNIA's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to AT&T-CALIFORNIA or another Other User, and shall pay AT&T-CALIFORNIA for all costs incurred by AT&T-CALIFORNIA in connection with any

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rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities.

- 27.7 Removal of Unauthorized Attachments. If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized facilities within the specified period of time, AT&T-CALIFORNIA shall by written notice advise Attaching Party to remove its unauthorized facilities not less than 60 days from the date of notice and Attaching Party shall remove the facilities within the time specified in the notice. If the facilities have not been removed within the time specified in the notice, AT&T-CALIFORNIA may, at AT&T-CALIFORNIA's option, remove Attaching Party's facilities at Attaching Party's expense.
- 27.8 No Ratification of Unpermitted Attachments or Unauthorized Use of AT&T-CALIFORNIA's Facilities. No act or failure to act by AT&T-CALIFORNIA with regard to any unauthorized attachment or occupancy or unauthorized use of AT&T-CALIFORNIA's Structure shall be deemed to constitute a ratification by AT&T-CALIFORNIA of the unauthorized attachment or occupancy or use, nor shall the payment by Attaching Party of fees and charges for unauthorized pole attachments or conduit occupancy exonerate Attaching Party from liability for any trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities.

### 28. REMOVAL OF ATTACHING PARTY'S FACILITIES

- 28.1 When Attaching Party no longer intends to occupy space on an AT&T-CALIFORNIA pole or in an AT&T-CALIFORNIA duct or conduit, Attaching Party will provide written notification to AT&T-CALIFORNIA that it wishes to terminate the occupancy permit with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Attaching Party's facilities, the occupancy permit shall terminate and the space shall be available for reassignment.
- 28.1.1 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from AT&T-CALIFORNIA's Structure.
- 28.1.2 Except as otherwise agreed upon in writing by the Parties, Attaching Party must, after removing its facilities, plug all previously occupied ducts at the entrances to AT&T-CALIFORNIA's manholes.
- 28.1.3 Attaching Party shall be solely responsible for the removal of its own facilities from AT&T-CALIFORNIA's Structure.
- 28.2 At AT&T-CALIFORNIA's request, Attaching Party shall remove from AT&T-CALIFORNIA'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-CALIFORNIA's Structure.
- 28.3 Removal Following Termination of Occupancy permit. Attaching Party shall remove its facilities from AT&T-CALIFORNIA's poles, ducts, conduits, or rights-of-way within thirty (30) days after termination of the occupancy permit.
- 28.4 Removal Following Replacement of Facilities. Attaching Party shall remove facilities no longer in service from AT&T-CALIFORNIA's Structures within thirty (30) days after the date Attaching Party replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit.
- 28.5 Removal to Avoid Forfeiture. If the presence of Attaching Party's facilities on or in AT&T-CALIFORNIA's Structure would cause a forfeiture of the rights of AT&T-CALIFORNIA to occupy the property where such Structure is located, AT&T-CALIFORNIA 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-CALIFORNIA will give Attaching Party not less than thirty (30) days from the date of notice to remove Attaching Party's facilities unless prior removal is required to prevent the forfeiture of AT&T-CALIFORNIA's rights. At Attaching Party's

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request, the Parties will engage in good faith negotiations with each other, with Other Users, and with third-Party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of Attaching Party's facilities.

- 28.6 Removal of Facilities by AT&T-CALIFORNIA; Notice of Intent to Remove. If Attaching Party fails to remove its facilities from AT&T-CALIFORNIA's Structure in accordance with the provisions of Sections 28.1-28.6 of this Agreement, AT&T-CALIFORNIA 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-CALIFORNIA shall give Attaching Party not less than thirty (30) days prior written notice of its intent to remove Attaching Party's facilities pursuant to this section.
- 28.7 Removal of Facilities by AT&T-CALIFORNIA. If AT&T-CALIFORNIA removes any of Attaching Party's facilities pursuant to this article, Attaching Party shall reimburse AT&T-CALIFORNIA for AT&T-CALIFORNIA's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.
- 28.8 Removal of CLEC's Facilities. AT&T- CALIFORNIA retains the authority and right to remove any abandoned equipment left on or in AT&T structures or buildings and to sell, at salvage value, any abandoned equipment to recover removal costs.

### 29. RATES, FEES, CHARGES, AND BILLING

- 29.1 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees outlined in this Agreement will be set forth in Pricing Appendix to this Agreement. All rates, charges and fees, and changes thereto, shall be subject to all applicable federal and state laws, rules, regulations, and commission orders. AT&T-CALIFORNIA may accordingly change rates, charges and fees and will provide at least sixty (60) days notice to Attaching Party prior to making rate changes. Pole top space will be charged based on the number of vertical feet of space occupied, at the rates that will be in Pricing Appendix, except that in no case shall the charge be for less than one (1) vertical foot regardless of the amount of vertical space actually occupied.

