

# LARGE FILING SEPERATOR SHEET

CASE NUMBER: 07-747-TP-NAG

FILE DATE: 6.27.07

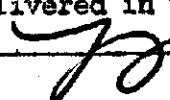
SECTION: 1 of 4

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The Public Utilities Commission of Ohio  
TELECOMMUNICATIONS APPLICATION FORM

(Effective: 10/01/2004)

(Pursuant to Case Nos. 99-998-TP-COI and 99-563-TP-COI)

168

In the Matter of the Application of AT&T Ohio )  
for the Review of an Agreement Pursuant to Section 252 )  
of the Telecommunications Act of 1996. )

Case No. 07-747-TP-NAG

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PUCO

Name of Registrant(s) AT&T Ohio  
DBA(s) of Registrant(s) The Ohio Bell Telephone Company uses the name AT&T Ohio.  
Address of Registrant(s) 150 E. Gay Street, Room 4-C, Columbus, Ohio 43215  
Company Web Address www.att.com

Regulatory Contact Person(s) Jon F. Kelly Phone (614) 223-7928 Fax: (614) 223-5755  
Regulatory Contact Person's Email Address jk2961@att.com  
Contact Person for Annual Report Mike Schaedler Phone (216) 822-8307  
Consumer Contact Information Kathy Gentile-Klein Phone (216) 822-2395  
Date June 26, 2007

Motion for protective order included with filing? ☐ Yes ☒ No

Motion for waiver(s) filed affecting this case? ☐ Yes ☒ No [Note: waiver(s) tolls any automatic timeframe]

Company Type (check all applicable): ☐ CTS (IXC) ☒ ILEC ☐ CLEC ☐ CMRS ☐ AOS  
☐ Other (explain)

**NOTE:** This form must accompany all applications filed by telecommunication service providers subject to the Commission's rules promulgated in Case No. 99-998-TP-COI, as well as by ILECs filing an ARB or NAG case pursuant to the guidelines established in Case No. 96-463-TP-UNC. It is preferable NOT to combine different types of filings, but if you do so, you must file under the process with the longest applicable review period.

**I. Please indicate the reason for submitting this form (check one)**

- ☐ 1 (AAC) Application to Amend Certificate by a CLEC to modify Serving Area (0-day notice, 7 copies)  
☐ 2 (ABN) Abandonment of all Services  
☐ a. CLEC (90-day approval, 10 copies) ☐ b. CTS (14-day approval, 10 copies) ☐ c. ILEC (NOT automatic, 10 copies)  
☐ 3 (ACE) New Operating Authority for providers other than CMRS (30-day approval, 7 copies); for CMRS, see item No. 15 on this page.  
☐ a. Switched Local ☐ b. Non-switched local ☐ c. CTS ☐ d. Local and CTS ☐ e. Other (explain)  
☐ 4 (ACO) LEC Application to Change Ownership (30-day approval, 10 copies)  
☐ 5 (ACN) LEC Application to Change Name (30-day approval, 10 copies)  
☐ 6 (AEC) Carrier-to-Carrier Contract Amendment to an agreement approved in a NAG or ARB case (30-day approval, 7 copies)  
**NOTE: see item 25 (CTR) on page two of this form for all other contract filings.**  
☐ 7 (AMT) LEC Merger (30-day approval, 10 copies)  
☐ 8 (ARB) Application for Arbitration (see 96-463-TP-COI for applicable process, 10 copies)  
☐ 9 (ATA) Application for Tariff Amendment for Tier 1 Services, Application to Reclassify Service Among Tiers, or Change to Non-Tier Service  
☐ a. Tier 1 (and Carrier-to-Carrier tariff filings as set-forth in 95-845-TP-COI)  
☐ i. Pre-filing submittal (30-day pre-filing submittal with Staff and OCC; **Do Not Docket**, 4 copies)  
☐ ii. New End User Service which has been preceded by a 30-day pre-filing submittal with Staff for all submittals and also with OCC for Tier 1 residential services (0-day filing, 10 copies)  
☐ iii. New End User Service (NOT preceded by a 30-day filing submittal, 30-day approval, 10 copies)  
☐ iv. New Carrier-to-Carrier Service which has been preceded by a 30-day pre-filing with Staff (0-day filing, 10 copies)  
☐ v. Change in Terms and Conditions, textual revision, correction of error, etc. (30-day approval, 10 copies)  
☐ vi. Grandfather service (30-day approval, 10 copies)  
☐ vii. Initial Carrier-to-Carrier Services Tariff subsequent to ACE approval (60-day approval, 10 copies)  
☐ viii. Withdrawal of Tier 1 service must be filed as an "ATW", not an "ATA" - see item 12, below  
☐ b. Reclassification of Service Among Tiers (NOT automatic, 10 copies)  
☐ c. Textual revision with no effect on rates for non-specific or non-tier service (30-day approval, 10 copies)  
☐ 10 (ATC) Application to Transfer Certificate (30-day approval, 7 copies)  
☐ 11 (ATR) LEC Application to Conduct a Transaction Between Utilities (30-day approval, 10 copies)  
☐ 12 (ATW) Application to Withdraw a Tier 1 Service  
☐ a. CLEC (60-day approval, 10 copies) ☐ b. ILEC (NOT automatic, 10 copies)  
☐ 13 (CIO) Application for Change in Operations by Non-LEC Providers (0-day notice, 7 copies)  
☒ 14 (NAG) Negotiated Interconnection Agreement Between Carriers (0-day effective, 90-day approval, 8 copies)  
☐ 15 (RCC) For CMRS providers only to Register or to Notify of a Change in Operations (0-day notice, 7 copies)  
☐ 16 (SLF) Self-complaint Application  
☐ a. CLEC only - Tier 1 (60-day automatic, 10 copies)  
☐ b. Introduce or increase maximum price range for Non-Specific Service Charge (60-day approval, 10 copies)  
☐ 17 (UNC) Unclassified (explain) (NOT automatic, 15 copies)  
☐ 18 (ZTA) Tariff Notification Involving only Tier 2 Services  
**NOTE: Notifications do not require or imply Commission Approval.**  
☐ a. New End User Service (0-day notice, 10 copies)  
☐ b. Change in Terms and Conditions, textual revision, correction of error, etc. (0-day notice, 10 copies)  
☐ c. Withdrawal of service (0-day notice, 10 copies)  
☐ 19 Other (explain) (NOT automatic, 15 copies)

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**THE FOLLOWING ARE TRF FILINGS ONLY, NOT NEW CASES (0-day notice, 3 copies)**

- ☐ 20 Introduction or Extension of Promotional Offering
- ☐ 21 New Price List Rate for Existing Service
- ☐ a. Tier 1 ☐ b. Tier 2
- ☐ 22 Designation of Registrant's Process Agent(s)
- ☐ 23 Update to Registrant's Maps
- ☐ 24 Annual Tariff Option For Tier 2 Services – indicate which option you intend to adopt to maintain the tariff. NOTE, changing options is only permitted once per calendar year.
- ☐ Paper Tariff ☐ Electronic Tariff. If electronic, provide the tariff's web address: \_\_\_\_\_

**THE FOLLOWING ARE CTR FILINGS ONLY, NOT NEW CASES (0-day notice, 7 copies)**

- ☐ 25 Application to establish, revise, or cancel an end-user contract. (NOTE: see item 6 on page 1 of this form for carrier-to-carrier contract amendments)
- CTR Docket No. \_\_\_\_\_ - \_\_\_\_\_ - TP – CTR (Use same CTR number throughout calendar year)

**II. Please indicate which of the following exhibits have been filed. The numbers (corresponding to the list on page (1) and above) indicate, at a minimum, the types of cases in which the exhibit is required:**

<input type="checkbox"/>	[all]	A copy of any motion for waiver of O.A.C. rule(s) associated with this filing. NOTE: the filing of a motion for waiver tolls any automatic timeframe associated with this filing.
<input type="checkbox"/>	[3]	Completed Service Requirements Form.
<input type="checkbox"/>	[3, 9(vii)]	A copy of registrant's proposed tariffs. (Carrier-to-Carrier resale tariff also required if facilities-based)
<input type="checkbox"/>	[3]	Evidence that the registrant has notified the Ohio Department of Taxation of its intent to conduct operations as a telephone utility in the State of Ohio.
<input type="checkbox"/>	[3]	Brief description of service(s) proposed.
<input type="checkbox"/>	[3a-b,3d]	Explanation of whether applicant intends to provide <input type="checkbox"/> resold services, <input type="checkbox"/> facilities-based services, or <input type="checkbox"/> both resold and facilities-based services.
<input type="checkbox"/>	[3a-b,3d]	Explanation as to whether CLEC currently offers CTS services under separate CTS authority, and whether it will be including those services within its CLEC filing, or maintaining such CTS services under a separate affiliate.
<input type="checkbox"/>	[3a-b,3d]	Explanation of how the proposed services in the proposed market area are in the public interest.
<input type="checkbox"/>	[3a-b,3d]	Description of the proposed market area.
<input type="checkbox"/>	[3a-b,3d]	Description of the class of customers (e.g., residence, business) that the applicant intends to serve.
<input type="checkbox"/>	[3a-b,3d]	Documentation attesting to the applicant's financial viability, including the following: 1) An executive Summary describing the applicant's current financial condition, liquidity, and capital resources. Describe internally generated sources of cash and external funds available to support the applicant's operations that are the subject of this certification application. 2) Copy of financial statements (actual and pro forma income statement and a balance sheet). Indicate if financial Statements are based on a certain geographical area(s) or information in other jurisdictions 3) Documentation to support the applicant's cash and funding sources.
<input type="checkbox"/>	[3a-d]	Documentation attesting to the applicant's technical and managerial expertise relative to the proposed service offering(s) and proposed service area.
<input type="checkbox"/>	[3a-d]	Documentation indicating the applicant's corporate structure and ownership.
<input type="checkbox"/>	[3a-b,3d]	Information regarding any similar operations in other states. Also, if this company has been previously certified in the State of Ohio, include that certification number.
<input type="checkbox"/>	[3a-b,3d]	Verification that the applicant will maintain local telephony records separate and apart from any other accounting records in accordance with the GAAP.
<input type="checkbox"/>	[3a-b,3d]	Verification of compliance with any affiliate transaction requirements.
<input type="checkbox"/>	[3a-b,3d]	Explanation as to whether rates are derived through (check all applicable): <input type="checkbox"/> interconnection agreement, <input type="checkbox"/> retail tariffs, or <input type="checkbox"/> resale tariffs.
<input type="checkbox"/>	[1,3a-b,3d]	Explanation as to which service areas company currently has an approved interconnection or resale agreement.
<input type="checkbox"/>	[3a-b,3d, 9a(i-iii)]	Explanation of whether applicant intends to provide Local Services which require payment in advance of Customer receiving dial tone.
<input type="checkbox"/>	[3a,3b,3d, 9a(i-iii)]	Tariff sheet(s) listing the services and associated charges that must be paid prior to customer receiving dial tone (if applicable).
<input type="checkbox"/>	[3a-b,3d,8]	Letters requesting negotiation pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and a proposed timeline for construction, interconnection, and offering of services to end users.
<input type="checkbox"/>	[3-5,7,10-11,13]	Certification from Ohio Secretary of State as to party's proper standing (domestic or foreign corporation, authorized use of fictitious name, etc.). In transfer of certificate cases, the transferee's good standing must be established.
<input type="checkbox"/>	[3-4,7,10-11,13]	List of names, addresses, and phone numbers of officers and directors, or partners.
<input type="checkbox"/>	[3]	A sample copy of the customer bill and disconnection notice the applicant plans to utilize.
<input type="checkbox"/>	[1,4,9,10-13,16-21]	Copy of superseded tariff sheet(s) & price list(s), if applicable, marked as Exhibit A.
<input type="checkbox"/>	[1,4,9,10-13,16-21]	Copy of revised tariff sheets & price lists, marked as Exhibit B.
<input type="checkbox"/>	[3]	Provide a copy of any customer application form required in order to establish residential service, if applicable.
<input type="checkbox"/>	[1-2,4-7,9,12-13,16,18-23,25]	Description of and rationale for proposed tariff changes, including a complete description of the service(s) proposed or affected. Specify for each service affected whether it is <input type="checkbox"/> business; <input type="checkbox"/> residence; or <input type="checkbox"/> both. Also indicate whether it is a <input type="checkbox"/> switched or <input type="checkbox"/> dedicated service. Include this information in either the cover letter or Exhibit C.

<input type="checkbox"/>	[1,2,4,9a(v-vi), 5,10,16,18(b-c), 20-21]	Specify which notice procedure has been/will be utilized: <input type="checkbox"/> direct mail; <input type="checkbox"/> bill insert; <input type="checkbox"/> bill notation or <input type="checkbox"/> electronic mail. NOTE: <input type="checkbox"/> Tier 1 price list increases <b>must</b> be within an approved range of rates. <input type="checkbox"/> SLF Filings – Do NOT send customer notice until it has been reviewed and approved by Commission Staff
<input type="checkbox"/>	[2,4-5,9a(v), 9b, 10,12-13,16, 18(b-c),20-21]	Copy of real time notice which has been/will be provided to customers. NOTE: SLF Filings – Do NOT send customer notice until it has been reviewed and approved by Commission Staff
<input type="checkbox"/>	[1,2,5,9a(v),11-13, 18, 21(increase only)]	Affidavit attesting that customer notice has been provided.
<input type="checkbox"/>	[2,12]	Copy of Notice which has been provided to ILEC(s).
<input type="checkbox"/>	[2,12]	Listing of Assigned (NPA) NXX's where in the LECs (NPA) NXX's would be reassigned.
<input type="checkbox"/>	[2,4,10,12-13,]	List of Ohio exchanges specifically involved or affected.
<input type="checkbox"/>	[14]	The interconnection agreement adopted by negotiation or mediation.
<input type="checkbox"/>	[15]	For commercial mobile radio service providers, a statement affirming that registrant has obtained all necessary federal authority to conduct operations being proposed, and that copies have been furnished by cellular, paging, and mobile companies to this Commission of any Form 401, 463, and / or 489 which the applicant has filed with the Federal Communications Commission.
<input type="checkbox"/>	[15]	Exhibits must include company name, address, contact person, service description, and evidence of registration with the Ohio Secretary of State.
<input type="checkbox"/>	[24]	Affidavit that total price of contract exceeds total cost of all regulated services.
<input type="checkbox"/>	[5,13]	New title sheet with proposed new company name.
<input type="checkbox"/>	[1,3,13]	For CLECs, List of Ohio Exchanges the applicant intends to serve (Use spreadsheet from: <a href="http://www.puc.state.oh.us/puco/forms/form.cfm?doc_id=357">http://www.puc.state.oh.us/puco/forms/form.cfm?doc_id=357</a> ).
<input type="checkbox"/>	[1,3a-b,3d,7, 10,13, 23]	Maps depicting the proposed serving and calling areas of the applicant. <b>If Mirroring Large ILEC</b> exchanges for both serving area and local calling areas: • <b>Serving area</b> must be clearly reflected on an Ohio map attached to tariffs and textually described in tariffs by noting that it is reflecting a particular large ILEC/CLEC territory, and listing the involved exchanges. • <b>Local calling areas</b> must be clearly reflected on an Ohio map attached to the tariffs, and/or clearly delineated in tariffs, including a complete listing of each exchange being served and all exchanges to which local calls can be made from each of those exchanges. <b>If Self-defining</b> serving area and/or local calling area as an area other than that of the established ILEC exchange(s): • <b>Serving Area</b> must be clearly reflected on an Ohio map attached to the tariffs, and textually described in tariffs by listing the involved exchanges. • <b>Local Calling Areas</b> must be described in the tariff through textual delineation and clear maps. Maps for self-defined <b>serving and local calling areas</b> are required to be traced on United States Geological Survey topography maps. These maps are the Standard Topographic Quadrangle maps, 7.5 minute 1:24,000.
<input type="checkbox"/>		Other information requested by the Commission staff.
<input type="checkbox"/>	[3]	Initial certification that includes Tier 2 Services, indicate which option you intend to adopt to maintain the tariff: <input type="checkbox"/> Paper Tariff <input type="checkbox"/> Electronic Tariff - If electronic, provide the web address for the tariff:

III. Registrant hereby attests to its compliance with the following requirements in the Service Requirements Form, as well as all pertinent entries and orders issued by the Commission with respect to these issues. Further, registrant hereby affirms that it will maintain with its TRF docket an up-to-date, properly marked, copy of the Service Requirements Form available for public inspection.

**MANDATORY REQUIREMENTS FOR ALL BASIC LOCAL EXCHANGE AND CTS PROVIDERS:**

- ☒ Sales tax
- ☒ Minimum Telephone Service Standards (MTSS)
- ☒ Surcharges

**MANDATORY REQUIREMENTS FOR ALL BASIC LOCAL EXCHANGE PROVIDERS:**

- ☒ 1+ IntraLATA Presubscription

**SERVICE REQUIREMENTS FOR PROVISION OF CERTAIN SERVICES (CHECK ALL APPLICABLE):**

- ☐ Discounts for Persons with Communication Disabilities and the Telecommunication Relay Service [Required if toll service provided]
- ☐ Emergency Services Calling Plan [Required if toll service provided]
- ☐ Alternative Operator Service (AOS) requirements [Required for all providing AOS (including inmate services) service]
- ☐ Limitation of Liability Language [Required for all who have tariff language that may limit their liability]
- ☐ Termination Liability Language [Required for all who have early termination liability language in their tariffs]
- ☐ Service Connection Assistance (SCA) [Required for all LECs]
- ☐ Local Number Portability and Number Pooling [Required for facilities-based LECs]
- ☐ Package Language [Required for tariffs containing packages or service bundles containing both local and toll and/or non-regulated services]

IV. List names, titles, phone numbers, and addresses of those persons authorized to respond to inquiries from the Consumer Services Department on behalf of the applicant regarding end-user complaints:

Kathy Gentile-Klein, Manager-Customer Complaints, 216/822-2395, 45 Erieview Plaza, Cleveland, Ohio 44114



V. List names, titles, phone numbers, and addresses of those persons authorized to make and/or affirm or verify filings at the Commission on behalf of the applicant:

Robert J. Wentz, Manager, 614/223-7950, Susan Drombetta, State Regulatory Advocate, 614/223-8184, Jon F. Kelly, Counsel, 614/223-7928, or Mary Ryan Fenlon, Counsel, 614/223-3302, AT&T Ohio, 150 E. Gay Street, Room 4-C, Columbus, Ohio 43215

*NOTE: An annual report is required to be filed with the Commission by each company on an annual basis. The annual report form will be sent for completion to the address and individual(s) identified in this Section unless another address or individual is so indicated.*

VI. List Name(s), DBA(s) and PUCO Certification Number(s) of any affiliates you have operating in Ohio under PUCO authority, whether Telecommunication or other. (If needed, use a separate sheet and check here: ☐)  
Ameritech Advanced Data Services of Ohio, Inc., d/b/a SBC Advanced Solutions d/b/a AT&T Advanced Solutions, Inc., Cert. No. 90-5181, AT&T Communications of Ohio, Inc., Cert. No. 90-9000, Cincinnati SMSA Limited Partnership, d/b/a Cingular, Cert. No. 90-5304, McLang Cellular, LLC d/b/a Cingular, Cert. No. 90-5332, New Cingular Wireless PCS, LLC d/b/a Cingular, Cert. No. 90-5352, SBC Long Distance, LLC, d/b/a AT&T Long Distance, Cert. No. 90-6150, TCG Ohio, Inc., Cert. No. 90-9010, Wheeling Cellular Telephone Company d/b/a Cingular, Cert. No. 90-5320, BellSouth Long Distance, Inc., Cert. No. 90-5734.

### **AFFIDAVIT**

#### ***Compliance with Commission Rules and Service Standards***

I am an officer of the applicant corporation, \_\_\_\_\_, and am authorized to make this statement  
(Name of Company)  
on its behalf. I attest that these tariffs comply with all applicable rules, including the Minimum Telephone Service Standards (MTSS) for the state of Ohio. I understand that tariff notification filings do not imply Commission approval and that the Commission's rules, including the Minimum Telephone Service Standards, as modified and clarified from time to time, supercede any contradictory provisions in our tariff. We will fully comply with the rules of the state of Ohio and understand that noncompliance can result in various penalties, including the suspension of our certificate to operate within the state of Ohio.

I declare under penalty of perjury that the foregoing is true and correct.

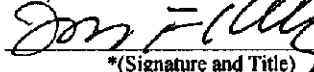
Executed on \_\_\_\_\_ at \_\_\_\_\_  
(Date) (Location)

\_\_\_\_\_  
\*(Signature and Title) (Date)

***\* This affidavit is required for every tariff-affecting filing. It may be signed by counsel or an officer of the applicant, or an authorized agent of the applicant.***

### **VERIFICATION**

I, Jon F. Kelly verify that I have utilized, verbatim, the Commission's Telecommunications Application Form and that all of the information submitted here, and all additional information submitted in connection with this case, is true and correct to the best of my knowledge.

 Counsel June 26, 2007  
\*(Signature and Title) (Date)

***\*Verification is required for every filing. It may be signed by counsel or an officer of the applicant, or an authorized agent of the applicant.***

***Send your completed Application Form, including all required attachments as well as the required number of copies, to:***

**Public Utilities Commission of Ohio**  
**Attention: Docketing Division** (or to the Telecommunications Division Chief if a prefiling submittal)  
**180 East Broad Street, Columbus, OH 43215-3793**



Jon F. Kelly  
General Attorney  
AT&T Ohio  
150 E. Gay St., Rm. 4-A  
Columbus, Ohio 43215

T: 614.223.7928  
F: 614.223.5955  
jk2961@att.com

June 26, 2007

Reneé J. Jenkins, Secretary  
Public Utilities Commission of Ohio  
180 East Broad Street, 13th Floor  
Columbus, Ohio 43215-3793

Re: AT&T Ohio/KMC Data, LLC  
Case No. 07-747-TP-NAG

Dear Ms. Jenkins:

AT&T Ohio<sup>1</sup> submits for the Commission's review its agreement dated June 25, 2007 with KMC Data, LLC. The Agreement is submitted pursuant to the provisions of Section 252(e) of the Telecommunications Act of 1996 ("the Act").

Pursuant to Section 252(i) of the Act, Time KMC Data, LLC has adopted the Interconnection Agreement between AT&T Ohio and Time Warner Telecom of Ohio, LLC ("the underlying Agreement"), as amended. One additional amendment is included in this filing that supersedes certain reciprocal compensation, interconnection, and trunking terms. The amendment was voluntarily negotiated by the parties. The Commission approved the underlying Agreement on July 17, 2002 in Case No. 02-911-TP-NAG.

Thank you for your courtesy and assistance in this matter. Please contact me if you have any questions.

Very truly yours,

Enclosures

<sup>1</sup> The Ohio Bell Telephone Company uses the name AT&T Ohio.