Attaching Party agrees that in the event Attaching Party fails to pay an amount due and payable within the period of time set forth for payment in this Agreement, interest shall accrue on the unpaid balance thereof at the rate of 1 ½% per month for each month from the expiration of such period until payment is received by Licensor or the maximum interest rate permitted by law, whichever is the lesser amount.

- 29.2 Changes to Rates, Charges and Fees. Subject to applicable federal and state laws, rules, regulations and orders, AT&T-CALIFORNIA shall have the right to change the rates, charges and fees outlined in this Agreement. AT&T-CALIFORNIA will provide the Attaching Party 60 day's 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 Agreement, (2) terminate this Agreement, or (3) seek relief through the dispute resolution process in the General Provisions section of this Agreement.

### 30.0 PERFORMANCE AND PAYMENT BONDS, LETTERS OF CREDIT, OR CASH DEPOSITS

- 30.1 Bonds, Letters of Credit, or Cash Deposits May Be Required. AT&T-CALIFORNIA may require Attaching Party, Authorized Contractors and other persons acting on Attaching Party's behalf to execute performance and payment bonds, letters of credit or cash deposits ( or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of the Attaching Party's obligations arising out of or in connection with this Agreement.

30.1.1 If a bond or similar form of assurance is required of the Attaching Party, an Authorized Contractor, or other person acting on Attaching Party's behalf. Attaching Party shall promptly submit to AT&T-CALIFORNIA adequate proof that the bond remains in full force and effect and provide



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certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing **AT&T-CALIFORNIA** 60 days written notice.

30.1.2 Upon request by **AT&T-CALIFORNIA**, Attaching Party will provide **AT&T-CALIFORNIA** with the **AT&T-CALIFORNIA** Credit Profile form and provide information to **AT&T-CALIFORNIA** regarding Attaching Party's credit and financial condition.

Payment and Performance Bonds in Favor of Contractors and Subcontractors: Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, material men, and other persons or entities performing work or providing materials in connection with Attaching Party's performance under this Agreement. In the event any lien, claim, or demand is made on **AT&T-CALIFORNIA** by any such employee, contractor, subcontractor, mechanics, material man, or other person or entity providing such materials or performing such work, **AT&T-CALIFORNIA** may require, in addition to any security provided under Section 30.1 of this Agreement, that Attaching Party execute payment or performance bonds, letter of credit or provide cash deposits or such other security as **AT&T-CALIFORNIA** may deem reasonable.

### 31. NOTICES

31.1 Notices to Attaching Party. All written notices required to be given to a Party shall be delivered or mailed to the Party's duly authorized agent or attorney, as designated in this section.

31.1.1 Such notice may be delivered to the Party's duly authorized agent or attorney in person or by agent or courier receipted delivery.

31.1.2 Such notice may be mailed to the Party's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.

31.1.3 Notices to Attaching Party and **AT&T-CALIFORNIA** shall be sent to the authorized agent or attorney designated below:

<b>NOTICE CONTACT</b>	<b>ATTACHING PARTY</b>	<b>AT&amp;T</b>
NAME/TITLE	Matthew J. Boos	AT&T Structure Access Manager
STREET ADDRESS	47034 Road 201, PO Box 21	5555 E. Olive rd., Rm 100WW
CITY, STATE, ZIP CODE	O'Neals, CA 93645	Fresno, Ca 93727
TELEPHONE NUMBER	559-868-6322	559-454-4101
FACSIMILE NUMBER	559-868-3404	

31.2 Changes in Notice requirements: Either Party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other Party. Such notice shall state, at a minimum, the name, title and full address of the new addressee.

EXECUTED THIS 12<sup>th</sup> day of July, 2012

**Ponderosa Cablevision**

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

Signatures

**LICENSEE:**  
Ponderosa Cablevision

By: E. L. Silkwood  
(SIGNATURE)

NAME: E. L. Silkwood

TITLE: President

**LICENSOR:**

Pacific Telephone Company d/b/a AT&T California

By: Blanca D. Barrera  
(SIGNATURE)

NAME: BLANCA D. BARRERA  
(PRINT NAME)

TITLE: DIRECTOR - GTE WEST



EXHIBIT D / APPENDIX 1

**REVISED**

**AT&T**

**ANNUAL FEES FOR POLE ATTACHMENTS AND CONDUIT OCCUPANCY**

<u>Year</u>	<u>Pole Attachment Rate</u>
2012	\$5.02
<u>Year</u>	<u>Conduit Occupancy Rate</u>
2012 (Inner duct)	\$0.49/linear foot

All pole and conduit license fees are for a period of one year from January 1 through December 31, effective January 1, 2012 and billable semiannually in advance in January and July of each year.