***Further Amendment  
Superseding Certain Intervening Law, Compensation,  
Interconnection and Trunking Provisions***

This Further Amendment Superseding Certain Intervening Law, Reciprocal Compensation, Interconnection and Trunking Terms ("Further Amendment") is applicable to this and any future Interconnection Agreement(s) between Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, Wisconsin Bell Inc. d/b/a SBC Wisconsin, Nevada Bell Telephone Company d/b/a SBC Nevada, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, SBC Oklahoma, SBC Texas, SBC Arkansas, and SBC Kansas and any of its future affiliates or subsidiaries which are the Incumbent Local Exchange Carrier (hereinafter each individually being a "SBC ILEC," and collectively being the "SBC ILECs") and KMC Data, LLC, KMC Telecom V, Inc., KMC Telecom, III, LLC f/k/a KMC Telecom, Inc., KMC Telecom II, Inc., KMC Telecom Holdings, Inc., KMC Telecom III, Inc., and all affiliates, subsidiaries successors and assigns which are a Certified Local Exchange Carrier in California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio, or Connecticut through December 31, 2005 (hereinafter, "KMC"), whether such Agreement is negotiated, arbitrated, or arrived at through the exercise of Section 252 (i) "Most Favored Nation" (MFN) rights. ILECs and KMC may be referred to individually as "Party" or collectively as the "Parties".

WHEREAS, SBC ILECs and KMC entered into interconnection agreements pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act") that were approved by the applicable state commissions (the "ICAs"); and

WHEREAS, for the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio and Connecticut, the Parties entered into an Amendment to KMC Contracts Superseding Certain Reciprocal Compensation, Interconnection and Trunking Terms ("Superseding Amendment") which will expire on December 31, 2004; and

WHEREAS, for the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio and Connecticut, the Parties desire to extend the Superseding Amendment for the Term of this agreement subject to the following modifications.

WHEREAS, the Term of this Amendment ("Term") shall commence on the Effective Date and shall continue until December 31, 2005. Thereafter, this Amendment will remain in full force and effect unless terminated by either Party by providing at least thirty (30) days' written notice to the other Party specifying the date it wishes to terminate this Amendment ("Termination Date.")

WHEREAS, the Parties wish to update and extend the Superseding Amendment by entering into this Further Amendment :

NOW, THEREFORE, for and in consideration of the premises, mutual promises and covenants contained in this Further Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 Scope of Agreement and Lock In:

1.1 The foregoing Recitals are hereby incorporated into and made a part of this Further Amendment.

1.2 Notwithstanding anything to the contrary in this Further Amendment, except for the waivers of intervening law in Section 2.2 and KMC's waiver of 252(i) MFN rights in Section 1.6 which are unaffected by this Section, neither Party waives, but instead expressly reserves, all of their rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, their intervening law rights (including intervening law rights asserted via written notice as to the Separate Agreement) relating to the following actions, which the Parties have not yet fully incorporated into this Amendment, the underlying ICAs or any future interconnection agreements or which may be the subject of further government review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36) and Order on Remand (FCC 04-290) WC Docket No. 04-312 and CC Docket No. 01-338 (rel. Feb. 4, 2005) ("TRO Remand Order"); and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001) (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001); and the FCC's Order In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (rel. April 21, 2004).

1.3 The Parties agree that this Further Amendment will act to supersede, amend and modify the applicable provisions currently contained in the ICAs. This Further Amendment shall also be incorporated into and become a part of, by exhibit, attachment or otherwise, and shall supersede, amend, and modify the applicable provisions of, any future interconnection agreement(s) between the Parties for the Term, whether negotiated, arbitrated, or arrived at through the exercise of Section 252(i) MFN rights.

1.4 Any inconsistencies between the provisions of this Further Amendment and other provisions of the current ICAs or future interconnection agreement(s) described above for the Term, will be governed by the provisions of this Further Amendment, unless this Further Amendment is specifically and expressly superseded by a future amendment between the Parties.

1.5 If the underlying ICAs or any future interconnection agreement(s) expire sooner than the Termination Date, the Parties agree that the Further Amendment shall not extend or otherwise alter the term and termination rights of the underlying ICAs or any future interconnection agreement(s), but instead, the Further Amendment will be incorporated into any successor interconnection agreement(s) between the Parties through the Termination Date. Also, the Parties recognize that an MFN interconnection agreement often receives quicker state public utility commission ("PUC") approval than the negotiated Further Amendment which will be affixed to that interconnection agreement. To the extent that the date of state PUC approval of the underlying MFN interconnection agreement precedes the date of state PUC approval of the Further Amendment, the Parties agree that the rates, terms and conditions of the Further Amendment will, upon state PUC approval of the Further Amendment, apply retroactively to the date of such state PUC approval of the underlying interconnection agreement, or the Termination Date, whichever is later so that the rates, terms and conditions contained herein will apply uninterrupted for the Term. In no event shall this retroactivity apply prior to the effective date this Further Amendment is signed by KMC.

1.6 KMC hereby waives its section 252(i) MFN rights for any reciprocal compensation, points of interconnection ("POIs") or trunking requirements that are subject to this Further Amendment; provided, however, that if such other rates, terms, and conditions have been voluntarily agreed to by SBC ILEC across the thirteen-state region as a whole, KMC may exercise its rights under section 252(i) to obtain the rates, terms, and conditions in their entirety governing reciprocal compensation, POIs or trunking requirements to which SBC ILEC have agreed. This waiver includes, but is not limited to, any lease, transfer, sale or other conveyance by KMC of all or a substantial portion of its assets, in which case KMC shall obtain the purchaser's agreement to be bound by the terms and conditions set forth herein, but only as to that portion of purchaser's operations resulting from the purchase of KMC.

1.7 The Parties agree that this Further Amendment shall only apply to KMC Telecom III, Inc., and KMC Telecom III, LLC ~~tr~~/a KMC Telecom, Inc. until the sale of such entities is full and final.

## 2.0 Intervening Law/Change of Law:

2.1 The Parties acknowledge and agree that on May 24, 2002, the D.C. Circuit issued its decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA decision*"), and following remand and appeal issued a decision in *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II decision*"), . In addition, the

FCC adopted its Triennial Review Order on February 20, 2003, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36), and Order on Remand (FCC 04-290) WC Docket No. 04-312 and CC Docket No. 01-338 (rel. Feb. 4, 2005) ("TRO Remand Order"). Moreover, on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (and on remand, *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999) and on appeal to and remand by the United States Supreme Court, *Verizon v. FCC, et. al*, 535 U.S. 467 (2002) (all collectively referred to as the "Orders"). In entering into this Further Amendment, and except as otherwise set forth in Sections 2.2 and 2.3 below, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to the Orders and any other federal or state regulatory, legislative or judicial action(s), including but not limited to any legal or equitable rights of review and remedies (including agency reconsideration and court review), and its rights under this Intervening Law paragraph and as to any intervening law rights that either Party has in the current ICAs or any future interconnection agreement(s). Except as otherwise set forth in Sections 2.2 and 2.3 below, if any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory or legislative body or court of competent jurisdiction stays, modifies, or otherwise affects any of the rates, terms and/or conditions ("Provisions") in this Further Amendment or the current ICAs or any future interconnection agreement(s), specifically including, but not limited to, those arising with respect to the Orders, the affected Provision(s) will be immediately invalidated, modified or stayed as required to effectuate the subject order, but only after the subject order becomes effective, upon the written request of either Party ("Written Notice"). In such event, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in the current ICAs or any future interconnection agreement(s). In the event that any intervening law rights in the current ICAs or any future interconnection agreement(s) conflict with this Intervening Law paragraph and Section 2.2 and 2.3, for the Term, this Intervening Law paragraph and Sections 2.2 and 2.3 following shall supersede and control as to any such conflict(s) as to all rates, terms and conditions in the current ICAs and any future interconnection agreement(s) for such time period.

2.2 Notwithstanding anything herein, during the Term the Parties waive any rights they may have under the Intervening/Change of Law provisions in this Further Amendment, the Parties' current ICAs or any future interconnection agreement(s) to which this Further Amendment is added, or any other amendments thereto with respect to any reciprocal compensation or Total Compensable Local Traffic (as defined herein), POIs or trunking requirements that are subject to this Further Amendment including, without limitation, waiving any rights to change the compensation in this Further Amendment in the event that SBC ILEC invokes the FCC terminating compensation plan pursuant to the FCC ISP Reciprocal Compensation Order in any particular state(s);

provided however, that if a final, legally binding FCC order related to intercarrier compensation becomes effective after the Effective Date of this Further Amendment including, without limitation, an FCC Order that is issued upon the conclusion of the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier Compensation, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01 92, established in Notice of Proposed Rulemaking Order No. 01-132 (April 27, 2001) (referred hereto as an "FCC Order"), the affected provisions of this Further Amendment relating to rates for reciprocal compensation, rates for Total Compensable Local Traffic (as defined herein), POIs or trunking requirements shall be invalidated, modified, or stayed, consistent with such FCC Order, with such invalidation, modification, or stay becoming effective only upon the date of the written request of either Party once the FCC Order has become effective (the "Written Request"). In such event, upon receipt of the Written Request, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the ICAs, future interconnection agreement(s) and Further Amendment (including any separate amendments to such agreements). If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such FCC Order shall be resolved pursuant to the dispute resolution process provided for in the ICAs or future interconnection agreement(s) provided, however, that the rates, terms and conditions ultimately ordered by a state commission in an arbitration or negotiated by the Parties shall be retroactive to the effective date of the Written Request following such FCC Order. Except with respect to the exceptions relating to rates for reciprocal compensation, rates for Total Compensable Local Traffic (as defined herein), POIs and trunking requirements provisions set forth in this Section 2.2, during the Term, each Party shall have full intervening law rights under Section 2.1 of this Further Amendment and any intervening law rights in the underlying Agreement, and may invoke such intervening law/change in law rights as to any provisions in the ICA or future interconnections agreement(s) (including any separate amendments) impacted by any regulatory, legislative or judicial action as well as the intervening law rights relating to an FCC Order set forth in this Section 2.2.

### 3.0 Reservations of Rights:

3.1 The Parties continue to disagree as to whether ISP calls constitute local traffic subject to reciprocal compensation obligations. By entering into this Further Amendment, neither party waives its right to advocate its view with respect to this issue. The Parties agree that nothing in this Further Amendment shall be construed as an admission that ISP traffic is, or is not, local in nature. The Parties further agree that any payment to KMC under the terms of this Further Amendment shall not be construed as agreement or acquiescence by the SBC ILECs that calls to ISPs constitute local traffic subject to reciprocal compensation obligations. Notwithstanding the foregoing, the Parties agree that SBC ILECs shall make payments for calls to ISPs to KMC pursuant to Sections 4, 5, and 6 herein during the term of this Further Amendment.

3.2 The Parties continue to disagree as to where POIs should be established and under what rates, terms, and conditions KMC may lease facilities from SBC ILEC to

establish such POIs. By entering into this Further Amendment, neither Party waives its right to advocate its view with respect to these issues. The Parties further agree that nothing in this Further Amendment shall be construed as an admission with respect to the proper establishment of POIs and the treatment of facilities used to establish such POIs under applicable federal and state law. The Parties further agree that the establishment of POIs pursuant to the rates, terms, and conditions specified in this Further Amendment shall not be construed as agreement or acquiescence by either Party as to the proper establishment of POIs and the treatment of facilities used to establish such POIs. Notwithstanding the foregoing, the Parties agree that KMC and SBC ILEC shall establish POIs pursuant to the rates, terms, and conditions called for in Section 4 herein during the term of this Further Amendment.

3.3. The Parties reserve the right to raise the appropriate treatment of Voice Over Internet Protocol ("VOIP") traffic under the Dispute Resolution provisions of the ICAs or any future interconnection agreement(s) between the Parties through December 31, 2005. The Parties further agree that this Further Amendment shall not be construed against either Party as a "meeting of the minds" that VOIP traffic is or is not local traffic subject to reciprocal compensation. By entering into the Further Amendment, both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Sec. 252 of the Act, commission established rulemaking dockets, or in any legal challenges stemming from such proceedings.

3.4 By entering into this Further Amendment, neither Party waives the right to advocate its views with respect to the use of, and compensation for, tandem switching and common transport facilities in connection with the carriage of Virtual Foreign Exchange traffic. The Parties further agree that nothing in this Further Amendment shall be construed as an admission with respect to the proper treatment of Virtual Foreign Exchange traffic. The Parties agree that the handling of Virtual Foreign Exchange traffic pursuant to the rates, terms, and conditions specified in this Further Amendment shall not be construed as agreement or acquiescence by either Party as to the proper treatment of such traffic. Notwithstanding the foregoing, the Parties agree that all compensation between the Parties for the exchange of Virtual Foreign Exchange traffic shall be governed by the rates, terms, and conditions called for in Section 5.1 herein during the term of this Further Amendment.

#### 4.0 Network Architecture Requirements:

4.1 KMC will establish a physical point of interconnection (POI) in each mandatory local calling area in which it has assigned telephone numbers (NPA/NXXs) in the Local Exchange Routing Guide (LERG). Each Party shall be financially responsible for one hundred percent (100%) of the facilities, trunks, and equipment on its side of the POI.

(a) In California and Illinois, the Parties agree that this section is satisfied if KMC (at its sole option) establishes a POI either:



(i) at each access or local tandem in which tandem serving area KMC has established a working telephone number local to a rate center in that tandem serving area, and each end office where KMC maintains a physical collocation arrangement (but only for those trunk groups associated with that end office); or

(ii) within 15.75 miles of the Vertical and Horizontal coordinate of each rate center where KMC has established a working telephone number local to that rate center.

(b) In Connecticut, Indiana, Michigan, Nevada, Ohio, and Wisconsin, the Parties agree that this section is satisfied if, KMC (at its sole option), establishes a POI either:

(i) at each access or local tandem in which tandem serving area KMC has established a working telephone number local to a rate center in that tandem serving area, and each end office where KMC maintains a physical collocation arrangement (but only for those trunk groups associated with that end office); or

(ii) within each mandatory local calling area where KMC has established a working telephone number local to a rate center in that calling area.

(c) The Parties agree that the waivers contained in Sections 2.2 and 2.3 with respect to changes in law do not apply to state commission-required changes in the geographic scope or definition of local calling areas. Where the local calling scope has changed, either party may exercise the right to renegotiate the number and location of POIs required under this Further Amendment. This provision shall not be interpreted to affect how the Parties agree to exchange, and compensate one another for, Virtual Foreign Exchange traffic (as defined herein) pursuant to Sections 4, 5, and 6 during the term of this Amendment.

(d) KMC may, at its sole option, establish a POI by obtaining dedicated Special Access services or facilities from SBC ILECs (without the need for KMC equipment, facilities, or collocation at the SBC ILECs' offices), or services or facilities from a third party, by establishing collocation, by establishing a fiber meet, or by provisioning such services or facilities for itself.

4.2 Where KMC leases facilities from SBC ILECs to establish a POI, KMC shall be required to begin paying SBC ILEC for such facilities once the facilities are jointly tested and accepted at a trunk level.

4.3 KMC agrees to abide by SBC ILECs' trunk engineering/administration guidelines as stated in the ICAs, including the following:

4.3.1 When interconnecting at SBC ILECs' digital End Offices, the Parties have a preference for use of B8ZS ESF two-way trunks for all traffic between their networks. Where available, such trunk equipment will be used for these Local

Interconnection Trunk Groups. Where AMI trunks are used, either Party may request upgrade to B8ZS ESF when such equipment is available.

4.3.2 The Parties shall establish direct End Office primary high usage Local Interconnection trunk groups when end office traffic (actual or forecasted) requires twenty-four (24) or more trunks over three consecutive months for the exchange of IntraLATA Toll and Local traffic. These trunk groups will be two-way and will utilize Signaling System 7 ("SS7") signaling or MF protocol where required.

4.3.3 The Parties recognize that embedded one-way trunks may exist for Local/IntraLATA toll traffic via end point meet facilities. The Parties agree the existing architecture may remain in place and be augmented for growth as needed. The Parties may subsequently agree to a transition plan to migrate the embedded one-way trunks to two-way trunks via a method described in Appendix NIM. The Parties will coordinate any such migration, trunk group prioritization, and implementation schedule. SBC ILECs agree to develop a cutover plan and project manage the cutovers with KMC participation and agreement.

4.4 Subject to Section 4.6, in order to qualify for receipt of reciprocal compensation in a given tandem serving area as provided in this amendment, KMC will achieve and maintain a network architecture within that tandem serving area such that Direct End Office Trunking ("DEOT") does not fall below 70% for two consecutive months. Subject to Section 4.6, if KMC has not established a POI required by Section 4.0, KMC shall not be entitled to reciprocal compensation for calls from that local calling area.

4.5 For new interconnections, KMC will achieve the DEOT criteria identified in Section 4.4 no later than six (6) months (or such other period as may be agreed to by the Parties) after the parties first exchange traffic for each new interconnection arrangement.

4.6 Under no circumstances shall KMC have any liability or otherwise be penalized under this Further Amendment for non-compliance with the applicable POI and DEOT criteria specified herein during the transition period identified in Section 4.5. Furthermore, KMC will have no liability and will face no penalty for non-compliance with the POI and DEOT criteria specified herein at any time thereafter if such non-compliance results from SBC ILEC's inability to provide staffing, collocation space, trunking, or facilities necessary to satisfy the transition or from SBC ILEC's failure to perform required network administration activities (including provisioning, activation, and translations), regardless of whether SBC ILEC's inability or failure to perform is related to a Force Majeure event as that term is described in the underlying ICAs.

4.6.1 Establishing a New POI in an Existing Local Calling Area (or other applicable serving area in California, Nevada, Connecticut, and Ameritech territory) where KMC provides service as of the date of execution of this Further Amendment. KMC will notify SBC ILEC of KMC's intention to establish a new

POI in an existing local calling area (or other applicable serving area in California, Nevada, Connecticut, and Ameritech territory) no later than 90 days prior to the end of the transition period by letter to the SBC ILEC Account Manager and project manager for KMC. KMC and SBC ILEC will meet within 10 business days of such notice to plan the transition to any new POI. This notice and subsequent meeting are intended to give both parties adequate time to plan, issue orders, and implement the orders in the transition period under Section 4.5. Nothing in this paragraph specifically or this Further Amendment generally shall prevent KMC from ordering, or excuse SBC ILECs from provisioning, trunks with respect to an existing POI for new growth or augments during the time that a new POI is being established.

4.6.2 Establishing a POI in a New Local Calling Area (or other applicable serving area in California, Nevada, Connecticut, and Ameritech territory) where KMC does not provide service as of the date of execution of this Amendment. KMC will notify its SBC ILEC Account Manager no later than 90 days prior to the LERG effective date for the new NPA-NXXs it wishes to activate. Joint planning meetings for the new POI will be held within 10 business days of SBC ILEC's receipt of such notification. The outcome of the joint planning meeting will be orders for facilities and trunks for the new POI to complete the establishment of the POI as promptly as possible, and in any event, by the LERG effective date for the new NPA-NXX. The POI must be established in the applicable Local Calling Area (or other applicable serving area in California, Nevada, Connecticut, and Ameritech territory) prior to the exchange of live traffic.

4.7 At any time as a result of either Party's own capacity management assessment, the Parties may begin the provisioning process. The intervals used for the provisioning process will be the same as those used for SBC ILECs' Switched Access service.

4.8 The movement of existing trunks to new POIs, either on a rollover basis or a disconnect and add basis, will not be counted against any limitations otherwise placed on KMC's ability to order and receive trunks in any given market.

4.9 In a blocking situation, KMC may escalate to its SBC ILEC Account Manager in order to request a shorter interval. The SBC ILEC Account Manager will obtain the details of the request and will work directly with the SBC ILEC LSC and network organizations in order to determine if KMC's requested interval, or a reduced interval, can be met.

## 5.0 Compensable Traffic:

5.1 If KMC designates different rating and routing points such that traffic that originates in one rate center terminates to a routing point designated by KMC in a rate center that is not local to the calling party even though the called NXX is local to the

calling party, such traffic ("Virtual Foreign Exchange" traffic) shall be rated in reference to the rate centers associated with the NXX prefixes of the calling and called parties' numbers, and treated as Local traffic for purposes of compensation.

5.2 Local, Virtual Foreign Exchange, Mandatory Local and Optional EAS traffic eligible for reciprocal compensation will be combined with traffic terminated to Internet Service Providers (ISPs) to determine the Total Compensable Local Traffic.

5.2.1 In determining the Total Compensable Local Traffic, InterLATA toll and IXC-carried intraLATA toll are excluded, and will be subject to Meet Point Billing as outlined in the interconnection agreement and applicable tariffs.

5.2.2 The rates for the termination of intraLATA toll and Originating 8YY traffic are governed by the parties' switched access tariffs.

5.2.3 In determining the Total Compensable Local Traffic, SBC ILECs-transited minutes of use (MOUs) will be excluded from these calculations.

5.2.4 The rates for SBC ILECs-transited MOUs will be governed by the interconnection agreement.

5.3 Subject to applicable confidentiality guidelines, SBC ILECs and KMC will cooperate to identify toll and transiting traffic; originators of such toll and transiting traffic; and information useful for settlement purposes with such toll and transit traffic originators.

5.3.1 SBC ILECs and KMC agree to explore additional options for management and accounting of toll and transit traffic, including, but not limited to the exchange of additional signaling/call-related information in addition to Calling Party Number.

5.3.2 The Parties agree to explore additional options for management and accounting of the jurisdictional nature of traffic exchanged between their networks.

#### 6.0 Rate Structure and Rate Levels:

During the period from January 1, 2005 up through and including December 31, 2005, Total Compensable Local Traffic as defined herein will be exchanged in all states at the rate of \$.0005 per minute of use. This rate shall be payable to the party on whose network the call is terminating, and shall apply symmetrically for traffic originated by one party and terminated on the other party's network.

#### 7.0 Additional Terms and Conditions:

7.1 This Further Amendment contains provisions that have been negotiated as part of an entire Further Amendment and integrated with each other in such a manner that each provision is material to every other provision.

7.2 The Parties agree that each and every rate, term and condition of this Further Amendment is legitimately related to, and conditioned on, and in consideration for, every other rate, term and condition in the underlying ICAs or interconnection agreement. The Parties agree that they would not have agreed to this Further Amendment except for the fact that it was entered into on a 13-State basis and included the totality of rates, terms and conditions listed herein.

7.3 Except as specifically modified by this Further Amendment with respect to their mutual obligations herein and subject to Section 2.0, neither Party relinquishes, and each Party instead fully reserves, any and all legal rights that it had, has and may have to assert any position with respect to any of the matters set forth herein before any state or federal administrative, legislative, judicial or other legal body.

7.4 This Further Amendment is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

7.5 The terms contained in this Further Amendment constitute the agreement with regard to the superseding, modification, and amendment of the ICAs and incorporation into future interconnection agreement(s) through December 31, 2005; and shall be interpreted solely in accordance with their own terms.

7.6 The headings of certain sections of this Further Amendment are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Further Amendment.

7.7 This Further Amendment may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

7.8 SBC Telecommunications, Inc. hereby represents and warrants that it is authorized to act as agent for, and to bind in all respects as set forth herein, the individual SBC ILECs.

8.0 Intentionally Omitted.

KMC Data, LLC, KMC Telecom V, Inc., and KMC Telecom III, LLC f/k/a KMC Telecom, Inc., KMC Telecom II, Inc., KMC Telecom Holdings, Inc., and KMC Telecom III, Inc. and all affiliates, subsidiaries successors and assigns which are a Certified Local Exchange Carrier in California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio, or Connecticut

Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, Wisconsin Bell Inc. d/b/a SBC Wisconsin, Nevada Bell Telephone Company d/b/a SBC Nevada, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, SBC Oklahoma, SBC Texas, SBC Arkansas, and SBC Kansas by SBC Operations, Inc., its authorized agent

Signature: 

Name: Marva Braun Johnson  
(Print or Type)

Signature: 

Name: Mike Auinbauh

Title: Vice President & Senior Counsel  
(Print or Type)

Title: AVP-Local Interconnection Marketing

Date: 9/14/05

Date: SEP 27 2005

AECN/OCN: \_\_\_\_\_

**INTERCONNECTION AGREEMENT  
UNDER SECTIONS 251 AND 252  
OF THE  
TELECOMMUNICATIONS ACT OF 1996**

This Interconnection Agreement (the "MFN Agreement"), is being entered into by and between The Ohio Bell Telephone Company<sup>1</sup> (which uses the registered trade name AT&T Ohio) ("AT&T Ohio") and KMC Data LLC ("CLEC"), (each a "Party" and, collectively, the "Parties"), pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act").

**RECITALS**

WHEREAS, pursuant to Section 252(i) of the Act, CLEC has requested to adopt the Interconnection Agreement by and between AT&T Ohio and Time Warner Telecom of Ohio, LLC for the State of Ohio, which was approved by the Public Utilities Commission of Ohio ("the Commission") under Section 252(e) of the Act on July 17, 2002 in Case No. 02-911-TP-NAG, including any amendments to such Agreement (the "Separate Agreement"), which is incorporated herein by reference; and

WHEREAS, the Parties have agreed to certain voluntarily negotiated provisions to the MFN Agreement which are set forth in a Further Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions to this MFN Agreement (collectively the "MFN Agreement"), which is incorporated herein by this reference and attached hereto, which contains provisions previously approved by this Commission in Docket No. 05-1225-TP-AEC;

WHEREAS, based upon applicable Commission rules, this MFN Agreement is effective upon filing and is deemed approved by operation of law on the 91<sup>st</sup> day after filing; and

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CLEC and AT&T Ohio hereby agree as follows:

**1.0 Incorporation of Recitals and Separate Agreement by Reference**

- 1.1 The foregoing Recitals are hereby incorporated into and made a part of this MFN Agreement.
- 1.2 Except as expressly stated herein, the Separate Agreement (including any and all applicable Appendices, Schedules, Exhibits, Attachments and Amendments thereto) is incorporated herein by this reference and forms an integral part of the MFN Agreement.

**2.0 Modifications to Separate Agreement**

- 2.1 References in the Separate Agreement to "CLEC" or to "Other" shall for purposes of this MFN Agreement be deemed to refer to CLEC.
- 2.2 References the Separate Agreement to the "Effective Date," the date of effectiveness thereof and like provisions shall, consistent with Commission practice, for purposes of this MFN Agreement (but excluding the title page and Section 21), be deemed to refer to the date this MFN Agreement is filed with the Commission (although this MFN Agreement is subject to Commission approval and will be deemed approved by operation of law on the 91<sup>st</sup> day after filing). In addition, this MFN Agreement shall expire on December 15, 2006 (the "Expiration Date"). The change in "Effective Date" within the MFN Agreement is only intended so that the Parties may meet the operation obligations of the Agreement and so it is clear that neither Party may commence operations under the MFN Agreement until after it is effective and is in no way intended to extend the MFN Agreement beyond the Expiration Date set forth above. The term "Effective Date" for purposes of Section 21 shall mean the 17th day of April, 2002.

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<sup>1</sup> The Ohio Bell Telephone Company (previously referred to as "Ohio Bell" or "SBC Ohio") now operates under the name "AT&T Ohio."

- 2.3 The Notices Section in the Separate Agreement is hereby revised to reflect that Notices should be sent to CLEC under this MFN Agreement at the following address:

NOTICE CONTACT	CLEC CONTACT
NAME/TITLE	Brian Murdoch, Director, Carrier Management
STREET ADDRESS	c/o Hypercube, LLC 5300 Oakbrook Parkway, Suite 330
CITY, STATE, ZIP CODE	Norcross, GA 30093
FACSIMILE NUMBER	(678) 387-2791

- 2.4 The Notices Section in the Separate Agreement is hereby revised to reflect that Notices should be sent to AT&T Ohio under this MFN Agreement at the following address:

NOTICE CONTACT	AT&T-13STATE CONTACT
NAME/TITLE	Contract Management ATTN: Notices Manager
STREET ADDRESS	311 S. Akard, 9 <sup>th</sup> Floor Four AT&T Plaza
CITY, STATE, ZIP CODE	Dallas, TX 75202-5398
FACSIMILE NUMBER	214-464-2006

### 3.0 Reservations of Rights

- 3.1 In entering into this MFN Agreement, the Parties acknowledge and agree that neither Party waives, and each Party expressly reserves, any of its rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in this MFN Agreement (including intervening law rights asserted by either Party via written notice as to the Separate Agreement), with respect to any orders, decisions, legislation or proceedings and any remands by the FCC, state utility commission, court, legislature or other governmental body including, without limitation, any such orders, decisions, legislation, proceedings, and remands which were issued, released or became effective prior to the Effective Date of this MFN Agreement, or which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review.
- 3.2 It is AT&T Ohio's position that this MFN Agreement (including all attachments thereto) and every interconnection, service and network element provided hereunder, is subject to all other rates, terms and conditions contained in the MFN Agreement (including all attachments/appendices thereto), and that all of such provisions are integrally related and non-severable.



IN WITNESS WHEREOF, the Parties hereto have caused this MFN Agreement to be executed as of this 30<sup>th</sup>  
day of June, 2007.

KMC Data LLC  
by HyperCuba LLC, its authorized agent

By: [Signature]

Printed: Brian Murdock

Title: DIRECTOR - CARRIER MGT.  
(Print or Type)

Date: 6.18.07

The Ohio Bell Telephone Company d/b/a AT&T Ohio  
by AT&T Operations, Inc., its authorized agent

By: [Signature]

Printed: Rebecca L. Sparks

Title: Executive Director-Regulatory

Date: JUN 25 2007

FACILITIES-BASED OCN # 9557

ACNA KMD

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE  
TELECOMMUNICATIONS ACT OF 1996

**OHIO BELL TELEPHONE COMPANY INCORPORATED**

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Line Information Database-Administration .....	LIDB-AS-AM-OH

**AMERITECH OHIO/TIME WARNER TELECOM OF OHIO, L.P.**

Line Information and CNAM Service .....	LINE INFORMATION/CNAM SERVICE-AM-OH
Ohio Pricing .....	PRICING-OH
Ohio Pricing Merger Promotion Template .....	PRICING MERGER-OH

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252  
OF THE TELECOMMUNICATIONS ACT OF 1996**

**between**

**Ohio Bell Telephone Company Incorporated**

**and**

**Time Warner Telecom of Ohio, L.P.**

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**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE  
TELECOMMUNICATIONS ACT OF 1996**

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (**the Agreement**), is dated as of \_\_\_\_\_, 2002 by and between SBC Communications, Inc. owned **Ohio Bell Telephone Company Incorporated ("Ameritech Ohio" or "AM-OH")** and, **Time Warner Telecom of Ohio, L.P. ("TWTC")** (a Limited Partnership). Notwithstanding Paragraph 43 of the Merger Conditions approved by FCC Memorandum Opinion and Order released October 8, 1999 in CC Docket No. 98-141 "In re Applications of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63 90, 95 and 101 of the Commission's Rules," this Agreement is effective and available only in the State of Ohio because of differences and limitations in regulatory, legal, technical, network and OSS attributes in other states. Other states' terms and conditions are not included in this Agreement as a result of a ruling in the following state of Ohio Arbitration Award: **In the matter of AT&T Communications, Inc.'s Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Ameritech Ohio Cause No. 00-1188-TP-ARB.**

**WHEREAS**, TWTC represents that it is, or intends to become, a provider of Telephone Exchange Service to End Users offered exclusively over its own Telephone Exchange Service facilities or predominantly over its own Telephone Exchange Service facilities in combination with the use of unbundled Network Elements purchased from other entity(ies) and the resale of Telecommunications Services of other carriers.

**WHEREAS**, the Parties want to Interconnect their networks at mutually agreed upon points of interconnection to provide, directly or indirectly, Telephone Exchange Services and Exchange Access to End Users over their respective Telephone Exchange Service facilities in the states which are subject to this Agreement; and

**WHEREAS**, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will Interconnect their networks and facilities and provide to each other services as required by the Telecommunications Act of 1996 as specifically set forth herein; and

**WHEREAS**, for purposes of this Agreement, TWTC intends to operate where **Ohio Bell Telephone Company Incorporated, ("Ameritech Ohio")**, is the incumbent Local Exchange Carrier(s) and TWTC, a competitive Local Exchange Carrier, has or, prior to the provisioning of any Interconnection, access to unbundled Network Elements, Telecommunications Services or any other functions, facilities, products or services hereunder, will have been granted authority to provide certain local Telephone Exchange Services in **Ameritech-Ohio** Service areas by the appropriate State Commission;

**NOW, THEREFORE**, the Parties hereby agree as follows:



## GENERAL TERMS AND CONDITIONS

This Agreement is composed of General Terms and Conditions, which are set forth below, together with certain Appendices, Schedules, Exhibits and Addenda which immediately follow this Agreement, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

### 1. DEFINITIONS

Capitalized Terms used in this Agreement shall have the respective meanings specified below, in Section 1.x of each Appendix attached hereto, and/or as defined elsewhere in this Agreement.

#### 1.1 GENERAL DEFINITIONS

- 1.1.1 **"A-link"** means a diverse pair of facilities connecting local end office switching centers with Signaling Transfer Points.
- 1.1.2 **"Act"** means the Communications Act of 1934 [47 U.S.C. 153(R)], as amended by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) codified throughout 47 U.S.C.
- 1.1.3 **"Access Compensation"** is the compensation paid by one Party to the other Party for the origination/termination of intraLATA toll calls to/from its End User. Access compensation is in accordance with the LEC's tariffed access rates.
- 1.1.4 **"Access Service Request" (ASR)** is an industry standard form used by the Parties to add, establish, change or disconnect trunks for the purposes of Interconnection.
- 1.1.5 **"Account Owner"** means a telecommunications company, including AM-OH, that stores and/or administers Line Record Information and/or Group Record Information in a Party's LIDB and/or Calling Name Database.
- 1.1.6 **"Advanced Services"** means intrastate or interstate wireline Telecommunications Services, such as ADSL, IDSL, xDSL, Frame Relay, Cell Relay and VPOP-Dial Access Service (an AM-OH Frame Relay-based service) that rely on packetized technology and have the capability of supporting transmissions speeds of at least 56 kilobits per second in both directions. This definition of Advanced Services does not include:
  - 1.1.6.1 Data services that are not primarily based on packetized technology, such as ISDN,
  - 1.1.6.2 x.25-based and x.75-based packet technologies, or

- 1.1.6.3 Circuit switched services (such as circuit switched voice grade service) regardless of the technology, protocols or speeds used for the transmission of such services.
- 1.1.7 **"Affiliate"** is As Defined in the Act.
- 1.1.8 **"Alternate Billing Service" (ABS)** means a service that allows End Users to bill calls to accounts that may not be associated with the originating line. There are three types of ABS calls: calling card, collect and third number billed calls.
- 1.1.9 **AM-OH** - As used herein, **AM-OH** means the applicable SBC-owned ILEC doing business in Ohio.
- 1.1.10 **"Applicable Law"** means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement.
- 1.1.11 **"As Defined in the Act"** means as specifically defined by the Act.
- 1.1.12 **"As Described in the Act"** means as described in or required by the Act.
- 1.1.13 **"Automated Message Accounting" (AMA)** is a structure inherent in switch technology that initially records Telecommunication message information. AMA format is contained in the Automated Message Accounting document published by Telcordia (formerly known as Bellcore) as GR-1100-CORE, which defines and amends the industry standard for message recording.
- 1.1.14 **"Automatic Route Selection" or "ARS"** means a service feature associated with a specific grouping of lines that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into the system.
- 1.1.15 **"Billed Number Screening" (BNS)** means a validation of toll billing exception (TBE) data and performance of public telephone checks; i.e., determining if a billed line is a public (including those classified as semi-public) telephone number.
- 1.1.16 **"Bona Fide Request" (BFR)** is the process described in the applicable Appendix UNE.
- 1.1.17 **"Business Day"** means Monday through Friday, excluding holidays on which **AM-OH** does not provision new retail services and products.

- 1.1.18 **"Busy Line Verification" (BLV)** means a service whereby an End User requests an operator to confirm the busy status of a line.
- 1.1.19 **"CABS"** means the Carrier Access Billing System.
- 1.1.20 **"Calling Card Service"** means a service that enables a calling End User to bill a telephone call to a calling card number with or without the help of an operator.
- 1.1.21 **"Calling Name Database"** means a Party's database containing current Calling Name Information, including the Calling Name Information of any telecommunications company participating in that Party's Calling Name Database. A Calling Name Database may be part of, or separate from, a LIDB.
- 1.1.22 **"Calling Name Delivery Service" (CNDS)** means a service that enables a terminating End User to identify the calling party by a displayed name before a call is answered. The calling party's name is retrieved from a Calling Name Database and delivered to the End User's premise between the first and second ring for display on compatible End User premises equipment.
- 1.1.23 **"Calling Name Information"** means a Telecommunications Carrier's records of its End Users names associated with one or more assigned ten (10) digit telephone numbers.
- 1.1.24 **"Calling Number Delivery"** means a feature that enables an End User to view the directory number of the calling party on a display unit.
- 1.1.25 **"Calling Party Number" (CPN)** means a Signaling System 7 ("SS7") parameter whereby the ten (10) digit number of the calling Party is forwarded from the End Office.
- 1.1.26 **"Centralized Message Distribution System" (CMDS)** means the transport system that LECs use to exchange outcollect and Carrier Access Billing System ("CABS") access messages among each other and other Parties connected to CMDS.
- 1.1.27 **"Central Office Switch" (Central Office)** is a switching entity within the public switched telecommunications network, including but not limited to:
- 1.1.27.1 **"End Office Switch" or "End Office"** is a switching machine that **directly** terminates traffic to and receives traffic from purchasers of local exchange services. An End Office Switch does not include a PBX.

- 1.1.27.2 **"Tandem Office Switch" or "Tandem(s)"** are used to connect and switch trunk circuits between and among other Central Office Switches. A Tandem Switch does not include a PBX.
- 1.1.27.3 **"Centralized AMA" (CAMA)** is an arrangement where the AMA equipment is centralized in, for example, a Tandem and is used by offices that do not have LAMA (Local AMA). The End Office Switch must send ANI digits to the CAMA office for billing a calling subscriber.
- 1.1.28 **"Claim"** means any pending or threatened claim, action, proceeding or suit.
- 1.1.29 **"CNAM Query"** means a Query that allows TWTC to query a Calling Name Database for Calling Name Information in order to deliver that information to TWTC's local CNDIS subscribers.
- 1.1.30 **"CNAM Query Rate"** means a rate that applies to each CNAM Query received at the SCP where the Calling Name Database resides.
- 1.1.31 **"Collocation"** is As Described in the Act. Terms related to collocation are defined in the applicable Appendix Collocation or applicable collocation tariff, as appropriate.
- 1.1.32 **"Commercial Mobile Radio Services" (CMRS)** means Commercial Mobile Radio Service, As Defined in the Act and FCC rules.
- 1.1.33 **"Commission"** means the **Public Utilities Commission of Ohio (PUC-OH)**, the applicable State agency with regulatory authority over Telecommunications.
- 1.1.34 **"Common Channel Signaling" (CCS)** means an out-of-band, packet-switched, signaling network used to transport supervision signals, control signals, and data messages. It is a special network, fully separate from the transmission path of the public switched network. Unless otherwise agreed by the Parties, the CCS protocol used by the Parties shall be SS7.
- 1.1.35 **"Control Office"** means the Central Office providing Tandem Switching Capability for E9-1-1 calls. The Control Office controls switching of ANI information to the PSAP and also provides the Selective Routing feature, standard speed calling features, call transfer capability and certain maintenance functions for each PSAP.
- 1.1.36 **"Consequential Damages"** means Losses claimed to have resulted from any indirect, incidental, reliance, special, consequential, punitive, exemplary, multiple or any other Loss, including damages claimed to have resulted from harm to business, loss of anticipated revenues, savings, or

profits, or other economic Loss claimed to have been suffered not measured by the prevailing Party's actual damages, and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions.

- 1.1.37 **"Customer Usage Data"** means the Telecommunications Services usage data of a TWTC End User measured in minutes, sub-minute increments, message units, or otherwise, that is recorded by **AM-OH** and forwarded to TWTC.
- 1.1.38 **"Custom Local Area Signaling Service Features" (CLASS Features)** means certain Common Channel Signaling based features available to End Users, including: Automatic Call Back; Call Trace; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.
- 1.1.39 **"Customer Name and Address Information" (CNA)** means the name, service address and telephone numbers of a Party's End Users for a particular Exchange Area. CNA includes nonpublished listings, coin telephone information and published listings.
- 1.1.40 **"Data Base Administration Center" (DBAC)** means an **AM-OH** location where facility and administrative personnel are located for administering LIDB and/or Sleuth.
- 1.1.41 **THIS SPACE INTENTIONALLY LEFT BLANK**
- 1.1.42 **THIS SPACE INTENTIONALLY LEFT BLANK**
- 1.1.43 **"Delaying Event"** means any failure of a Party to perform any of its obligations set forth in this Agreement, caused in whole or in part by:
- 1.1.43.1 the failure of the other Party to perform any of its obligations set forth in this Agreement, including but not limited to a Party's failure to provide the other Party with accurate and complete Service Orders;
  - 1.1.43.2 any delay, act or failure to act by the other Party or its End User, agent or subcontractor; or
  - 1.1.43.3 any Force Majeure Event.
- 1.1.44 **"Designated Central Office Document" (Document DCO)** is a document that is referenced in **AM-OH** Appendix NIM. The purpose of the DCO is to document the physical architectural plan for interconnection and specifies the TWTC Central Offices, TWTC Routing Points, Activation Dates, the POI(s) and the applicable **AM-OH** Central Offices.

- 1.1.45 **"Dialing Parity"** is As Defined in the Act. As used in this Agreement, Dialing Parity refers to both Local Dialing Parity and Toll Dialing Parity.
- 1.1.46 **"Digital Cross Connect Panel" (DSX Panel)** means a cross-connect bay or panel used for the termination of equipment and facilities operating at digital rates.
- 1.1.47 **"Digital Signal Level"** is one of several transmission rates in the time-division multiplex hierarchy.
- 1.1.47.1 **"Digital Signal Level 0" (DS-0)** is the 64 Kbps zero-level signal in the time-division multiplex hierarchy.
- 1.1.47.2 **"Digital Signal Level 1" (DS-1)** is the 1.544 Mbps first-level signal in the time-division multiplex hierarchy.
- 1.1.47.3 **"Digital Signal Level 3" (DS-3)** is the 44.736 Mbps third-level signal in the time-division multiplex hierarchy.
- 1.1.48 **"Digital Subscriber Line" (DSL)** is as defined in the applicable Appendix DSL and/or the applicable tariff, as appropriate.
- 1.1.49 **"Electronic File Transfer"** is any system or process that utilizes an electronic format and protocol to send or receive data files.
- 1.1.50 **"End Users"** means a third-party residence or business that subscribes to Telecommunications Services provided by any of the Parties at retail. As used herein, the term "End Users" does not include any of the Parties to this Agreement with respect to any item or service obtained under this Agreement.
- 1.1.51 **"Enhanced LECLink"** is a customer access service to the national distribution of billing records via Telcordia's Centralized Message Distribution System (CMDS).
- 1.1.52 **"Enhanced Service Provider" (ESP)** is a provider of enhanced services as those services are defined in 47 CFR Section 64.702.
- 1.1.53 **"Exchange Access"** is As Defined in the Act.
- 1.1.54 **"Exchange Area"** means an area, defined by the Commission, for which a distinct local rate schedule is in effect.
- 1.1.55 **"Exchange Message Interface" (EMI)** (formerly Exchange Message Record - EMR) is the standard used for exchange of Telecommunications message information among Telecommunications Carriers for billable, non-

billable, sample, settlement and study data. EMI format is contained in Telcordia Practice BR-010-200-010, CRIS Exchange Message Record.

- 1.1.56 **"Exchange Service"** means Telephone Exchange Service, As Defined in the Act.
- 1.1.57 **"Feature Group A" (FGA)** means calls either originated by, or delivered to, an End User who has purchased switched access FGA service from the interstate or intrastate tariffs of either Party. FGA also includes, but is not limited to, FGA-like services provided by either Party, where calls are originated from and/or delivered to numbers which are assigned to a Rate Center within one LATA but where the Party receiving the call is physically located in a LATA different than the LATA of the Party originating the call. The intercarrier compensation mechanism as well as additional definitions for FGA are specified in the appropriate Appendix FGA.
- 1.1.58 **"Feature Group D" (FGD)** is access available to all customers, providing trunk side access to a Party's End Office Switches with an associated uniform 101XXXX access code for customer's use in originating and terminating communications.
- 1.1.59 **"FCC"** means the Federal Communications Commission.
- 1.1.60 **"Fiber Meet"** means an Interconnection architecture method whereby the Parties physically Interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually agreed upon location, at which one Party's responsibility or service begins and the other Party's responsibility ends.
- 1.1.61 **"Foreign Exchange" (FX)** means a service whereby calls either originated by or delivered to a customer who has purchased FX service from the state or interstate tariffs of either Party. FX also includes, but is not limited to, FX-like services provided by either Party where calls are originated from and/or delivered to numbers which are assigned to a Rate Center within one local calling area but where the Party receiving the call is physically located outside of that local calling area. FX service can be either interLATA or intraLATA. InterLATA FX, where the originating and receiving parties are physically located in different LATAs, is considered equivalent to FGA and the intercarrier compensation mechanism is the same as FGA. IntraLATA FX, when provided by two or more local exchange carriers ("LECs"), is considered a jointly provided service and meet-point billed by those providing it utilizing a mutually agreed to meet-point billing, or meet-point billing like procedure.
- 1.1.62 **"Governmental Authority"** means any federal, state, local, foreign, or international court, government, department, commission, board, bureau,

agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.

- 1.1.63 **"Group Record"** means information in LIDB and/or the LIDB administrative system that is common to all telephone numbers in an NPA-NXX or all Special Billing Numbers in an NXX-0/1XX.
- 1.1.64 **"Incumbent Local Exchange Carrier" (ILEC)** is As Defined in the Act.
- 1.1.65 **"Integrated Services Digital Network" (ISDN)** means a switched network service that provides end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN (BRI-ISDN) provides for a digital transmission of two 64 Kbps bearer channels and one 16 Kbps data channel (2B+D).
- 1.1.66 **"Intellectual Property"** means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 1.1.67 **"Inter-wire Center Transport"** means the transmission facilities between serving wire centers.
- 1.1.68 **"Interconnection"** is As Defined in the Act.
- 1.1.69 **"Interconnection Activation Date"** is the date that the construction of the joint facility Interconnection arrangement has been completed, trunk groups have been established, joint trunk testing is completed and trunks have been mutually accepted by the Parties.
- 1.1.70 **"Interexchange Carrier" (IXC)** means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.
- 1.1.71 **"InterLATA"** is As Defined in the Act.
- 1.1.72 **"Intermediate Distribution Frame" (IDF)** is a second frame that augments an existing Main Distribution Frame. Lines or outside cables do not terminate on the IDF.
- 1.1.73 **"Internet Service Provider" (ISP)** is an Enhanced Service Provider that provides Internet Services, and is defined in paragraph 341 of the FCC's First Report and Order in CC Docket No. 97-158 and defined in paragraphs 3-5 of the FCC's Declaratory Ruling in CC Docket 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68.
- 1.1.74 **"IntraLATA Toll Traffic"** means the IntraLATA traffic between two locations within one LATA where one of the locations lies outside of the normal local calling area as defined by the applicable Commission.



- 1.1.75 **"LIDB Editor"** means a SCP tool that bypasses the LIDB administrative system and provides emergency access to LIDB for data administration.
- 1.1.76 **"Line Information Data Base" (LIDB)** means a transaction-oriented database system that functions as a centralized repository for data storage and retrieval. LIDB is accessible through CCS networks. LIDB contains records associated with End User line numbers and special billing numbers. LIDB accepts queries from other network elements and provides return result, return error, and return reject responses as appropriate. Examples of information that Account Owners might store in LIDB and in their Line Records are: ABS Validation Data, Originating Line Number Screening (OLNS) data, ZIP Code data, and Calling Name Information.
- 1.1.77 **"LIDB Service Applications"** means the query types accepted for access to LIDB information.
- 1.1.78 **"Line Record"** means information in LIDB and/or the LIDB administrative system that is specific to a single telephone number or Special Billing Number.
- 1.1.79 **"Line Side"** refers to the switch port toward the TWTC's side of the equipment.
- 1.1.80 **"Local Access Transport Area" (LATA)** is As Defined in the Act.
- 1.1.81 **"Local Exchange Carrier" (LEC)** is As Defined in the Act.
- 1.1.82 **"Local Exchange Routing Guide" (LERG)** is a Telcordia Reference document used by Telecommunications Carriers to identify NPA-NXX routing and homing information as well as Network element and equipment designations.
- 1.1.83 **"Local Loop Transmission", "Unbundled Local Loop", "Loop"** means the transmission path which extends from the Network Interface Device or demarcation point at an End User's premise to the Main Distribution Frame or other designated frame or panel in the AM-OH Serving Wire Center.
- 1.1.84 **"Local Traffic"** - Local Traffic, for purposes of intercompany compensation, is if (i) the call originates and terminates in the same AM-OH exchange area; or (ii) originates and terminates within different AM-OH Exchanges that share a common mandatory local calling area, e.g. mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other like types of mandatory expanded local calling scopes
- 1.1.85 **"Local Number Portability"** means the ability of users of Telecommunications Services to retain, at the same location, the presence of a previously existing telephone number(s).

- 1.1.86 **"Location Routing Number" (LRN)** is a ten (10) digit number that is assigned to the network switching elements (Central Office – Host and Remotes as required) for the routing of calls in the network. The first six (6) digits of the LRN will be one of the assigned NPA NXX of the switching element. The purpose and functionality of the last four (4) digits of the LRN have not yet been defined but are passed across the network to the terminating switch.
- 1.1.87 **"Local Service Provider" (LSP)** is the LEC that provides retail local Exchange Service to an End User. The LSP may or may not provide any physical network components to support the provision of that End User's service.
- 1.1.88 **"Loss" or "Losses"** means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).
- 1.1.89 **"Main Distribution Frame" (MDF)** is termination frame for outside facility and inter-exchange office equipment at the central office for DS-0 and DSL services.
- 1.1.90 **"MECAB"** refers to the Multiple Exchange Carrier Access Billing document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee ("CLC") of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECAB document, published by ATIS as ATIS/OBF- MECAB- Issue 6, February 1998, contains the recommended guidelines for the billing of access services provided to an IXC by two or more LECs, or by one LEC in two or more states within a single LATA.
- 1.1.91 **"MECOD"** refers to the Multiple Exchange Carriers Ordering and Design Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering/Provisioning Committee of the OBF, which functions under the auspices of the CLC of ATIS. The MECOD document, published by ATIS as ATIS/OBF- MECAB- Issue 3, February 1993, establishes methods for processing orders for access service which is to be provided to an IXC by two or more telecommunications providers.
- 1.1.92 **"Meet-Point Billing" (MPB)** refers to the billing associated with interconnection of facilities between two or more LECs for the routing of traffic to and from an IXC with which one of the LECs does not have a direct connection. In a multi-bill environment, each Party bills the appropriate tariffed rate for its portion of a jointly provided Switched Exchange Access Service.
- 1.1.93 **"Meet-Point Trunks/Trunk Groups" (MPTGs)** are used for the joint provision of Switched Access services, pursuant to Telcordia Technical

References GR-394-CORE "GR-394" and GR-317-CORE "GR-317". MPTGs are those between a local End Office and an Access Tandem as described in FSD 20-24-0000 and 20-24-0300.

- 1.1.94 **"Multiple Bill/MultipleTariff"** is the meet-point billing method where each LEC prepares and renders its own meet point bill to the IXC in accordance with its own tariff for that portion of the jointly provided Switched Access Service which that LEC provides. The MECAB documents refer to this method as Multiple Bill/reflecting a multiple tariff (MM).
- 1.1.95 **"Mutual Compensation"** as defined in the Amendment to Time Warner Telecom Contracts Superseding Certain Compensation, Interconnection and Trunking Provisions.
- 1.1.96 **"Network Data Mover" (NDM)** is an industry standard protocol for transferring information electrically.
- 1.1.97 **"Network Element"** is As Defined in the Act.
- 1.1.98 **"North American Numbering Plan" (NANP)** A numbering architecture in which every station in the NANP Area is identified by a unique ten-digit address consisting of a three-digit NPA code, a three- digit central office code of the form NXX, and a four-digit line number of the form XXXX.
- 1.1.99 **"Numbering Plan Area" (NPA)** also called area code. An NPA is the 3-digit code that occupies the A, B, C positions in the 10-digit NANP format that applies throughout the NANP Area. NPAs are of the form NXX, where N represents the digits 2-9 and X represents any digit 0-9. In the NANP, NPAs are classified as either geographic or non-geographic. a) Geographic NPAs are NPAs which correspond to discrete geographic areas within the NANP Area. b) Non-geographic NPAs are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples are NPAs in the N00 format, e.g., 800.
- 1.1.100 **"Number Portability"** is As Defined in the Act.
- 1.1.101 **"NXX" or "Central Office Code"** is the three-digit switch entity indicator that is defined by the fourth through sixth digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers.
- 1.1.102 **"Ordering and Billing Forum" (OBF)** is a forum comprised of local telephone companies and inter-exchange carriers whose responsibility is to create and document Telecommunication industry guidelines and standards.

- 1.1.103“**Originating Point Code**” (OPC) means a code assigned to identify TWTC’s system(s) that originate SS7 messages, including LIDB Service Queries.
- 1.1.104“**Party**” means either TWTC or the SBC-owned ILEC; use of the term “Party” includes each of the SBC-owned ILEC(s) that is a party to this Agreement. “**Parties**” means both TWTC and the SBC-owned ILEC; use of the term “Parties” includes each of the SBC-owned ILEC(s) that is a party to this Agreement.
- 1.1.105“**Permanent Number Portability**” (PNP) is a long term method of providing LNP using LRN.
- 1.1.106“**Person**” means an individual or a partnership, an association, a joint venture, a corporation, a business or a trust or other entity organized under Applicable law, an unincorporated organization or any Governmental Authority.
- 1.1.107“**Point of Interconnection**” (POI) is a physical location at which the Parties’ networks meet for the purpose of establishing Interconnection. POIs include a number of different technologies and technical interfaces based on the Parties’ mutual agreement.
- 1.1.108“**Physical Collocation**” is as defined in applicable Appendix Collocation or applicable tariff, where applicable.
- 1.1.109“**Plain Old Telephone Service**” (POTS) means telephone service for the transmission of human speech.
- 1.1.110“**Rate Center Area**” means the following in each applicable area:
- 1.1.110.1 AM-OH
- 1.1.110.1.1“**Rate Center**” means the specific geographic point that has been designated by a given LEC as being associated with a particular NPA-NXX code that has been assigned to the LEC for its provision of Telephone Exchange Service. The Rate Center is the finite geographic point identified by a specific V&H coordinate, which is used by that LEC to measure, for billing purposes, distance sensitive transmission services associated with the specific Rate Center.
- 1.1.111“**Rating Point**” means the V&H coordinates associated with a particular telephone number for rating purposes.

- 1.1.112 **"Referral Announcement"** refers to a process by which calls are routed to an announcement that states the new telephone number of an End User.
- 1.1.113 **"Routing Point"** is a location which a LEC has designated on its own network as the homing or routing point for traffic inbound to Exchange Service provided by the LEC which bears a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access services. The Routing Point need not be the same as the Rating Point, nor must it be located within the Rate Center area, but must be in the same LATA as the NPA-NXX.
- 1.1.114 **"SBC Communications Inc." (SBC)** means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company, and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.1.115 **"Service Control Point" (SCP)** is the node in the common channel signaling network that accepts Queries for certain Database services. The SCP is a real time database system that receives Queries from service platforms, performs subscriber or application-specific service logic, and then sends a Response back to the Query-originating platform. Such service platforms can be Service Switching Points (SSPs) or other network nodes capable of properly formatting and launching Queries.
- 1.1.116 **"Service Management System" (SMS)** means an off-line system used to access, create, modify, or update information in a Database.
- 1.1.117 **"Service Provider Number Portability" (SPNP)** is synonymous with Permanent Number Portability ("PNP").
- 1.1.118 **"Service Switching Point" (SSP)** is a telephone central office switch equipped with a Signaling System 7 (SS7) interface.
- 1.1.119 **"Signaling System 7" (SS7)** means a signaling protocol used by the CCS Network.
- 1.1.120 **"Signal Transfer Point" (STP)** performs a packet switching function that routes signaling messages among Service Switching Points (SSP), Service Control Points (SCP), Signaling Points (SP), and other STPs in order to set up calls and to query databases for Advanced Services.

- 1.1.121 **"Sleuth"** means an off-line administration system that monitors suspected occurrences of ABS-related fraud.
- 1.1.122 **"Special Billing Number" (SBN)** means a Line Record in LIDB that is based on an NXX-0/1XX numbering format. NXX-0/1XX numbering formats are similar to NPA-NXX formats except that the fourth digit of a SBN is either a zero (0) or a one (1).
- 1.1.123 **"Switched Access Detail Usage Data"** means a category 1101xx record as defined in the EMI Telecordia Practice BR 010-200-010.
- 1.1.124 **"Switched Exchange Access Service"** means the offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of telephone toll service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access Services.
- 1.1.125 **"Synchronous Optical Network" (SONET)** is an optical interface standard that allows inter-networking of transmission products from multiple vendors. The base rate is 51.84 Mbps ("OC-1/STS-1") and higher rates are direct multiples of the base rate, up to 13.22 Gbps.
- 1.1.126 **"Tape Load Facility"** means data entry points at the LIDB administrative system and/or the SCPs where LIDB resides.
- 1.1.127 **"Telecommunications"** is As Defined in the Act.
- 1.1.128 **"Telecommunications Carrier"** is As Defined in the Act.
- 1.1.129 **"Telecommunications Service"** is As Defined in the Act.
- 1.1.130 **"Telephone Exchange Service"** is As Defined in the Act.
- 1.1.131 **"Telephone Toll Service"** is As Defined in the Act.
- 1.1.132 **"Third Party"** means any Person other than a Party.
- 1.1.133 **"Toll Billing Exception Service" (TBE)** means a service that allows End Users to restrict third number billing or collect calls to their lines.
- 1.1.134 **"Toll Free Service"** is service provided with any dialing sequence that invokes toll-free, 800-like, service processing, for example for illustration only, 800 or 800-like services. Toll Free Service includes but is not limited to calls placed to 800/888 NPA Service Access Codes (SAC).

1.1.135 "**Translation Type**" means a code in the Signaling Connection Control Part (**SCCP**) of the SS7 signaling message. Signal Transfer Points (STPs) use Translation Types to identify the routing table used to route a LIDB Query and/or CNAM Query. All LIDB Queries and/or CNAM Queries that use the same Translation Type are routed to the same LIDB and/or CNAM Database for a particular Line Record or, prior to number portability, for a particular NPA-NXX.

1.1.136 "**Trunk**" means a communication line between two switching systems.

1.1.137 "**Wire Center**" is the location of one or more local switching systems. A **point** at which End User's loops within a defined geographic area converge. Such **local** loops may be served by one (1) or more Central Office Switches within such premises

## 2. INTERPRETATION, CONSTRUCTION AND SEVERABILITY

### 2.1 Definitions

2.1.1 For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement or lowercased terms not defined will have the meaning in the Act, or in the absence of their inclusion in the Act, their customary usage in the Telecommunications industry as of the Effective Date.

### 2.2 Headings Not Controlling

2.2.1 The headings and numbering of Sections, Parts, Appendices Schedules and Exhibits to this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

2.2.2 This Agreement incorporates a number of Appendices which, together with their associated Attachments, Exhibits, Schedules and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Appendices have been grouped under broad headings. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability that any

particular appendix, attachment, exhibit, schedule or addenda may otherwise have.

**2.3     Referenced Documents**

2.3.1 Unless the context shall otherwise specifically require, and subject to Section 21, whenever any provision of this Agreement refers to a technical reference, technical publication, TWTC Practice, **AM-OH** Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement (collectively, a "**Referenced Instrument**"), it will, unless otherwise specified in this Agreement, be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such Referenced Instrument at such time. If a dispute about interpretation arises, the Parties shall submit the matter for resolution pursuant to Section 10 of this Agreement.

**2.4     References**

2.4.1 References herein to Sections, Paragraphs, Exhibits, Parts, Schedules, and Appendices shall be deemed to be references to Sections, Paragraphs and Parts of, and Exhibits, Schedules and Appendices to this Agreement unless the context shall otherwise require.

**2.5     Tariff References**

2.5.1 Wherever any Commission ordered tariff provision or rate is cited or quoted herein, it is understood that said cite encompasses any revisions or modifications to said tariff.

2.5.2 Wherever any Commission ordered tariff provision or rate is incorporated, cited or quoted herein, it is understood that said incorporation or reference applies only to the entity within the state whose Commission ordered that tariff.

2.5.3 Wherever the term "customer" is used in connection with **AM-OH** retail tariffs, the term "customer" means the ultimate "consumer" or the "end user" of any tariffed service.

**2.6     Conflict in Provisions**

2.6.1 In the event of a conflict between the provisions of this Agreement and the Act, the provisions of the Act shall govern.

2.6.2 If any definitions, terms or conditions in any given Appendix, Attachment, Exhibit, Schedule or Addenda differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those



contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Appendix, Attachment, Exhibit, Schedule or Addenda. In particular, if an Appendix contains a Term length that differs from the Term length in the main body of this Agreement, the Term length of that Appendix will control the length of time that services or activities are to occur under that Appendix, but will not affect the Term length of the remainder of this Agreement.

2.7 Joint Work Product

2.7.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

2.8 Severability

2.8.1 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible. The Parties negotiated the terms and conditions of this Agreement for Interconnection, services and Network Elements as a total arrangement and it is intended to be nonseverable.

2.9 Incorporation by Reference

2.9.1 The General Terms and Conditions of this Agreement, and every Interconnection, Resale Service Network Element, function, facility, product or service provided hereunder, shall be subject to all rates, terms and conditions contained in the Appendices to this Agreement which are legitimately related to such Interconnection, Resale Service, Network Element, function, facility, product or service; and all such rates, terms and conditions are incorporated by reference herein and deemed a part of every Interconnection, Resale Service, Network Element, function, facility, product or service provided hereunder. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each Interconnection, Resale Service, Network Element, function, facility, product or service provided hereunder: definitions; interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures

for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnity; remedies; intellectual property; publicity and use of trademarks and service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; relationship of the Parties/independent contractor; no third Party beneficiaries, disclaimer of agency; assignment; subcontracting; hazardous substances and responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; customer inquiries; expenses; conflict of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

2.10 Non-Voluntary Provisions

2.10.1 This Agreement incorporates certain rates, terms and conditions that were not voluntarily negotiated by AM-OH but instead resulted from determinations made in arbitrations under Section 252 of the Act or from other requirements of regulatory agencies or state law (individually and collectively, a "Non-Voluntary Arrangement"). If any Non-Voluntary Arrangement is modified as a result of any order or finding by the FCC, the appropriate Commission or a court of competent jurisdiction, any Party may, by providing written notice to the other Party, require that any affected Non-Voluntary Arrangement (and any related rates, terms and conditions) be deleted or renegotiated to comport with the order or finding, as applicable, in good faith and this Agreement amended accordingly. If such modifications to this Agreement are not executed within sixty (60) calendar days after the date of such notice, a Party may pursue its rights under Section 10.

2.11 State-Specific Rates, Terms and Conditions

2.11.1 State-specific terms have been negotiated (or in the case of 2.10.1 above, included in the agreement per state requirement) by the Parties only as to the states where this Agreement has been executed, filed and approved. When the Parties negotiate an agreement for an additional state, neither Party shall be precluded by any language in this Agreement from negotiating state-specific terms for the state in which are to apply.

2.11.2 Successor Rates. Certain of the rates, prices and charges set forth in the applicable Appendix Pricing have been established by the appropriate Commissions in cost proceedings or dockets initiated under or pursuant to the Act. If during the Term that Commission or the FCC changes a rate, price or charge in an order or docket that applies to any of the Interconnection, Resale Services, Network Elements, functions, facilities, products and services available hereunder, the Parties agree to amend this Agreement to incorporate such new rates, prices and charges, with such rates, prices and charges to be effective as of the date specified in such order or docket (including giving effect to any retroactive application, if so ordered). If either Party refuses to

execute an amendment to this Agreement within sixty (60) calendar days after the date of such order or docket, the other Party may pursue its rights under Section 10.

2.12 Scope of Obligations

2.12.1 Notwithstanding anything to the contrary contained herein, AM-OH's obligations under this Agreement shall apply only to:

2.12.1.1 the specific operating area(s) or portion thereof in which AM-OH is then deemed to be the ILEC under the Act (the "**ILEC Territory**"), and

2.12.1.2 assets that AM-OH owns or leases and which are used in connection with AM-OH's provision to TWTC of any Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided or contemplated under this Agreement, the Act or any tariff or ancillary agreement referenced herein (individually and collectively, the "**ILEC Assets**").

2.13 Affiliates

2.13.1 These General Terms and Conditions and all attachments and Appendices hereto (this Agreement), including subsequent amendments, if any, shall bind AM-OH, TWTC and any entity that currently or subsequently is owned or controlled by or under common ownership or control with TWTC. TWTC further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between AM-OH and any such TWTC Affiliate that continues to operate as a separate entity. This Agreement shall remain effective as to TWTC and any such TWTC Affiliate for the term of this Agreement as stated herein until either AM-OH or TWTC or any such TWTC Affiliate institutes renegotiation consistent with the provisions of this Agreement for renewal and term. Notwithstanding the foregoing, this Agreement will not supercede a currently effective interconnection agreement between any such TWTC Affiliate and SBC or AM-OH until the expiration of such other agreement.

3. **NOTICE OF CHANGES -- SECTION 251(c)(5)**

3.1 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software, the purchase of the assets of another company or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R. 51.325 through 51.335, as such rules may be amended from time to time (the "**Network Disclosure Rules**").

**4. GENERAL RESPONSIBILITIES OF THE PARTIES**

- 4.1 Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with **AM-OH**'s network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.
- 4.2 The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all End Users in their respective designated service areas.
- 4.3 Each Party is solely responsible for all products and services it provides to its End Users and to other Telecommunications Carriers.
- 4.4 Facilities-based carriers and UNE-based Switch Port providers are responsible for administering their End User records in a LIDB.
- 4.5 At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law:
  - 4.5.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$100,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$100,000 for Bodily Injury by disease-each employee.
  - 4.5.2 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; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$2,000,000 are also required if this Agreement involves collocation. The other Party must be named as an Additional Insured on the Commercial General Liability policy.
  - 4.5.3 If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.

- 4.5.4 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 4.5.1 through 4.5.3 of this Agreement.
- 4.5.5 The Parties agree that companies affording the insurance coverage required under Section 4.7 shall have a rating of B+ or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.
- 4.5.6 Each Party agrees to provide the other Party 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.
- 4.5.7 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
- 4.5.7.1 The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of 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
- 4.5.7.2 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
- 4.5.7.3 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party 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.
- 4.6 Section 4.5 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.
- 4.7 Upon TWTC signature of this Agreement, TWTC shall provide **AM-OH** with TWTC's state-specific authorized and nationally recognized OCN/AECNs for facilities-based (Interconnection and/or unbundled Network Elements) and a separate and distinct OCN/AECN for Resale Services.

4.8 In the event that TWTC makes any corporate name change (including addition or deletion of a d/b/a), change in OCN/AECN, or makes or accepts a transfer or assignment of interconnection trunks or facilities (including leased facilities), or a change in any other TWTC identifier (collectively, a "TWTC Change"), TWTC shall submit written notice to AM-OH within thirty (30) calendar days of the first action taken to implement such TWTC Change. TWTC may make one (1) TWTC Change in any twelve (12) month period without charge by AM-OH for updating its databases, systems, and records solely to reflect such TWTC Change. In the event of any additional TWTC Change, AM-OH reserves the right to seek recovery of the costs associated with updating the applicable AM-OH databases, systems, and records to reflect TWTC Change. Notwithstanding the above, for each TWTC Change the TWTC shall pay any applicable charges associated with recording and otherwise updating any TWTC branding or announcement(s), and any applicable charges associated with any service orders or requests submitted to AM-OH to make the TWTC Change.

4.9 When a End User changes its service provider from AM-OH to TWTC or from TWTC to AM-OH and does not retain its original telephone number, the Party formerly providing service to such End User shall furnish a referral announcement ("**Referral Announcement**") on the original telephone number that specifies the End User's new telephone number.

4.9.1. Referral Announcements shall be provided by a Party to the other Party for the period specified in 170 IAC 7-1.1-11(I)(3)(a) and (b) and at the rates set forth in the referring Party's tariff(s). However, if either Party provides Referral Announcements for a period different than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.

4.10 Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (for example, by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.

4.11 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

## 5. EFFECTIVE DATE, TERM, AND TERMINATION

5.1 THIS SPACE INTENTIONALLY LEFT BLANK

5.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on date May 31, 2003 (the "**Term**"). Absent the receipt by one Party of written notice from the other Party within 180 calendar days prior to

the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 5.3 or 5.4.

- 5.3 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof. Any termination of this Agreement pursuant to this Section 5.3 shall take effect immediately upon delivery of written notice to the other Party that it failed to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof.
- 5.4 If pursuant to Section 5.2, this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement after delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 5.5 and 5.6. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 5.4 other than its obligations under Sections 5.5 and 5.6.
- 5.5 Upon termination or expiration of this Agreement in accordance with Sections 5.2, 5.3 or 5.4:
  - 5.5.1 Each Party shall continue to comply with its obligations set forth in Section 42; and
  - 5.5.2 Each Party shall promptly pay all amounts owed under this Agreement or place any Disputed Amounts into an escrow account that complies with Section 8.4 hereof;
  - 5.5.3 Each Party's confidentiality obligations shall survive; and
  - 5.5.4 Each Party's indemnification obligations shall survive.
- 5.6 If **AM-OH** serves notice of expiration pursuant to Section 5.2 or Section 5.4, TWTC shall have fifteen (15) calendar days to provide **AM-OH** written confirmation if TWTC wishes to pursue a successor agreement with **AM-OH** or terminate its agreement. TWTC shall identify the action to be taken on each applicable (13) state(s). If TWTC wishes to pursue a successor agreement with **AM-OH**, TWTC will include its written confirmation or notice of expiration/termination, as applicable, a written request to commence negotiations with **AM-OH** under Sections 251/252 of the Act and identify each of the state(s) the successor agreement will cover. Upon receipt of TWTC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.

- 5.7 The rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act; or (ii) the date that is ten (10) months after the date on which AM-OH received TWTC's Section 252(a)(1) request unless the date is extended by mutual agreement; provided, however, when a successor agreement becomes effective, the terms, rates and charges of such successor Agreement shall apply retroactively back to the date this Agreement of termination or expiration of this agreement, whichever is later, and that the retro-active true-up shall be completed within ninety (90) calendar days following the effective date of such successor Agreement.
- 5.8 If at any time during the Section 252(a)(1) negotiation process (prior to or after the expiration date or termination date of this Agreement), TWTC withdraws its Section 252(a)(1) request, TWTC must include in its notice of withdrawal a request to adopt a successor agreement under Section 252(i) of the Act or affirmatively state that TWTC does not wish to pursue a successor agreement with AM-OH for a given state. The rates, terms and conditions of this Agreement shall continue in full force and effect until the later of: 1) the expiration of the term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date TWTC provides notice of withdrawal of its Section 252(a)(1) request. If the Term of this Agreement has expired, on the earlier of (i) the ninety-first (91st) calendar day following AM-OH's receipt of TWTC's notice of withdrawal of its Section 252(a)(1) request or (ii) the effective date of the agreement following approval by the Commission of the adoption of an agreement under 252(i), the Parties shall, have no further obligations under this Agreement except those set forth in Section 5.5 of this Agreement.
- 5.9 If TWTC does not affirmatively state that it wishes to pursue a successor agreement with AM-OH in its, as applicable, notice of expiration or termination or the written confirmation required after receipt of the AM-OH's notice of expiration or termination, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date TWTC provided or received notice of expiration or termination. If the Term of this Agreement has expired, on the ninety-first (91st) day following TWTC provided or received notice of expiration or termination, the Parties shall have no further obligations under this Agreement except those set forth in Section 5.5 of this Agreement.
- 5.10 In the event of termination of this Agreement pursuant to Section 5.9, or 5.7(ii) AM-OH and TWTC shall cooperate in good faith to effect an orderly transition of service under this Agreement; provided that TWTC shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End Users have been transitioned to a new LEC by the expiration date or termination date of this Agreement.



**6. END USER FRAUD**

- 6.1 In the event of fraud associated with a TWTC End User's account, the Parties agree that liability should be determined based on the facts related to the incident of fraud. **AM-OH** shall not be liable for any fraud associated with a TWTC End User's account unless such fraud is determined to have been committed by an employee or other person under the control of SBC-Ameritech.
- 6.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud involving 1+ IntraLATA toll calls, ABS, and ported numbers. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 6.3 In cases of suspected fraudulent activity by an End User, at a minimum, the cooperation referenced in Section 6.2 will include providing to the other Party, upon request, information concerning Customers who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the End User's permission to obtain such information.
- 6.4 **AM-OH** will provide notification messages to TWTC on suspected occurrences of ABS-related fraud on TWTC accounts stored in the applicable LIDB. **AM-OH** will provide via fax.
- 6.4.1 TWTC understands that Sleuth alerts only identify potential occurrences of fraud. TWTC understands and agrees that it will need to perform its own investigations to determine whether a fraud situation actually exists. TWTC understands and agrees that it will also need to determine what, if any, action TWTC should take as a result of a Sleuth alert.
- 6.4.2 The Parties will provide contact names and numbers to each other for the exchange of Sleuth alert notification information twenty-four (24) hours per day seven (7) days per week.
- 6.4.3 For each alert notification provided to TWTC, TWTC may request a corresponding thirty-day (30-day) historical report of ABS-related query processing. TWTC may request up to three reports per alert.
- 6.5 In **AM-OH** ABS-related alerts are provided to TWTC at no additional charge.

**7. DEPOSITS**

- 7.1 The deposit requirements set forth in this Section 7 apply to the Resale Services and Network Elements furnished under this Agreement. TWTC furnishes both Resale Services and Network Elements in one (1) state under this Agreement, TWTC shall make two (2) separate deposits for that state, each calculated separately as set forth below in Sections 7.2 through 7.9, inclusive.

- 7.2 If TWTC has not established a minimum of twelve (12) consecutive months good credit history with AM-OH TWTC shall remit an initial cash deposit to AM-OH prior to the furnishing of Resale Services or Network Elements in each state covered by this Agreement. The deposit required by the previous sentence shall be determined as follows:
- 7.2.1 For AM-OH subject to external credit check verification and/or financial statement review, AM-OH may require two (2) to four (4) months of projected average monthly billings as a deposit.
- 7.2.2 If TWTC has established a minimum of twelve (12) consecutive months good credit history with AM-OH, AM-OH shall waive the initial deposit requirement; provided, however, that the terms and conditions set forth in Section 7.1 through Section 7.9 of this Agreement shall continue to apply in each state for the Term. In determining whether TWTC has established a minimum of twelve (12) consecutive months good credit history with AM-OH, TWTC's payment record with AM-OH for the most recent twelve (12) months occurring within the twenty-four (24) month period immediately prior to the Effective Date shall be considered.
- 7.3 Any cash deposit for one state shall be held by AM-OH as a guarantee of payment of charges billed to TWTC, provided, however, AM-OH may exercise its right to credit any cash deposit to TWTC's account upon the occurrence of any one of the following events:
- 7.3.1 when AM-OH sends TWTC the second delinquency notification for that state during the most recent twelve (12) months; or
- 7.3.2 when AM-OH suspends TWTC's ability to process orders in accordance with Section 9.5.1.3; or
- 7.3.3 when TWTC files for protection under the bankruptcy laws; or
- 7.3.4 when an involuntary petition in bankruptcy is filed against TWTC and is not dismissed within sixty (60) days; or
- 7.3.5 when this Agreement expires or terminates; or
- 7.3.6 during the month following the expiration of twelve (12) months after that cash deposit was remitted, AM-OH shall credit any cash deposit to TWTC's account so long as TWTC has not been sent more than one delinquency notification letter for that state during the most recent twelve (12) months.
- 7.3.7 For the purposes of this Section 7.3, interest will be calculated as specified in Section 8.1 and shall be credited to TWTC's account at the time that the cash deposit is credited to TWTC's account.

- 7.4 So long as TWTC maintains timely compliance with its payment obligations, AM-OH will not increase the deposit amount required. If TWTC fails to maintain timely compliance with its payment obligations, AM-OH reserves the right to require additional deposit(s) in accordance with Section 7.1 and Section 7.5 through Section 7.9.
- 7.5 If during the first six (6) months of operations TWTC has been sent one delinquency notification letter by AM-OH, the deposit amount for that state shall be re-evaluated based upon TWTC's actual billing totals and shall be increased if TWTC's actual billing average:
- 7.5.1 for AM-OH for a two (2) to four (4) month period exceeds the deposit amount held.
- 7.6 Throughout the Term, any time TWTC has been sent two (2) delinquency notification letters by AM-OH, the deposit amount for that state shall be re-evaluated based upon TWTC's actual billing totals and shall be increased if TWTC's actual billing average:
- 7.6.1 For AM-OH for a two (2) to four (4) month period exceeds the deposit amount held.
- 7.7 Whenever a deposit is re-evaluated as specified in Section 7.5 or Section 7.6, such deposit shall be calculated in an amount equal to the average billing to TWTC for that state for a two (2) to four (4) month period. The most recent three (3) months billing on all of TWTC's CBAs/ESBAs/ASBS ("ASBS" is utilized in AM-OH only) and BANS for Resale Services or Network Elements, as appropriate within that state shall be used to calculate TWTC's monthly average.
- 7.8 Whenever a deposit is re-evaluated as specified in Section 7.5 and Section 7.6, TWTC shall remit the additional deposit amount to AM-OH within thirty (30) calendar days of receipt of written notification from AM-OH requiring such deposit. If TWTC fails to furnish the required deposit within thirty (30) calendar days of receipt of written notice requesting such deposit AM-OH shall begin the process set forth in Section 9 of this Agreement. If TWTC continues to fail to furnish the required deposit at the expiration of the fourteen (14) calendar days specified in Section 9.3 of this Agreement, then AM-OH shall begin the procedure(s) set forth in Section 9.5 of this Agreement.
- 7.9 The fact that AM-OH holds either a cash deposit or irrevocable bank letter of credit does not relieve TWTC from timely compliance with its payment obligations under this Agreement.

## 8. BILLING AND PAYMENT OF CHARGES

- 8.1 Unless otherwise stated, each Party will render monthly bill(s) to the other for Interconnection, Resale Services, Network Elements, functions, facilities, products and services provided hereunder at the rates set forth in the applicable Appendix

Pricing, as set forth in applicable tariffs or other documents specifically referenced herein and, as applicable, as agreed upon by the Parties or authorized by a Party.

**8.1.1 THIS SPACE INTENTIONALLY LEFT BLANK.**

8.1.2 Remittance in full of all bills rendered by either Party is due within thirty (30) calendar days of each bill date (the "**Bill Due Date**") and shall be paid in accordance with the terms of Section 8.3 of this Agreement.

8.1.3 If either Party fails to remit payment for any charges for services by the Bill Due Date, or if a payment or any portion of a payment is received from either Party after the Bill Due Date, or if a payment or any portion of a payment is received in funds which are not immediately available to either Party as of the Bill Due Date (individually and collectively, "**Past Due**"), then a late payment charge shall be assessed as provided in Section 8.1.4., as applicable. If late charges are assessed by TWTC, then Section 8.2 shall apply for the computation of the late charges.

8.1.4 If any charge incurred under this Agreement that is billed out of any AM-OH billing system is Past Due, the unpaid amounts shall accrue interest from the Bill Due Date at the lesser of (i) one and one-half percent (1 ½%) per month and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the day following the Bill Due Date to and including the date that the payment is actually made and available.

8.2 If any charge incurred by AM-OH under this Agreement, billed out of TWTC's billing system, is Past Due, the unpaid amounts shall bear interest from the day following the Bill Due Date until paid. The interest rate applied shall be the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable Party's intrastate access services tariff in that state and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the Bill Due Date to and including the date that the payment is actually made and available.

8.3 Payments will be made in U.S. Dollars via electronic funds transfer (EFT) to an appropriate AM-OH bank account. At least thirty (30) days prior to the first transmission of billing data and information for payment, TWTC and AM-OH will each provide the name and address of its bank, its account and routing number and to whom billing payments should be made payable. If such banking information changes, each Party will provide the other Party at least thirty (30) days written notice of the change and such notice will include the new banking information. AM-OH desires electronically transferred funds and remittances via automated clearinghouse (ACH) utilizing either a CCD+ or a CTX standard entry class code. TWTC agrees to provide such automated remittances. In the event TWTC receives multiple and/or other bills from AM-OH which are payable on the same date, TWTC may remit one payment for the sum of all such bills using CTX. Each Party will provide the other Party with a contact person for the handling of billing payment questions or problems. TWTC and AM-OH shall abide by the National Automated

Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer shall be received by **AM-OH** no later than the Bill Due Date of each bill or Late Payment Charges will apply. **AM-OH** shall not be liable for any delays in receipt of funds or errors in entries caused by TWTC or Third Parties, including TWTC's financial institution. TWTC is responsible for its own banking fees.

- 8.4 If any portion of an amount due to a Party (the "**Billing Party**") for Resale Services or Network Elements under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "**Non-Paying Party**") shall, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("**Disputed Amounts**") and include in such written notice the specific details and reasons for disputing each item listed in Section 10.4.1. The Non-Paying Party shall pay when due (i) all undisputed amounts to the Billing Party, and (ii) all Disputed Amounts into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties. To be acceptable, the Third Party escrow agent must meet all of the following criteria:
- 8.4.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;
  - 8.4.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
  - 8.4.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle Automatic Clearing House (ACH) (credit transactions) (electronic funds) transfers.
  - 8.4.4 In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree that the escrow account will meet all of the following criteria:
    - 8.4.4.1 The escrow account must be an interest bearing account;
    - 8.4.4.2 All charges associated with opening and maintaining the escrow account will be borne by the disputing Party;
    - 8.4.4.3 That none of the funds deposited into the escrow account or the interest earned thereon may be subjected to the financial institution's charges for serving as the Third Party escrow agent;
    - 8.4.4.4 All interest earned on deposits to the escrow account shall be disbursed to the Parties in the same proportion as the principal; and
    - 8.4.4.5 Disbursements from the escrow account shall be limited to those:

- 8.4.4.5.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or
  - 8.4.4.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 10.7; or
  - 8.4.4.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 10.7.
- 8.5 Disputed Amounts in escrow shall be subject to Late Payment Charges as set forth in Section 8.1.
- 8.6 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 10.
- 8.7 If the Non-Paying Party disputes any charges for Resale Services or Network Elements and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties shall cooperate to ensure that all of the following actions are taken:
  - 8.7.1 the Billing Party shall credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after the resolution of the Dispute;
  - 8.7.2 within fifteen (15) calendar days after resolution of the Dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party shall be released to the Non-Paying Party, together with any accrued interest thereon;
- 8.8 If the Non-Paying Party disputes any charges for Resale Services or Network Elements and any portion of the dispute is resolved in favor of the Billing Party, the Parties shall cooperate to ensure that all of the following actions are taken:
  - 8.8.1 within fifteen (15) calendar days after resolution of the Dispute, the portion of the Disputed Amounts resolved in favor of the Billing Party shall be released to the Billing Party, together with any accrued interest thereon; and
  - 8.8.2 no later than the third Bill Due Date after the resolution of the dispute regarding the Disputed Amounts, the Non-Paying Party shall pay the Billing Party the difference between the amount of accrued interest such Billing Party received from the escrow disbursement and the amount of Late Payment Charges such Billing Party is entitled to receive pursuant to Section 8.1.

- 8.9 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party for Resale and/or Network elements within the time specified in Section 8.8 shall be grounds for termination of this Agreement.
- 8.10 If either Party requests one or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.
- 8.11 Exchange of Billing Message Information
- 8.11.1 **AM-OH** will provide TWTC a specific Daily Usage File ("DUF" or "Usage Extract") for Resale Services and Network Element usage sensitive services provided hereunder ("Customer Usage Data"). Such Customer Usage Data shall be provided by **AM-OH** in accordance with Exchange Message Interface (EMI) guidelines supported by OBF. Any exceptions to the supported formats will be noted in the DUF implementation requirements documentation for **AM-OH**. The DUF shall include (i) specific daily usage, including both Local Traffic (if and where applicable) and LEC-carried IntraLATA Toll Traffic, in EMI format for usage sensitive services furnished in connection with each Resale Service and Network Element to the extent that similar usage sensitive information is provided to retail End Users of **AM-OH** within that state, (ii) with sufficient detail to enable TWTC to bill its End Users for usage sensitive services furnished by **AM-OH** in connection with Resale Services and Network Elements provided by **AM-OH**. Procedures and processes for implementing the interfaces with **AM-OH** will be included in implementation requirements documentation.
- 8.11.2. To establish file transmission for the Daily Usage File, TWTC must provide a separate written request for each state to **AM-OH** no less than sixty (60) calendar days prior to the desired first transmission date for each file.
- 8.11.3 Call detail for LEC-carried calls that are alternately billed to TWTC End Users lines provided by **AM-OH** through Resale or Network Elements will be forwarded to TWTC as rated call detail on the DUF.
- 8.11.4 Interexchange call detail on Resale Services or Network Elements (ports) that is forwarded to **AM-OH** for billing, which would otherwise be processed by **AM-OH** for its retail End Users, will be returned to the IXC and will not be passed through to TWTC. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a resold account. Billing for Information Services and other ancillary services traffic on Resale Services and Network Elements (ports) will be passed through when **AM-OH** records the message.
- 8.11.5 **AM-OH** Ancillary Services messages originated on or billed to a Resale Service or Network Element (port) shall be subject to the rates, terms and conditions of Appendix MESSAGE EXCHANGE.

8.11.6 TWTC shall be responsible for providing all billing information to each of its End Users, regardless of the method used to provision the End User's service.

**9. NONPAYMENT AND PROCEDURES FOR DISCONNECTION**

- 9.1 Unless otherwise specified therein, Sections 9.1, 9.2, 9.3, 9.4 and 9.5 shall apply to all charges billed for all services Interconnection, Resale Services, Network Elements, functions, facilities, products and services furnished under this Agreement.
- 9.2 Failure to pay undisputed charges may be grounds for disconnection of Interconnection, Resale Services, Network Elements, functions, facilities, products and services furnished under this Agreement. If a Party fails to pay by the Bill Due Date, any and all charges billed to it under this Agreement, including any Late Payment Charges or miscellaneous charges ("**Unpaid Charges**"), and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party shall notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the applicable Interconnection, Resale Services, Network Elements, functions, facilities, products and services furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party.
- 9.2.1 With respect to Resale Services and Network Elements, **AM-OH** will notify TWTC of any Unpaid Charges that remain unpaid fifteen (15) calendar days after the Bill Due Date and that TWTC must remit payment within fourteen (14) calendar days following receipt of **AM-OH**'s notice.
- 9.3 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party shall take all of the following actions not later than fourteen (14) calendar days following receipt of the Billing Party's notice of Unpaid Charges:
- 9.3.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("**Disputed Amounts**") and the specific details listed in Section 10.4.1 of this Agreement, together with the reasons for its dispute; and
- 9.3.2 immediately pay to the Billing Party all undisputed Unpaid Charges; and
- 9.3.3 pay all Disputed Amounts relating to Resale Services and Network Elements into an interest bearing escrow account that complies with the requirements set forth in Section 8.4.
- 9.3.4 With respect to Resale Services and Network Elements, evidence that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 and deposited a sum equal to the Disputed Amounts into that account must be furnished to the Billing Party before the Unpaid Charges will be deemed to be "disputed" under Section 10 of this Agreement.



9.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 10.

9.5 **AM-OH**

9.5.1 Notwithstanding anything to the contrary herein, if the Non-Paying Party fails to (i) pay any undisputed amounts by the Bill Due Date, (ii) pay the disputed portion of a past due bill for Resale Services or Network Elements into an interest-bearing escrow account with a Third Party escrow agent, (iii) pay any revised deposit or (iv) make a payment in accordance with the terms of any mutually agreed upon payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for failing to comply with the foregoing. If the Non-Paying Party does not satisfy the written demand within five (5) Business Days of receipt, the Billing Party may exercise any, or all, of the following options:

9.5.1.1 assess a late payment charge and where appropriate, a dishonored check charge;

9.5.1.2 require provision of a deposit or increase an existing deposit pursuant to a revised deposit request;

9.5.1.3 refuse to accept new, or complete pending, orders; and/or

9.5.1.4 discontinue service.

9.5.1.4.1 **THIS SECTION INTENTIONALLY LEFT BLANK.**

9.5.2 Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of the above options:

9.5.2.1 shall not delay or relieve the Non-Paying Party's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date, and

9.5.2.2 Sections 9.5.1.3 and 9.5.1.4 shall exclude any affected order or service from any applicable performance interval or Performance Benchmark.

9.5.3 Once disconnection has occurred, additional charges may apply.

**10. DISPUTE RESOLUTION**

**10.1 Finality of Disputes**

10.1.1 Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than

twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

10.1.2 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges for which the Bill Due Date occurred within the twelve (12) months immediately preceding the date on which the other Party received notice of such Disputed Amounts.

10.2 Alternative to Litigation

10.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

10.3 Commencing Dispute Resolution

10.3.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods:

10.3.1.1 Service Center (**AM-OH**)

10.3.1.2 Informal Dispute Resolution; and

10.3.1.3 Formal Dispute Resolution, each of which is described below.

10.4 Service Center Dispute Resolution. The following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement.

10.4.1 If the written notice given pursuant to Section 10.3 discloses that a TWTC dispute relates to billing, then the procedures set forth in this Section 10.4 shall be used and the dispute shall first be referred to the appropriate **AM-OH** Service Center for resolution. In order to resolve a billing dispute, disputing party shall furnish **AM-OH** written notice of (i) the date of the bill in question, (ii) CBA/ ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that TWTC disputes the billed amount. To be deemed a "dispute" under this Section 10.4, TWTC must provide evidence that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 8.4 of this Agreement and deposited all Unpaid Charges relating to

Resale Services and Network Elements into that escrow account. Failure to provide the information and evidence required by this Section 10.4.1 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute TWTC's irrevocable and full waiver of its right to dispute the subject charges.

- 10.4.2 The Parties shall attempt to resolve Disputed Amounts appearing on the other Party's current billing statements thirty (30) to sixty (60) calendar days from the Bill Due Date (provided the other Party furnishes all requisite information and evidence under Section 10.4.1 by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, the non-disputing Party will notify the disputing Party of the status of the dispute and the expected resolution date.
- 10.4.3 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days from the date notice of the Disputed Amounts was received (provided that TWTC furnishes all requisite information and evidence under Section 10.4.1), AM-OH will notify TWTC of the status of the dispute and the expected resolution date.
- 10.4.4 Any notice of Disputed Amounts given by AM-OH to TWTC pursuant to Section 10.3 shall furnish TWTC written notice of: (i) the date of the bill in question, (ii) the account number or other identification of the bill in question, (iii) any telephone number, circuit ID number or trunk number in question, (iv) any USOC (or other descriptive information) questioned, (v) the amount billed, (vi) the amount in question, and (vii) the reason that AM-OH disputes the billed amount. The Parties shall attempt to resolve Disputed Amounts appearing on current billing statement(s) thirty (30) to sixty (60) calendar days from the Bill Due Date (provided AM-OH furnishes all requisite information by the Bill Due Date) and Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days, TWTC will notify AM-OH of the status of the dispute and the expected resolution date.
- 10.4.5 If the Non-Paying Party is not satisfied by the resolution of the billing dispute under this Section 10.4, the Non-Paying Party may notify the Billing Party in writing that it wishes to invoke the Informal Resolution of Disputes afforded pursuant to Section 10.5 of this Agreement.

10.5 Informal Resolution of Disputes

10.5.1 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 10.3 or Section 10.4.5, each Party will appoint a knowledgeable, responsible representative with the authority to resolve the dispute, to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

10.6 Formal Dispute Resolution

10.6.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 10.5, then either Party may invoke the Formal Dispute Resolution procedures described in this Section 10.6. Formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 10.3, except that Formal Dispute Resolution may be invoked after ten (10) calendar days if mutually agreed to by the Parties or if the Parties mutually agree that they have reached an impasse or if the dispute affects the ability of a Party to provide uninterrupted service to its End User(s) or precludes the provisioning of service, functionality, or network element, except that if the Commission has adopted an expedited review process, the affected Party shall be entitled to immediately exercise its rights thereunder.

10.6.2 Claims Subject to Elective Arbitration. Claims will be subject to elective arbitration pursuant to Section 10.7 if, and only if, the claim is not settled through informal Dispute Resolution and both Parties agree to arbitration under Section 10.7. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.

10.6.3 Claims Not Subject to Arbitration. If the following claims are not resolved through informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

10.6.3.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement

10.6.3.2 Actions to compel compliance with the Dispute Resolution process.

10.6.3.3 All claims arising under federal or state statute(s), including antitrust claims.

## 10.7 **Arbitration**

10.7.1 Disputes subject to elective arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to the non-procedural rules of the appropriate Commission or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. An arbitration will be held in the state in which the dispute arose or in another location agreed to by the Parties if the dispute is regional in nature. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. The Parties shall work cooperatively to implement the arbitration award within the time parameters stated in the award. The Parties may submit the arbitrator's award to a Commission. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

## 11. **AUDITS – AM-OH**

11.1 Subject to the restrictions set forth in Section 20 and except as may be otherwise expressly provided in this Agreement, a Party (the "**Auditing Party**") may audit the other Party's (the "**Audited Party**") books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than

the date on which services were first supplied under this Agreement ("**service start date**") for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least five percent (5%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.

- 11.1.1 The scope of the audit shall be limited to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the service start date and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the service start date. Such audit shall begin no fewer than thirty (30) calendar days after Audited Party receives a written notice requesting an audit and shall be completed no later than thirty (30) calendar days after the start of such audit.
- 11.1.2 Such audit shall be conducted either by the Auditing Party's employee(s) or an independent auditor acceptable to both Parties; provided, however, if the Audited Party requests that an independent auditor be engaged and the Auditing Party agrees, the Audited Party shall pay one-quarter (1/4) of the independent auditor's fees and expenses. If an independent auditor is to be engaged, the Parties shall select an auditor by the thirtieth day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties.
- 11.1.3 Each audit shall be conducted on the premises of the Audited Party during the Audited Party's normal business hours. Audited Party shall cooperate fully in any such audit and shall provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party Proprietary Information that reveals the identity of End Users of Audited Party.

- 11.1.4 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.
- 11.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 8.1, for the number of calendar days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.
- 11.1.6 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.
- 11.1.7 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 11.1. Any additional audit shall be at the requesting Party's expense.

## **12. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

- 12.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, RESALE SERVICES, NETWORK ELEMENTS, FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

**13. LIMITATION OF LIABILITY**

- 13.1 Except as otherwise provided in Section 14 Indemnity, or in specific appendices, each Party shall be responsible only for service(s) and facility(ies) which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the service(s) and facility(ies) provided by the other Party, its agents, subcontractors, or others retained by such parties.
- 13.2 In the case of any Loss alleged or made by a Third Party arising under the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation under this Section shall be limited to, that portion (as mutually agreed to by the Parties) of the resulting expense caused by its own negligence or willful misconduct or that of its affiliates, agents, servants, contractors, or others acting in aid or concert with it.
- 13.3 In no event shall either Party have any liability whatsoever 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 anything said, omitted, or done hereunder (collectively, Consequential Damages), even if the other Party has been advised of the possibility of such damages; provided that the foregoing shall not limit a Party's obligation under this Agreement to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorney's fees) and Consequential Damages of such Third Party.
- 13.4 AM-OH shall not be liable for damages to an End User's premises resulting from the furnishing of Interconnection, Resale Services, Network Elements, functions, facilities, products or services, including the installation and removal of equipment and associated wiring, unless the damage is caused by AM-OH's gross negligence or willful misconduct. AM-OH does not guarantee or make any warranty with respect to unbundled elements when used in an explosive atmosphere.
- 13.5 Except for payments required pursuant to Section 15 Performance Measurements, including but not limited to any penalties, damages, service associated credits with the SBC-AIT merger or other penalties assessed by any state, and except for indemnity obligations under Section 14 Indemnity, each Party's liability to the other Party for any Loss relating to or arising out of any negligent act or omission in its performance under this Agreement, whether in contract, tort or otherwise, shall not exceed in total the amount AM-OH or TWTC has or would have properly charged to the other Party by such negligent or breaching Party for the service(s) or function(s) not performed or improperly performed. Notwithstanding the foregoing, in cases involving any Claim for a Loss associated with the installation, provision, termination, maintenance, repair or restoration of an individual Network Element or a Resale Service provided for a specific End User of the other Party, the negligent or breaching Party's liability shall be limited to the greater of: (i) the total amount properly charged to the other Party for the service or function not performed or



improperly performed, and (ii) the amount such negligent or breaching Party would have been liable to its End User if the comparable retail service was provided directly to its End User.

- 13.6 To the extent permitted by Applicable Law, a Party may, in its sole discretion, provide in its tariffs and contracts with its End Users or Third Parties that relate to any service, product or function provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End User or Third Party for: (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the applicable person for the service, product or function that gave rise to such Loss and (ii) any Consequential Damages (as defined in Section 13.3). To the extent a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability that such other Party included in its own tariffs at the time of such Loss.
- 13.7 AM-OH shall not be liable for damages to an End User's premises resulting from the furnishing of any Interconnection, Resale Services, Network Elements, functions, facilities, products or services, including, if applicable, the installation and removal of equipment and associated wiring, unless the damage is caused by AM-OH's gross negligence or willful misconduct. AM-OH does not guarantee or make any warranty with respect to unbundled elements when used in an explosive atmosphere.
- 13.8 TWTC hereby releases AM-OH from any and all liability for damages due to errors or omissions in TWTC's End User listing information as provided by TWTC to AM-OH under this Agreement, including any errors or omissions occurring in TWTC's End User listing information as it appears in the White Pages directory, including, but not limited to, Consequential Damages, except to the extent caused by AM-OH's own negligence or willful misconduct.
- 13.9 This Section 13 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of liability agreed to and the type of damages that are recoverable. Both Parties acknowledge that they negotiated alternate limitation of liability provisions but that such provisions would have altered the cost, and thus the price, of providing the Interconnection, Resale Services, Network Elements, functions, facilities, products and services available hereunder, and no different pricing reflecting different costs and different limits of liability was agreed to.
- 13.10 REMEDIES. Except as expressly provided herein, no remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under Applicable Law or otherwise.

#### 14. INDEMNITY

- 14.1 Except as otherwise provided herein or in specific appendices, and to the extent not prohibited by law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall defend and indemnify the other Party, its officers, directors, employees and permitted assignees (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("Fault") by such Indemnifying Party, its agents, its end user, contractors, or others retained by such parties, in connection with the indemnifying provision of services or functions under this Agreement; provided, however, that: (1) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (2) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course and scope of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (3) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.
- 14.2 Each Party, shall, to the maximum extent permitted by Applicable Law, provide in its tariffs and contracts with its End Users that relate to any Telecommunications Service or Network Element provided or contemplated under this Agreement that in no case shall either Party or any of its agents, contractors or others retained by such parties be liable to any End User for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable End User for the service(s) or function(s) that gave rise to such Loss, and (ii) any Consequential Damages (as defined in Section 13.3). In the event that a Party breaches its obligation under this Section, the breaching Party shall be liable to the non-breaching Party for any and all Losses resulting from such breach, including, without limitation, indemnification and/or reimbursement for Losses arising from claims from such breaching Party's End Users.
- 14.3 To the extent allowable by applicable law, TWTC agrees to indemnify, defend and hold harmless AM-OH from any Loss arising out of AM-OH's provision of 911 services or out of TWTC's End Users' use of the 911 service, whether suffered, made, instituted, or asserted by TWTC or its End Users, including for any personal injury or death of any person or persons, except for Loss which is the direct result of AM-OH's own negligence or willful misconduct.
- 14.4 Each Party shall be indemnified, defended and held harmless by the other Party against any Loss arising from a Party's disclosure of any End User-specific information associated with either the originating or terminating numbers used to provision unbundled elements provided hereunder or all other claims arising out of any act or omission of the End User in the course of using services or functions provided pursuant to this Agreement.

14.5 The Indemnifying Party agrees to defend any suit brought against the Indemnified Party for any Loss identified in this Section. The Indemnified Party agrees to notify the Indemnifying Party promptly in writing of any written claims, lawsuits or demands for which the Indemnifying Party may be responsible under this Agreement. The Indemnified Party shall cooperate in every reasonable way to facilitate defense or settlement. The Indemnifying Party shall have the right to control and conduct the defense and settlement of any action or claim subject to the consultation of the Indemnified Party. The Indemnifying Party shall not be responsible for any settlement unless the Indemnifying Party approved such settlement in advance and agrees to be bound by the settlement agreement.

14.6 Indemnification Procedures

14.6.1 Whenever a claim shall arise for indemnification under this Section 14, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

14.6.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.

14.6.3 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.

14.6.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.

14.6.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible

for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.

14.6.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.

14.6.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.

14.6.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.

14.6.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 20.

## 15. PERFORMANCE MEASURES

15.1 The Commission's order, decision or findings regarding Performance Measures and associated remedies will be applied for failure to meet specified performance standards. AM-OH will apply the Commission's order, decision or findings, which shall constitute the sole obligation of AM-OH to pay damages or financial penalties for failure to meet specified performance standards or measures set forth in the Commission's order.

**16. INTELLECTUAL PROPERTY**

- 16.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.
- 16.2 TWTC acknowledges that its right under this Agreement to Interconnect with AM-OH's network and to unbundle and/or combine AM-OH's Network Elements (including combining with TWTC's Network Elements) may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights to Third Parties. TWTC understands that it is responsible for obtaining any Intellectual Property rights associated with each network element purchased from AM-OH, and further agrees to provide AM-OH, prior to using any such network element, with either: (1) a copy of the applicable Intellectual Property rights (or letter from the licensor attesting as such); or (2) an affidavit signed by TWTC attesting to the acquisition of any known and necessary Intellectual Property rights.
- 16.3 To the extent not prohibited by contract with the vendor of the network element sought by TWTC, AM-OH agrees to provide a list of the names of the vendors of all known and necessary Intellectual Property licenses applicable to the subject network element(s) within seven days of a request for such a list by TWTC.
- 16.4 AM-OH agrees to use its best efforts to obtain for TWTC, under commercially reasonable terms, any necessary Intellectual Property rights to each unbundled network element necessary for TWTC to use such unbundled network element in the same manner as used by AM-OH. AM-OH shall have no obligation to attempt to obtain any Intellectual Property right(s) that would permit TWTC to use any unbundled network element in a different manner than used by AM-OH.
- 16.5 AM-OH hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning TWTC's (or any Third Party's) rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such Interconnection or unbundling and/or combining of network elements (including combining with TWTC's network elements) in AM-OH's network or TWTC's use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with unbundled network elements are vendor licenses and warranties and are a part of the Intellectual Property rights AM-OH agrees herein to use its best efforts to obtain. In the event such an agreement is not forthcoming for a network element ordered by TWTC, the Parties commit to negotiate in good faith in an attempt to provision alternative elements or services that shall be equivalent to the element for which TWTC is unable to obtain such license or agreement.
- 16.6 All costs associated with the extension of Intellectual Property rights to TWTC as stated hereinabove, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing

the unbundled network element to which the Intellectual Property rights relate and apportioned to all requesting carriers using that unbundled network element.

- 16.7 Each Party shall and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, account or otherwise) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third party for actual infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret, or any other intellectual property right now know or later developed to the extent that such claim or action arises from the actions of the respective Parties, or failure to act, as required pursuant to the Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply when an Indemnified Party or its End User modifies Interconnection, Resale Services, Network Elements, function, products, or services provided under this Agreement and no infringement would have occurred without such modification.

## **17. NOTICES**

- 17.1 Subject to Section 17.2, notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be
- 17.1.1 delivered personally;
  - 17.1.2 delivered by express overnight delivery service;
  - 17.1.3 mailed, via certified mail U.S. Postal Service, with postage prepaid, and a return receipt requested; or
  - 17.1.4 delivered by facsimile; provided that a paper copy is also sent by a method described in 17.1.1, 17.1.2, or 17.1.3.
  - 17.1.5 Notices will be deemed given as of the date of the actual receipt, except if delivered by facsimile, the notice will be deemed given on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone:

17.1.6 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	Time WarnerTelecom Of Ohio, L.P.	<u>AM-OH</u> CONTACT
NAME/TITLE	Tina Davis, VP & Deputy General Counsel  Cc: Pamela Sherwood Regulatory VP- Mid West Region Time Warner Telecom 4625 West 86 <sup>th</sup> Street Suite 500 Indianapolis, IN 46268 Fax: 317-713-8923	Contract Administration ATTN: Notices Manager
STREET ADDRESS	10475 Park Meadows Drive	311 S. Akard, 9 <sup>th</sup> Floor Four Bell Plaza
CITY, STATE, ZIP CODE	Littleton, CO 80124	Dallas, TX 75202-5398
FACSIMILE NUMBER	303-566-1010	214-464-2006

17.1.7 Either Party may unilaterally change its designated contact, address, telephone number and/or facsimile number for the receipt of notices by giving written notice to the other Party in compliance with this Section. Any notice to change the designated contact, address, telephone and/or facsimile number for the receipt of notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

**17.2 AM-OH**

17.2.1 **AM-OH** communicates official information to TWTC via its CLEC Online notification process. This process covers a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues.

**18. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS**

18.1 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that

mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party.

- 18.2 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

## 19. NO LICENSE

- 19.1 Except at otherwise expressly provided in this Agreement, no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

## 20. CONFIDENTIALITY

- 20.1 All information, including specifications, microfilm, photocopies, magnetic disks, magnetic tapes, audit information, models, system interfaces, forecasts, computer programs, software, documentation, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data shall be deemed "Confidential" or "Proprietary" (collectively "**Proprietary Information**") if:

20.1.1 Furnished or made available or otherwise disclosed by one Party (the "**Disclosing Party**") or its agent, employee, representative or Affiliate to the other Party (the "**Receiving Party**") or its agent, employee, representative or Affiliate dealing with End User-specific, facility-specific, or usage-specific information, other than End User information communicated for the purpose of publication or directory database inclusion, 911, call processing, billing or settlement or for such other purposes as mutually agreed upon;

20.1.2 In written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary"; or

20.1.3 Communicated orally and declared to the Receiving Party at the time of delivery to be "Confidential" or "Proprietary", and which shall be summarized in writing and marked "Confidential" or "Proprietary" and delivered to the Receiving Party within ten (10) calendar days following such disclosure; and

20.1.4 Any portion of any notes, analyses, data, compilations, studies, interpretations or other documents prepared by any Receiving Party to the



extent the same contain, reflect, are derived from, or are based upon, any of the information described in this Section 20, unless such information contained or reflected in such notes, analyses, etc. is so commingled with the Receiving Party's information that disclosure could not possibly disclose the underlying proprietary or confidential information (such portions of such notes, analyses, etc. referred to herein as "**Derivative Information**").

**20.2 Proprietary Information Shall be Held in Confidence**

**20.2.1 Each Receiving Party agrees that:**

- (a) all Proprietary Information communicated to it or any of its agents, employees, representatives and Affiliates in connection with this Agreement shall be held in confidence to the same extent as such Receiving Party holds its own confidential information of like importance; provided that such Receiving Party and its agents, employees, representatives and Affiliates shall not use less than a reasonable standard of care in maintaining the confidentiality of such information;
- (b) it will not, and it will not permit any of its agents, employees, representatives and Affiliates to disclose such Proprietary Information to any Third Party;
- (c) it will disclose Proprietary Information only to those of its agents, employees, representatives and Affiliates who have a need for it in connection with the use or provision of any services required to fulfill this Agreement; and

**20.2.2 A Receiving Party may disclose Proprietary Information of a Disclosing Party to the Receiving Party's agents, employees, representatives and Affiliates who need to know such information to perform their obligations under this Agreement; provided that before disclosing any Proprietary Information to any agent, employee, representative or Affiliate, the Receiving Party shall notify such agent, employee, representative or Affiliate of such Party's obligation to comply with this Agreement. Any Receiving Party so disclosing Proprietary Information shall be jointly and severally liable for any breach of this Agreement by any of its agents, employees, representatives and Affiliates and such Receiving Party agrees, at its sole expense, to use its reasonable efforts (including court proceedings) to restrain its agents, employees, representatives and Affiliates from any prohibited or unauthorized disclosure or use of the Proprietary Information. Each Receiving Party making such disclosure shall notify the Disclosing Party as soon as possible if it has knowledge of a breach of this Agreement in any material respect. A Disclosing Party shall not disclose Proprietary Information directly to an agent, employee, representative or Affiliate of the**

Receiving Party without the prior written authorization of the Receiving Party.

20.2.3 Proprietary Information shall not be reproduced by any Receiving Party in any form except to the extent (i) necessary to comply with the provisions of Section 20.5 and (ii) reasonably necessary to perform its obligations under this Agreement. All such reproductions shall bear the same copyright and proprietary rights notices as are contained in or on the original.

20.3 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information that:

20.3.1 Was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party; or

20.3.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or

20.3.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or

20.3.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or

20.3.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or

20.3.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or

20.3.7 Is required to be made public by the Receiving Party pursuant to Applicable Law or regulation, provided that such production or disclosure shall have been made in accordance with Section 20.5.

20.4 Proposed Disclosure of Proprietary Information to a Governmental Authority

20.4.1 If a Receiving Party desires to disclose or provide to a Commission, the FCC or any other governmental authority any Proprietary Information of the Disclosing Party, such Receiving Party shall, prior to and as a condition of such disclosure, (i) provide the Disclosing Party with written notice and the form of such proposed disclosure as soon as possible but in any event early enough to allow the Disclosing Party to protect its interests in the Proprietary

Information to be disclosed and (ii) attempt to obtain in accordance with the applicable procedures of the intended recipient of such Proprietary Information an appropriate order for protective relief or other reliable assurance that confidential treatment shall be accorded to such Proprietary Information.

20.4.2 If a Receiving Party is required by any Governmental Authority or by Applicable Law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible, and in no event later than five (5) calendar days after receipt of such requirement, and prior to such disclosure. Upon receipt of written notice of the requirement to disclose Proprietary Information, the Disclosing Party at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or waive the Receiving Party's compliance with this Section 20.4 with respect to all or part of such requirement.

20.4.3 The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to seek pursuant to this Section 20.4. In the absence of such relief, if the Receiving Party is legally compelled to disclose any Proprietary Information, then the Receiving Party shall exercise all commercially reasonable efforts to preserve the confidentiality of the Proprietary information, including cooperating with the Disclosing Party to obtain an appropriate order for protective relief or other reliable assurance that confidential treatment will be accorded the Proprietary Information.

20.5 Notwithstanding any of the foregoing, AM-OH shall be entitled to disclose Proprietary Information on a confidential basis to regulatory agencies upon request for information as to AM-OH's activities under the Act and AM-OH need not provide prior written notice of such disclosure to TWTC if AM-OH has obtained an appropriate order for protective relief or other reliable assurance that confidential treatment shall be accorded to such Proprietary Information.

20.6 Return of Proprietary Information

20.6.1 All Proprietary Information, other than Derivative Information, shall remain the property of the Disclosing Party, and all documents or other tangible media delivered to the Receiving Party that embody such Proprietary Information shall be, at the option of the Disclosing Party, either promptly returned to Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Proprietary Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.

- 20.6.2 At the request of the Disclosing Party, any Derivative Information shall be, at the option of the Receiving Party, either promptly returned to the Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Derivative Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.
- 20.6.3 The Receiving Party may at any time either return the Proprietary Information to the Disclosing Party or destroy such Proprietary Information. If the Receiving Party elects to destroy Proprietary Information, all copies of such information shall be destroyed and upon the written request of the Disclosing Party, the Receiving Party shall provide to the Disclosing Party written certification of such destruction. The destruction or return of Proprietary information shall not relieve any Receiving Party of its obligation to continue to treat such Proprietary Information in the manner required by this Agreement.
- 20.7 Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement and each Party's obligation to safeguard Proprietary Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.
- 20.8 Pursuant to Section 222(b) of the Act, both Parties agree to limit their use of Proprietary Information received from the other to the permitted purposes identified in the Act.
- 20.9 Each Party has the right to refuse to accept any Confidential Information under this Agreement, and nothing herein shall obligate either Party to disclose to the other Party any particular information.
- 20.10 The Parties agree that an impending or existing violation of any provision of this Section 20 would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and agree that Disclosing Party shall be entitled to obtain immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity, including both specific performance and monetary damages. In the event of any breach of this Section 20 for which legal or equitable relief is sought, all reasonable attorney's fees and other reasonable costs associated therewith shall be recoverable by the prevailing Party.

## **21. INTERVENING LAW**

- 21.1 This Agreement is entered into as a result of both private negotiation between the Parties and the incorporation of some of the results of arbitration by the Commission. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in

this Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, including but not limited to any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996)(e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (and on remand *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (and on remand, *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). In addition, the Parties acknowledge that on November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999), portions of which become effective thirty (30) days following publication of such Order in the Federal Register (February 17, 2000) and other portions of which become effective 120 days following publication of such Order in the Federal Register (May 17, 2000). The Parties further acknowledge that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-carrier Compensation for ISP-bound Traffic* (the "ISP Inter-carrier Compensation Order.") By executing this Agreement and carrying out the inter-carrier compensation rates, terms and conditions herein, **AM-OH** does not waive any of its rights, and expressly reserves all of its rights, under the ISP Inter-carrier Compensation Order, including but not limited to its right to exercise its option at any time in the future to invoke the Intervening Law or Change of Law provisions and to adopt on a date specified by **AM-OH** the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions except as specifically set forth in Section 1 of the "Amendment to Time Warner Contracts Superseding Certain Compensation, Interconnection and Trunking Provisions", executed by the Parties April 30, 2001 and re-executed by the Parties concurrently with the execution of this Agreement. The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decisions and

any remand thereof, including its right to seek legal review or a stay pending appeal of such decisions or its rights under this Intervening Law paragraph.

- 21.2 Pursuant to Paragraph 43 of the Merger Conditions approved by FCC Memorandum Opinion and Order released October 8, 1999 in CC Docket No. 98-141 "In re Applications of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act . . .," this Agreement is effective and available only in the State of Ohio because of differences and limitations in regulatory, legal, technical, network and OSS attributes in other states. The Parties acknowledge that pursuant to the Arbitrator's Order in: In the Matter of AT&T Communications, Inc.'s Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Ameritech Ohio. Cause No. 00-1188-TP-ARB that Ameritech's Multi-State language shall not be included in this Agreement and that this Agreement shall only include interconnection terms and conditions specific to Ohio and that the terms changed pursuant to the Arbitrator's Order ("Multi-State Terms") shall be considered to have been arbitrated and such Multi-State Terms will not be considered portable to another state pursuant to the SBC/Ameritech Merger Conditions.

## **22. GOVERNING LAW**

- 22.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Interconnection, Resale Services, Network Elements, functions, facilities, products and services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. The Parties submit to personal jurisdiction in Columbus, Ohio.

## **23. REGULATORY APPROVAL**

- 23.1 The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Commission for approval in accordance with Section 252 of the Act and may thereafter be filed with the FCC. The Parties believe in good faith and agree that the services to be provided under this Agreement are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification.
- 23.2 Unless otherwise agreed, if the designated Party fails to file this Agreement with the appropriate Commission within sixty (60) days of both Parties' signatures, then this signed Agreement is null and no longer valid. In such event, the designated Party may not file this signed Agreement for approval unless it obtains the express written permission of the other Party. If the other Party objects to the filing of this signed Agreement following the expiration of the sixty (60) days referenced above, then either Party may initiate negotiations for a successor Agreement under Section

251/252 of the Act. If negotiations are commenced by either Party, then the Parties will determine what rates, terms and conditions, if any, will apply until such time as a successor Agreement is reached. In any event, upon approval of the successor Agreement by the Commission, the rates, terms and conditions of such successor Agreement shall retroactively apply back to the expiration and/or effective termination date of the last Commission approved agreement between the Parties or the effective date of any interim Agreement entered into between the Parties, whichever is earlier.

## **24. CHANGES IN END USER LOCAL EXCHANGE SERVICE PROVIDER SELECTION**

### **24.1 AM-OH**

24.1.1 Each Party will abide by applicable federal and state laws and regulations in obtaining End User authorization prior to changing an End User's Local Exchange Carrier to itself and in assuming responsibility for any applicable charges as specified in the FCC's rules regarding Subscriber Carrier Selection Changes (47 CFR 64.1100 through 64.1170) and any applicable state regulation. Each Party shall deliver to the other Party a representation of authorization that applies to all orders submitted by a Party under this Agreement requiring a LEC change. A Party's representation of authorization shall be delivered to the other Party prior to the first order submitted to the other Party. Each Party shall retain on file all applicable letters and other documentation of authorization relating to its End User's selection of such Party as its LEC, which documentation shall be available for inspection by the other Party at its request during normal business hours and at no charge.

24.1.2 Only an End User can initiate a challenge to a change in its LEC. If an End User notifies one Party that the End User requests local exchange service, and the other Party is such End User's LEC, then the Party receiving such request shall be free to immediately access such End User's CPNI subject to the requirements of the applicable Appendix OSS restricting access to CPNI in order to immediately provide service to such End User.

24.1.3 When an End User changes or withdraws authorization from its LEC, each Party shall release End User-specific facilities belonging to the ILEC in accordance with the End User's direction or that of the End User's authorized agent. Further, when an End User abandons its premise (that is, its place of business or domicile), AM-OH is free to reclaim the unbundled Network

Element facilities for use by another End User and is free to issue service orders required to reclaim such facilities.

24.1.4 Neither Party shall be obligated by this Agreement to investigate any allegations of unauthorized changes in local exchange service (slamming) at the request of the other Party; provided, however, that each Party shall cooperate with any investigation of a complaint alleging an unauthorized

change in local exchange service at the request of the FCC or the Commission.

## **25. COMPLIANCE AND CERTIFICATION**

- 25.1 Each Party shall comply at its own expense with all Applicable Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.
- 25.2 Each Party warrants that it has obtained all necessary state certification required in each state covered by this Agreement prior to ordering any Interconnection, Resale Services, Network Elements, functions, facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.
- 25.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.
- 25.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.

## **26. LAW ENFORCEMENT**

- 26.1 AM-OH and TWTC shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

### 26.1.1 Intercept Devices:

- 26.1.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with an End User of the other Party, it shall refer such request to the Party that serves such End User, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's facilities, in which case that Party shall comply with any valid request.

### 26.1.2. Subpoenas:

- 26.1.2.1 If a Party receives a subpoena for information concerning an End User the Party knows to be an End User of the other Party, it shall refer the subpoena to the Requesting Party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the receiving



Party was the End User's service provider, in which case that Party will respond to any valid request.

**26.1.3 Emergencies:**

26.1.3.1 If a Party receives a request from a law enforcement agency for a temporary number change, temporary disconnect, or one-way denial of outbound calls by the receiving Party's switch for an End User of the other Party, that Receiving Party will comply with a valid emergency request. However, neither Party shall be held liable for any claims or Losses arising from compliance with such requests on behalf of the other Party's End User and the Party serving such End User agrees to indemnify and hold the other Party harmless against any and all such claims or Losses.

**27. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR**

27.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

27.2 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

**28. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY**

28.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any Third

Party beneficiary rights hereunder. This Agreement shall not provide any Person not a party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

## 29. ASSIGNMENT

- 29.1 TWTC may not assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third person without the prior written consent of AM-OH, which may not be unreasonably withheld; provided that TWTC may assign or transfer this Agreement to its Affiliate by providing ninety (90) calendar days' prior written notice to AM-OH of such assignment or transfer; provided, further, that such assignment is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain proper Commission certification and approvals) or the terms and conditions of this Agreement. Any attempted assignment or transfer that is not permitted is void ab initio.
- 29.2 As a condition of any assignment or transfer of this Agreement (or any rights hereunder) that is permitted under or consented to by AM-OH pursuant to this Section 29, TWTC agrees that any change, modification or other activity required for AM-OH to accommodate or recognize the successor to or assignee of TWTC shall be a TWTC Change and shall be subject to Section 4.8.
- 29.3 If AM-OH directly or indirectly (including without limitation through a transfer of control or by operation of law) sells, exchanges, swaps, assigns, or transfers ownership or control of all or any portion of Ameritech's telephone operations (any such transaction, a "Transfer") to any purchaser, operator or other transferee (a "Transferee"), AM-OH must provide TWTC with at least ninety (90) calendar days prior written notice. AM-OH shall not engage in any Transfer unless the Transferee thereof shall agree in writing (in form and substance reasonably satisfactory to TWTC), for the benefit of TWTC:
- (i) to be bound by all of AM-OH's obligations in this Agreement with respect to the portion of Ameritech's telephone operations so transferred (the "Transferred Operations"), including but not limited to, any operating agreements, OSS, performance standards, or ancillary or third party arrangements relating to the provision of services under this Agreement;
  - (ii) to ensure that the Transfer shall not have a material adverse impact on the operations or functionality of any of the Services provided under this Agreement to TWTC or its End Users to the extent that such impact would not have been permitted under this Agreement;
  - (iii) to waive any claim of rural exemption with respect to the Transferred Operations pursuant to Section 251 (f) of the Act or other applicable law; and

- (iv) to engage in good faith negotiations with TWTC prior to the expiration of any interconnection agreement governing the Transferred Operations.

**30. DELEGATION TO AFFILIATE**

- 30.1 Each Party may without the consent of the other Party fulfill its obligations under this Agreement by itself or may cause its Affiliate(s) to take some or all of such actions to fulfill such obligations. Upon such delegation, the Affiliate shall become a primary obligor hereunder with respect to the delegated matter, but such delegation shall not relieve the delegating Party of its obligations as co-obligor hereunder. Any Party which elects to perform its obligations through an Affiliate shall cause its Affiliate to take all action necessary for the performance of such Party's obligations hereunder. Each Party represents and warrants that if an obligation under this Agreement is to be performed by an Affiliate, such Party has the authority to cause such Affiliate to perform such obligation and such Affiliate will have the resources required to accomplish the delegated performance.

**31. SUBCONTRACTING**

- 31.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.
- 31.2 Each Party will be solely responsible for payments due that Party's subcontractors.
- 31.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.
- 31.4 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of Interconnection, Resale Services, Network Elements, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.
- 31.5 Any subcontractor that gains access to CPNI or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

**32. HAZARDOUS SUBSTANCES AND RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION**

- 32.1 Each Party will be solely responsible at its own expense for the proper handling, storage, transport, treatment, disposal and use of all Hazardous Substances by such

Party and its contractors and agents. "Hazardous Substances" includes those substances:

- 32.1.1 included within the definition of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste or pollutant or contaminant under any Applicable Law, and
- 32.1.2 listed by any governmental agency as a hazardous substance.
- 32.2 TWTC will in no event be liable to AM-OH for any costs whatsoever resulting from the presence or release of any environmental hazard, including Hazardous Substances, that TWTC did not introduce to the affected work location. AM-OH will indemnify, defend (at TWTC's request) and hold TWTC and each of its officers, directors and employees harmless from and against any Loss that arises out of or results from:
  - 32.2.1 Any environmental hazard that AM-OH, its contractors or agents introduce to the work locations, or
  - 32.2.2 The presence or release of any environmental hazard for which AM-OH is responsible under Applicable Law.
- 32.3 AM-OH will in no event be liable to TWTC for any costs whatsoever resulting from the presence or release of any environmental hazard that AM-OH did not introduce to the affected work location. TWTC will indemnify, defend (at AM-OH's request) and hold AM-OH and each of its officers, directors and employees harmless from and against any Loss that arises out of or results from:
  - 32.3.1 any environmental hazard that TWTC, its contractors or agents introduce to the work locations, or
  - 32.3.2 the presence or release of any environmental hazard for which TWTC is responsible under Applicable Law.

### 33. **FORCE MAJEURE**

- 33.1 No Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from acts or occurrences beyond the reasonable control of such Party, including, but not limited to acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any Governmental Authority, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, hurricanes, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, or omissions of transportation carriers (individually or collectively, a "Force Majeure Event") or any Delaying Event caused by the other Party or any other circumstances beyond the Party's reasonable control. If a Force Majeure Event shall occur, the Party affected shall

give prompt written notice to the other Party of such Force Majeure Event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use reasonable and diligent efforts to avoid or remove the cause of nonperformance and the Parties shall give like notice and proceed to perform with dispatch once the causes are removed or cease.

#### **34. TAXES**

- 34.1 Each Party purchasing Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either Party's corporate existence, status, or income or (b) any corporate franchise Taxes. Whenever possible, Taxes shall be billed as a separate item on the invoice.
- 34.2 With respect to any purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement if any Tax is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills the purchasing Party for such Tax, or (2) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.
- 34.3 With respect to any purchase hereunder of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement that are resold to a third party, if any Tax is imposed by Applicable Law on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to

collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.

- 34.4 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.
- 34.5 If the purchasing Party fails to impose and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.
- 34.6 If either Party is audited by a taxing authority or other Governmental Authority, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 34.7 To the extent a sale is claimed to be for resale and thus subject to tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If Applicable Law excludes or exempts a purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 34.8 With respect to any Tax or Tax controversy covered by this Section 34, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax that it is ultimately obligated to pay

or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.

- 34.9 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 34 shall be sent in accordance with Section 17 hereof.

### **35. NON-WAIVER**

- 35.1 Except as otherwise specified in this Agreement, no waiver of any provision of this Agreement and no consent to any default under this Agreement shall be effective unless the same is in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

### **36. NETWORK MAINTENANCE AND MANAGEMENT**

- 36.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (for example, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, escalation processes, etc.) to achieve this desired result.
- 36.2 Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End Users are able to establish connections with little or no delay encountered in the network. Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center.
- 36.3 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.

- 36.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.
- 36.5 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's End Users. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications for planned mass calling events.
- 36.6 Neither Party shall use any Interconnection, Resale Service, Network Element, function, facility, product or service provided under this Agreement or any other service related thereto or used in combination therewith in any manner that interferes with or impairs service over any facilities of **AM-OH**, its affiliated companies or other connecting telecommunications carriers, prevents any carrier from using its Telecommunications Service, impairs the quality or the privacy of Telecommunications Service to other carriers or to either Party's End Users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue or refuse service, but only for so long as the other Party is violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

### **37. SIGNALING**

- 37.1 The Parties will Interconnect their networks using SS7 signaling as defined in GR-000317-CORE and GR-000394-CORE, including ISDN User Part (ISUP) for trunk signaling and Transaction Capabilities Application Part (TCAP) for CCS-based features in the Interconnection of their networks. Each Party may establish CCS interconnections either directly and/or through a Third Party. If CCS interconnection is established through a Third Party, the rates, terms, and conditions of the Parties' respective tariffs will apply. If CCS interconnection is established directly between TWTC and **AM-OH**, the rates, terms, and conditions of Appendix SS7 will apply.
- 37.2 The Parties will cooperate in the exchange of TCAP messages to facilitate full interoperability of CCS-based features between their respective networks, including all CLASS features and functions, to the extent each Party offers such features and functions to its own End Users. All CCS signaling parameters deployed by both Parties will be provided including CPN. All privacy indicators will be honored.



**38. TRANSMISSION OF TRAFFIC TO THIRD PARTIES**

- 38.1 TWTC will not send to AM-OH local traffic that is destined for the network of a Third Party unless TWTC has the authority to exchange traffic with that Third Party.

**39. CUSTOMER INQUIRIES**

- 39.1 Except as otherwise required by Section 24.1, each Party will refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by that Party.
- 39.2 Except as otherwise required by Section 24.1, each Party will ensure that all of its representatives who receive inquiries regarding the other Party's services:
- 39.2.1 Provide the number described in Section 39.1 to callers who inquire about the other Party's services or products; and
- 39.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.
- 39.3 Except as otherwise provided in this Agreement, TWTC shall be the primary point of contact for TWTC's End Users with respect to the services TWTC provides such End Users.
- 39.4 TWTC acknowledges that AM-OH may, upon End User request, provide services directly to such End User similar to those offered to TWTC under this Agreement.

**40. EXPENSES**

- 40.1 Except as expressly set forth in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the matters covered by this Agreement.
- 40.2 AM-OH and TWTC shall each be responsible for one-half (1/2) of expenses payable to a Third Party for Commission fees or other charges (including regulatory fees and any costs of notice or publication, but not including attorney's fees) associated with the filing of this agreement.

**41. CONFLICT OF INTEREST**

- 41.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, paid a fee, or otherwise received or will receive any personal compensation or consideration from the other Party, or any of the other Party's employees or agents in connection with the negotiation of this Agreement or any associated documents.

**42. SURVIVAL**

- 42.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Section 5.5; Section 5.6, Section 7.3; Section 8.1; Section 8.4; Section 8.5; Section 8.6; Section 8.7; Section 10, Section 11; Section 13; Section 14; Section 15; Section 16.1; Section 18; Section 19; Section 20; Section 22; Section 25.4; Section 26.1.3; Section 32; Section 34 and Section 42.

**43. SCOPE OF AGREEMENT**

- 43.1 This Agreement is intended to describe and enable specific Interconnection and compensation arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act and obtain approval of such arrangement under Section 252 of the Act. Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement described in the Act that is not expressly provided herein.
- 43.2 Except as specifically contained herein or provided by the FCC or any Commission within its lawful jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

**44. AMENDMENTS AND MODIFICATIONS**

- 44.1 No provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the appropriate Commission.
- 44.2 Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

**45. IN-REGION MOST FAVORED NATIONS (MFN) BETWEEN SBC STATES**

- 45.1 Subject to the conditions and limitations specified in Paragraph 43 of the SBC/Ameritech Merger Conditions<sup>1</sup>, AM-OH shall make available to any requesting telecommunication carrier in the SBC/Ameritech Area within any SBC/Ameritech State any interconnection arrangement or UNE in the SBC/Ameritech Service Area within any other SBC/Ameritech state that (1) was negotiated with a telecommunications carrier, pursuant to 47 U.S.C. 252(a)(1), by AM-OH (that at all times during the interconnection agreement negotiations was an SBC-owned ILEC) and (2) has been made available under an agreement to which AM-OH is a party.
- 45.2 The Parties acknowledge and agree that it may require additional time to implement an interconnection arrangement or UNE ported from one SBC-owned ILEC state to another SBC-owned ILEC state pursuant to Paragraph 43 of the SBC/Ameritech Merger Conditions. Thus, when TWTC exercises its option to adopt an interconnection arrangement or UNE in accordance with Paragraph 43 of the SBC/Ameritech Merger Conditions, the Parties shall meet within thirty (30) calendar days of Commission approval of the interconnection agreement or amendment containing such interconnection arrangement and/or UNE to agree upon an implementation schedule for such interconnection arrangement and/or UNE.
- 45.3 Paragraph 43 of the SBC/Ameritech Merger Conditions as well as this Section 45 shall expire the earliest of October 8, 2002 or the termination date outlined in section 5 of the General Terms and Conditions of this Agreement, whichever is earlier.

**46. APPENDICES INCORPORATED BY REFERENCE**

46.1 ACCESS TO RIGHTS-OF-WAY -- SECTION 251(b)(4)

- 46.1.1 AM-OH shall provide to TWTC access to poles, conduits and rights of ways pursuant to the applicable Appendix Structure Access, which is attached hereto and incorporated herein by reference.

46.2 COLLOCATION -- SECTION 251(c)(6)

- 46.2.1 Collocation will be provided pursuant to the applicable Appendix Collocation, which is attached hereto and incorporated herein by reference.

46.3 DATABASE ACCESS

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<sup>1</sup> See the FCC's Memorandum Opinion and Order approving the SBC/Ameritech Merger Conditions, *In re Applications of Ameritech Corp., Transferor and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket 98-141, issued on October 8, 1999 ("FCC 99-279).

46.3.1 AM-OH shall provide to TWTC nondiscriminatory access to databases and associated signaling necessary for call routing and completion pursuant to the applicable Appendix UNE, which is attached hereto and incorporated herein by reference.

46.4 DIALING PARITY -- SECTION 251(b)(3)

46.4.1 The Parties shall provide Local Dialing Parity to each other as required under Section 251(b)(3) of the Act.

46.4.2 AM-OH shall provide IntraLATA Dialing Parity in accordance with Section 271(e)(2) of the Act.

46.5 INTERCONNECTION PURSUANT TO SECTION 251(c)(2)(A),(B),(C);  
47 CFR § 51.305(a)(1)

46.5.1 AM-OH shall provide to TWTC Interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic pursuant to the applicable Appendix ITR, which is attached hereto and incorporated herein by reference. Methods for Interconnection and Physical Architecture shall be as defined in the applicable Appendix NIM, which is attached hereto and incorporated herein by reference.

46.6 NUMBER PORTABILITY -- SECTIONS 251(b)(2)

46.6.1 The Parties shall provide to each other Permanent Number Portability (PNP) on a reciprocal basis as outlined in the applicable Appendix Number Portability, which is attached hereto and incorporated herein by reference.

46.7 OTHER SERVICES

46.7.1 911 and E911 Services

46.7.1.1 AM-OH will make nondiscriminatory access to 911 and E911 services available under the terms and conditions of the applicable Appendix 911, which is attached hereto and incorporated herein by reference.

46.7.1.2 The Parties agree that for any switch or application used to provide only data services, the following rules concerning 911 requirements apply:

46.7.1.2.1 Having represented and warranted to AM-OH that it will only transmit data services over a particular switch or application, TWTC agrees that it will not

provide voice service to its End Users by means of such switch or application; and

- 46.7.1.2.2 TWTC understands and agrees that, should it decide to provide voice service, it is required to meet all applicable Commission 911 service requirements; and
- 46.7.1.2.3 TWTC agrees to begin implementing access to 911 sufficiently in advance of the planned implementation of voice service to meet its 911 requirements. TWTC understands that the steps it must take to fulfill its 911 obligation include, but are not limited to, obtaining NXX(s) from NECA for the exchange area(s) TWTC plans to serve, submission of the appropriate form(s) to AM-OH, and, following AM-OH's processing of such form(s), obtaining approval from the appropriate PSAP(s) for the TWTC's 911 service architecture. TWTC further understands that PSAP approval may include testing 911 trunks with appropriate PSAP(s). TWTC understands that, based on AM-OH's prior experience with TWTC implementation of 911, these steps require a minimum of sixty (60) days.

#### 46.7.2 AIN

- 46.7.2.1 One or more of the ILECs making up AM-OH has deployed a set of AIN features and functionalities unique to the particular ILEC(s). As such, the AIN network architecture, methods of access and manner of provisioning are specific to that ILEC or those ILECs. Accordingly, any request for AIN access pursuant to this Agreement must be reviewed for technical feasibility, with all rates, terms and conditions related to such request to be determined on an individual case basis and to be negotiated between the Parties. Upon request by TWTC, and where technically feasible, AM-OH will provide TWTC with access to AM-OH's Advanced Intelligent Network (AIN) platform, AIN Service Creation Environment (SCE) and AIN Service Management System (SMS) based upon ILEC-specific rates, terms, conditions and means of access to be negotiated by the Parties pursuant to Section 252 of the Act, and incorporated into this Agreement by Appendix or amendment, as applicable, subject to approval by the appropriate state Commission.

46.7.3 Directory Assistance (DA)

- 46.7.3.1 AM-OH will provide nondiscriminatory access to Directory Assistance services under the terms and conditions identified in the applicable Appendix DA, which is attached hereto and incorporated herein by reference.

46.7.4 Hosting

- 46.7.4.1 At TWTC's request, AM-OH shall perform hosting responsibilities for the provision of billable message data and/or access usage data received from TWTC for distribution to the appropriate billing and/or processing location or for delivery to TWTC of such data via AM-OH's internal network or the nationwide CMDS network pursuant to the applicable Appendix HOST, which is attached hereto and incorporated herein by reference.

46.7.5 Operator Services (OS)

- 46.7.5.1 AM-OH shall provide nondiscriminatory access to Operator Services under the terms and conditions identified in the applicable Appendix OS, which is attached hereto and incorporated herein by reference.

46.7.6 Signaling System 7 Interconnection

- 46.7.6.1 At TWTC's request, AM-OH shall perform SS7 interconnection services for TWTC pursuant to the applicable Appendix SS7, which is attached hereto and incorporated herein by reference.

46.7.7 Publishing and Directory

- 46.7.7.1 AM-OH will make nondiscriminatory access to Publishing and Directory service available under the terms and conditions of the applicable Appendix White Pages, which are attached hereto and incorporated herein by reference.

46.7.8 RESALE--SECTIONS 251(b)(1)

- 46.7.8.1 AM-OH shall provide to TWTC Telecommunications Services for resale at wholesale rates pursuant to the applicable Appendix Resale, which is attached hereto and incorporated herein by reference.

46.7.9 TRANSMISSION AND ROUTING OF SWITCHED ACCESS TRAFFIC PURSUANT TO 251(c)(2)

46.7.9.1 AM-OH shall provide to TWTC certain trunk groups (Meet Point Trunks) under certain parameters pursuant to the applicable Appendix ITR, which is attached hereto and incorporated herein by reference.

46.7.10 TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE TRAFFIC PURSUANT TO SECTION 251(c)(2)(D); 252(d)(1) and (2); 47 CFR § 51.305(a)(5).

46.7.10.1 The applicable Appendix Compensation, which is attached hereto and incorporated herein by reference, prescribe traffic routing parameters for Local Interconnection Trunk Group(s) the Parties shall establish over the Interconnections specified in the applicable Appendix ITR, which is attached hereto and incorporated herein by reference.

46.7.11 UNBUNDLED NETWORK ELEMENTS -- SECTIONS 251(c)(3)

46.7.11.1 Pursuant to the applicable Appendix UNE, which is attached hereto and incorporated herein by reference, AM-OH will provide TWTC access to Unbundled Network elements for the provision of Telecommunications Service as required by Sections 251 and 252 of the Act and in the Appendices hereto. TWTC agrees to provide access to its Network Elements to AM-OH under the same terms, conditions and prices contained herein and in the applicable Appendices hereto.

47. **AUTHORITY**

47.1 AM-OH represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation. AM-OH represents and warrants that SBC Telecommunications, Inc. has full power and authority to execute and deliver this Agreement as agent for AM-OH. AM-OH represents and warrants that it has full power and authority to perform its obligations hereunder.

47.2 TWTC represents and warrants that it is a legal entity duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. TWTC represents and warrants that it has been or will be certified as a LEC by the Commission(s) prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such Service.

- 47.3 Each Person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

**48. COUNTERPARTS**

- 48.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

**49. ENTIRE AGREEMENT**

- 49.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written.



**Signatures**

**Time Warner Telecom of Ohio, L.P.**

**by Time Warner Telecom General  
Partnership, its general partner**

**by Time Warner Telecom Holdings, Inc.,  
its general partner**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_  
(Print or Type)

Date: \_\_\_\_\_

AECN/OCN# 7178/7436  
(Facility Based – if applicable)

**Ohio Bell Telephone Company Incorporated  
by SBC Telecommunications, Inc., its  
authorized agent**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: President - Industry Markets

Date: \_\_\_\_\_

## **APPENDIX 800**

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**APPENDIX 800**  
**(Access To The Toll Free Calling Database)**

**1. INTRODUCTION**

- 1.1 This Appendix sets forth the terms and conditions for Access to the Toll Free Calling Database provided by Ameritech-Ohio (AM-OH) and TWTC.
- 1.2 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Ohio Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.3 As used herein, AM-OH means the applicable above listed ILEC doing business in Ohio.
- 1.4 As used herein, SBC-AMERITECH means the applicable above listed ILECs doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.

**2. DESCRIPTION**

- 2.1 AM-OH's 800 database, an American National Standards Institute (ANSI) Signaling System 7 (SS7) call-related database system, receives updates processed from the national System Management System (SMS) database. Customer records in the SMS are created or modified by entities known as Responsible Organizations (Resp Org) who obtain access to the SMS via the System Management System/800 database, Tariff FCC No. 1. 800 Service Providers must either become their own Resp Org or use the services of an established Resp Org. The services of a Resp Org include creating and updating 800 records in the SMS to download to the 800 database(s). AM-OH does not, either through a tariff or contract, provide Resp Org service.
- 2.2 After the 800 customer record is created in the SMS, the SMS downloads the records to the appropriate databases, depending on the area of service chosen by the 800 subscriber. An 800 customer record is created in the SMS for each 800 number to be activated. The SMS initiates all routing changes to update information on a nationwide basis.
- 2.3 Access to the Toll Free Calling Database allows TWTC to access AM-OH's 800 database for the purpose of switch query and database response. Access to the Toll Free Calling Database supports the processing of toll free calls (e.g., 800 and 888) where identification of the appropriate carrier (800 Service Provider) to transport the call is dependent upon the full ten digits of the toll free number (e.g., 1+800+NXX+XXXX). Access to the Toll Free Calling Database includes all 800-

type dialing plans (i.e., 800, 888, and other codes as may be designated in the future).

- 2.4 Access to the Toll Free Calling Database provides the carrier identification function required to determine the appropriate routing of an 800 number based on the geographic origination of the call, from a specific or any combination of NPA/NXX, NPA or LATA call origination detail.
- 2.5 There are three optional features available with 800 service:
  - 2.5.1 Designated 10-Digit Translation;
  - 2.5.2 Call Validation; and
  - 2.5.3 Call Handling and Destination.
  - 2.5.4 The Designated 10-Digit Translation feature converts the 800 number into a designated 10-digit number. If the 800 Service Provider provides the designated 10-digit number associated with the 800 number and request delivery of the designated 10-digit number in place of the 800 number, AM-OH will deliver the designated 10-digit number.
  - 2.5.5 The Call Handling and Destination feature allows the customer to create routing schemes utilizing:
    - 2.5.5.1 Time of Day
    - 2.5.5.2 Day of Week
    - 2.5.5.3 Day of Year
    - 2.5.5.4 Allocation of Traffic by Percentage
    - 2.5.5.5 NPA-NXX-XXXX

### **3. GENERAL TERMS AND CONDITIONS**

- 3.1 Access to the Toll Free Calling Database provided under these terms and conditions is only available for use in the provision of telephone exchange and Exchange Access Telecommunication Services as specified in the Telecommunications Act of 1996 and any effective rules and regulations of the Federal Communications Commission and the State regulatory Commission.
- 3.2 Access to the Toll Free Calling Database is offered separate and apart from other unbundled network elements necessary for operation of the network routing function addressed in these terms and conditions, e.g., end office 800 (SSP) functionality and (CCS/SS7) signaling. This Appendix is separate from the prices,

terms, conditions and billing for such related elements, and in no way shall this Appendix be construed to circumvent the prices, terms, conditions or billing as specified for such related elements.

- 3.3 TWTC shall address its queries to AM-OH's database to the alias point code of the STP pair identified by AM-OH. TWTC's queries shall use subsystem number 0 in the calling party address field and a translations type of 254 with a routing indicator set to route on global title. TWTC acknowledges that such subsystem number and translation type values are necessary for AM-OH to properly process queries to its 800 database.
- 3.4 Each Party warrants to the other that it shall send queries and SS7 messages conforming to the ANSI approved standards for SS7 protocol and pursuant to the Specifications and Standards documents attached and incorporated herein in Exhibit I. Both Parties acknowledge that transmission in said protocol is necessary for each Party to provision Access to the Toll Free Calling Database (or the equivalent thereof). Each Party reserves the right to modify its network pursuant to other specifications and standards, which may include Telcordia's specifications, defining specific service applications, message types, and formats, that may become necessary to meet the prevailing demands within the U.S. telecommunications industry. All such changes shall be announced in accordance with the then prevailing industry standard procedures. Each Party shall work cooperatively to coordinate any necessary changes.
- 3.5 TWTC acknowledges and agrees that CCS/SS7 network overload due to extraordinary volumes of queries and/or other SS7 network messages can and will have a detrimental effect on the performance of AM-OH's CCS/SS7 network and its 800 database. TWTC further agrees that AM-OH, at its sole discretion, may employ certain automatic and/or manual overload controls within AM-OH's CCS/SS7 network to guard against these detrimental effects. AM-OH shall report to TWTC any instances where overload controls are invoked due to TWTC's CCS/SS7 network. TWTC shall take immediate corrective actions as are necessary to cure the conditions causing the overload situation.
- 3.6 During periods of 800 database system congestion, AM-OH shall utilize an automatic code gapping procedure to control congestion that may affect the service of all customers of AM-OH's 800 database. The automatic code gapping procedure used by AM-OH shall notify TWTC's switch of the gap length (how long TWTC's switch should wait before sending another query) and the gap duration (how long the switch should continue to perform gapping). For example, during an overload condition, the automatic code gapping procedures shall tell AM-OH's 800 database when to begin to drop one out of three queries received. This code gapping procedure shall be applied uniformly to all users of AM-OH's 800 database. AM-OH reserves the right to manually invoke the automatic code gapping procedure to control congestion.

- 3.7 Prior to AM-OH initiating service under this Appendix, TWTC shall provide an initial forecast of busy hour query volumes. TWTC shall update its busy hour forecast for each upcoming calendar year (January - December) by October 1 of the preceding year and also whenever TWTC anticipates a change to existing forecasts. TWTC shall provide such updates each year for as long as this Appendix is in effect; provided, the obligation to provide updates shall not extend for longer than three years, assuming this Appendix in effect for that long or longer. If prior to the establishment of a mutually agreeable service effective date, in writing, AM-OH, at its discretion, determines that it lacks adequate processing capability to provide Access to the Toll Free Calling Database to TWTC, AM-OH shall notify TWTC of AM-OH's intent not to provide the services under this Appendix and this Appendix will be void and have no further effect.
- 3.8 TWTC shall from time to time at AM-OH's request, provide additional forecasted information as deemed necessary by AM-OH for network planning in connection with this offering.
- 3.9 AM-OH shall test the Access to the Toll Free Calling Database in conjunction with CCS/SS7 Interconnection Service (e.g., Appendix SS7) as outlined in Telcordia Technical References TR-NWT-000533, TR-NWT-000954, TR-TSV-000905, TP76638, GR-954-CORE, GR-905-CORE and Pacific Bell PUB L-780023-PB/NB and SBC-AMERITECH AM-TR-OAT-000069.
- 3.10 TWTC shall only use Access to the Toll Free Calling Database to determine the routing requirements for originating 800 calls. Neither TWTC nor carrier customers of TWTC, if TWTC is acting on behalf of other carriers, shall use the database information to copy, store, maintain or create any table or database of any kind or for any purpose. If TWTC acts on behalf of other carriers to access AM-OH's Toll Free Calling Database, TWTC shall prohibit such carriers from copying, storing, maintaining, or creating any table or database of any kind from any response provided by AM-OH after a query to AM-OH's Toll Free Calling Database. TWTC shall only use this network element in connection with the provision of telephone exchange and Exchange Access services.
- 3.11 TWTC shall ensure that it has sufficient link capacity and related facilities to handle its signaling and toll free traffic without adversely affecting other network subscribers.
- 3.12 AM-OH shall provide Access to the Toll Free Calling Database as set forth in this Appendix only as such elements are used for TWTC's activities on behalf of its local service customers where AM-OH is the incumbent local exchange carrier. TWTC agrees that any other use of AM-OH's Toll Free Calling Database for the provision of 800 database service by TWTC will be pursuant to the terms, conditions, rates, and charges of AM-OH's effective tariffs, as revised, for 800 database services.

3.13 Ordering and Billing Inquiries

3.13.1 Ordering and billing inquiries for the elements described herein shall be directed to:

3.13.1.1 For AM-OH - the Local Service Center (LSC).

3.13.1.2 For AM-OH - the AIIS Service Center in Milwaukee, Wisconsin.

4. **RATE REGULATIONS**

4.1 TWTC shall pay a Local Service Order Request Charge for each TWTC request for service order activity to establish Access to the Toll Free Calling Database in the AM-OH region.

4.2 The prices at which AM-OH agrees to provide TWTC with Access to the Toll Free Calling Database are contained in the applicable Appendix PRICING and/or the applicable Commissioned ordered tariff where stated.

4.3 TWTC shall pay a nonrecurring charge when a TWTC establishes or changes a signaling point code. The rates and charges for Signaling Point Code(s) are described in the Appendix SS7. This charge also applies to point code information provided by TWTC's allowing other telecommunications providers to use TWTC's SS7 signaling network.

4.4 Rate Elements

There are four rate elements associated with Access to the Toll Free Calling Database:

4.4.1 Basic Toll Free Access Query Rate Element

4.4.2 Designated 10-Digit Translation Rate Element (referred to as POTS Translations in AM-OH)

4.4.3 Call Validation Rate Element

4.4.4 Call Handling and Destination Rate Element (referred to as Six-Digit Master Number List Turnaround Rate Element in 800 Database Vertical Feature in AM-OH).

4.5 TWTC shall pay the Basic Toll Free Access query rate for each query received and processed by AM-OH's database. When applicable, the charge for the additional features (Designated 10-Digit Translation, Call Validation, and Call Handling and Destination) are per query and in addition to the Basic Toll Free Access query charge; and shall also be paid by TWTC.



**5. MONTHLY BILLING**

- 5.1 For information regarding billing, non-payment, disconnects, and dispute resolution, see the General Terms and Conditions of this Agreement.

**6. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS**

- 6.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

**APPENDIX 800  
EXHIBIT I**

**1. SPECIFICATIONS AND STANDARDS**

<b>1.1</b>	<b><u>Description of Subject Area And Issuing Organization</u></b>	<b><u>Document Number</u></b>
1.1.1	Telcordia, SS7 Specifications	TR-NWT-000246
1.1.1.1		TR-NWT-000271
1.1.1.2		TR-NWT-000533
1.1.2	Telcordia, CCS Network Interface Specifications	TR-TSV-000905
1.1.2.1		TP 76638
1.1.2.2		TR-NWT-00095

## **APPENDIX PHYSICAL COLLOCATION**



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## APPENDIX PHYSICAL COLLOCATION

### 1. INTRODUCTION

- 1.1 This Appendix sets forth terms and conditions for Physical Collocation provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and TWTC.

### 2. DEFINITIONS

- 2.1 **SBC Communications Inc. (SBC)** means the holding company which owns, directly or indirectly, the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 2.2 **THIS SECTION INTENTIONALLY LEFT BLANK.**
- 2.3 **THIS SECTION INTENTIONALLY LEFT BLANK.**
- 2.4 AM-OH - As used herein, AM-OH means the applicable above listed ILEC doing business in Ohio.
- 2.5 **THIS SECTION INTENTIONALLY LEFT BLANK.**
- 2.6 **THIS SECTION INTENTIONALLY LEFT BLANK.**
- 2.7 **THIS SECTION INTENTIONALLY LEFT BLANK.**
- 2.8 **THIS SECTION INTENTIONALLY LEFT BLANK.**
- 2.9 **"Active Central Office Space"** denotes the existing, central office switch room space, which can be designated for physical collocation, with sufficient infrastructure systems. Also denotes central office space that may contain obsolete and unused equipment.
- 2.10 **"Adjacent Structure"** is a Collocator provided structure at AM-OH's Premises adjacent to an Eligible Structure. This arrangement is only permitted when space is legitimately exhausted inside the Eligible Structure and to the extent technically feasible.
- 2.11 **"Application Fee"** means the charge assessed by AM-OH to process the

- Collocator's application for physical collocation requests.
- 2.12 **"Approved Vendor"** is a vendor who is qualified by AM-OH for installation, and/or removal of central office equipment, which is administered by SBC Procurement on a state by state basis.
- 2.13 **"Augment"** is a request from the Collocator to add equipment, cable, and/or Collocation services to or to remove cable and/or Collocation services from an existing Physical Collocation arrangement.
- 2.14 **"Caged Physical Collocation"** is a cage or similar structure (not including a top) enclosing Collocator's Physical Collocation Space in which a Collocator may install its telecommunications equipment.
- 2.15 **"Cageless Physical Collocation"** is a Collocation arrangement, provided in single bay increments, and does not require the construction of a cage or similar structure.
- 2.16 **"Collocation Interconnection Power Panel (CIPP)"** is a DC Power panel for Power termination. Two DC Power panels are available: (1) A DC power panel designed to provide either 20, 40 or 50 (Maximum) AMPS (redundant) of DC voltage, (2) A DC Power Panel designed to provide either 100 or 200 (Maximum) AMPS (redundant) of DC voltage; See also 9.6.5.
- 2.17 **"Collocator"** is any individual, partnership, association, joint-stock company, trust corporation, or governmental entity or any other entity who is collocated in AM-OH location, for purposes of Interconnection with AM-OH or access to Unbundled Network Elements (UNEs).
- 2.18 **"Delivery Date"** is the date, which AM-OH provides the requested collocation space to the Collocator in accordance with the Delivery Intervals set forth in Section 12 of this Agreement.
- 2.19 **"Eligible Equipment"** is the equipment eligible for collocation as defined in Section 6 of this Appendix.
- 2.20 **"Eligible Structure"** is (1) an AM-OH central office, serving wire center or tandem office, or (2) a building or similar structure owned or leased by AM-OH that houses its network facilities, or (3) a structure that houses AM-OH transmission facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures.
- 2.21 **THIS SECTION INTENTIONALLY LEFT BLANK.**
- 2.22 **"Entrance Fiber Facility"** is an arrangement where a Collocator-provided single mode fire retardant dielectric fiber optic cable extends from the AM-OH designated manhole into the AM-OH Eligible Structure designated splice point. It is used as a



transmission medium to the designated splice point. Collocator shall be permitted no more than two (2) entrance routes into the **AM-OH** Eligible Structure, if available.

- 2.23 **"Equipment"** means hardware that must use power, have electronics, and provide a Telecommunications Service. The equipment must be a complete piece, unit, or item of such equipment, not a piece-part or sub-component (such as a line card) of a complete unit of equipment. The Collocator may not collocate its equipment sub-components or piece-parts.
- 2.24 **"Individual Case Basis (ICB)"** is a pricing method used for services that are not tariffed or are not standard offerings or configurations.
- 2.25 **"Infrastructure Systems"** include, but are not limited to, structural components, such as floors capable of supporting equipment loads, frames, heating, ventilating and air conditioning ("HVAC") systems, electrical systems (AC power), DC Power, power distribution via frames or bays, high efficiency filtration, humidity controls, remote alarms, compartmentation, and smoke purge.
- 2.26 **"Interconnector's Collocation Services Handbook"** or like document is a publication provided to the Collocators, which provides information on how to order collocation arrangements and the processes and requirements for collocation in **AM-OH**, which is located on the SBC CLEC ONLINE Web-Site (<https://clec.sbc.com/>), as amended from time to time.
- 2.27 **"Non Standard Collocation Request (NSCR)"** in **AM-OH**, is a pricing method used for services that are not tariffed or are not standard offerings or configurations.
- 2.28 **"Other Central Office Space"** denotes the space within the central office, which can be designated for physical collocation where infrastructure systems do not currently exist and must be constructed.
- 2.29 **"Physical Collocation"** is as defined in Section 4 of this Appendix.
- 2.30 **"Physical Collocation Space"** is the space provided for the Collocator's physical collocation arrangement located within an **AM-OH** Eligible Structure.
- 2.31 **"Point of Termination (POT)"** denotes the point of demarcation, within an Eligible Structure at which the **AM-OH** responsibility for the provisioning of service ends.
- 2.32 **"Premises"** means **AM-OH's** Eligible Structures and all land owned, leased or otherwise controlled by **AM-OH** that is adjacent to these Eligible Structures.
- 2.33 **"Project Management Fee"** reflects **AM-OH's** labor costs to manage the provisioning of the individual Collocator's space requirements for a particular

Physical Collocation Space request. This fee is applicable upon the submission of an application.

- 2.34 **"Shared Physical Collocation Cage"** is a caged Physical Collocation Space that is shared by two or more Collocators within the **AM-OH**'s Eligible Structure.
- 2.35 **"Technically Feasible"** - A collocation arrangement is technically feasible if, in accordance with either national standards or industry practice, there is no significant technical impediment to its establishment. Deployment by any incumbent LEC of a collocation arrangement gives rise to a rebuttable presumption in favor of a Collocator seeking collocation in **AM-OH**'s Eligible Structures that such an arrangement is technically feasible.
- 2.36 **"Unbundled Network Element (UNE)"** is As Defined in the Act.
- 2.37 **"Unused Space"** is space within **AM-OH** Premises which is available for collocation (subject to technical feasibility, state and local safety and engineering requirements, third party property rights, and other requirements set forth in this Agreement) unless it is (a) physically occupied by non-obsolete and/or used equipment; (b) assigned to another collocator; (c) used to provide physical access to occupied space; (d) used to enable technicians to work on equipment located within occupied space; (e) properly reserved for future use, either by **AM-OH** or by another carrier or affiliate; or (f) essential for the administration and proper functioning of **AM-OH**'s Premises.

### 3. PURPOSE AND SCOPE OF APPENDIX

- 3.1 The purpose of this Appendix is to set forth the terms and conditions, including pricing, in which **AM-OH** will provide Physical Collocation to Collocator.
- 3.2 Preparation Prior to Regulatory Approval
  - 3.2.1 Upon the written request of Collocator, **AM-OH** shall consider an application for collocation space submitted prior to receiving the approval. Upon such an election, this Appendix shall become effective but only insofar as to be applicable to the consideration of an application for collocation space. In the event that the Appendix does not become fully effective as contemplated by this Section, Collocator shall not be entitled to any refund or return of any such payments beyond any portion of the charges paid but not attributable to costs incurred by **AM-OH**. To the extent that **AM-OH** has incurred preparation costs not included within any payment made by Collocator, Collocator shall pay those costs within thirty (30) calendar days of notice by **AM-OH**.

3.2.2 Collocator is responsible for obtaining an approved Interconnection Agreement (ICA) and meeting the state certification requirements. The following shall apply:

3.2.2.1 If the Commission has not approved the ICA prior to completion of the build-out, AM-OH will not process service orders for interconnection or access to UNEs. However, the requested space will be turned over to the Collocator if the final non-recurring costs have been received. Monthly recurring charges will commence when space is turned over.

3.2.2.2 If the Collocator has not received their state certification prior to completion of the build-out, AM-OH will not process service orders for interconnection or access to UNEs. However, the requested space will be turned over to the Collocator if the final non-recurring costs have been received. Monthly recurring charges will commence when space is turned over.

3.2.2.3 If the Collocator has not received their state certification or the Commission has not approved the ICA by day one hundred eighty (180) calendar days after space turnover, then the Collocator forfeits all charges collected to date by AM-OH and the collocation space. The Collocator will have thirty (30) calendar days to remove any equipment and bays placed by the Collocator in the premise.

3.2.2.4 The Parties agree that billing for all costs incurred in the establishment of Physical Collocation for the Collocator will be provided to the Collocator within one hundred eighty (180) calendar days of the billing cycle. Billing will be subject to true up if interim rates are pending Commission or FCC approval.

#### 4. GENERAL OFFERINGS

4.1 Except where Physical Collocation is not practical for technical reasons or because of space limitations, AM-OH will provide Physical Collocation to Collocator for the purpose of interconnecting to AM-OH network for the transmission and routing of telephone exchange service or exchange access, or both pursuant to 47 U.S.C. §251 (c)(2), or for obtaining access to AM-OH Unbundled Network Elements ("UNEs") for the provision of a telecommunications service pursuant to 47 U.S.C. §251 (c)(3) of the Act. Physical Collocation will be provided on a "first come, first served" basis, in accordance with the requirements of the Act (including 47 U.S.C. 251 (c)(6) of the Act).

4.1.1 **Caged Physical Collocation**

4.1.1.1 In the **AM-OH**'s, Collocator may apply for Caged Physical Collocation in initial and subsequent increments of fifty (50) square feet. Space totaling less than fifty (50) square feet will be provided where technically feasible. The caged serving arrangement is an area designated by **AM-OH** within an Eligible Structure to be used by a Collocator for the sole purpose of installing, maintaining and operating Collocator provided equipment. **AM-OH** will provide floor space, floor space conditioning, cage common systems and safety and security on a per square foot basis. **AM-OH** will prorate the charge for site conditioning and preparation undertaken to construct or condition the Physical Collocation Space so the first Collocator in an **AM-OH** Eligible Structure will not be responsible for the entire cost of site preparation.

4.1.1.2 The Collocator must use a contractor/vendor to perform the necessary preparation activities within the Collocator's Physical Collocation Space including the construction of the cage and any physical security arrangements, if applicable; provided, however, any such contractor/vendor shall be subject to the prior written approval of **AM-OH**, such Physical Collocation Space preparation activities shall be in accordance with all approved plans and specifications and coordinated with **AM-OH**, and the Collocator shall be solely responsible for all charges of any such contractor/vendor. The Collocator must provide a cage enclosure (not including a top), cable rack and support structure inside the cage, lighting, receptacles, cage grounding, cage sign and door key set.

4.1.2 **Shared Caged Collocation**

4.1.2.1 Upon request, **AM-OH** shall provide Collocator Shared Caged Collocation in any Unused Space.

4.1.2.1.1 A Collocator may request that **AM-OH** provide Shared Caged Collocation via (i) a new request for Physical Collocation whereby the Collocator requesting such space allocates the requested space among the number of Collocators initially requesting such space ("New Shared Collocation") or (ii) a request by Collocator to enter into a sublease arrangement with another Resident Collocators(s) in Collocator's existing Physical Collocation ("Subleased Shared Collocation"). In each Shared

Caged Collocation arrangement, AM-OH's single point of contact (SPOC) with respect to such arrangement shall be referred to as the "**Primary Collocator**". For New Shared Collocation, the Primary Collocator shall be the single Collocator that submits the request for New Shared Collocation on behalf of the other Resident Collocators (as defined below). For Subleased Shared Collocation, the Primary Collocator shall be the Collocator that originally requested and occupied such space and is the sublessor in such arrangement. For purposes of this section, each Collocator (including Resident Collocator(s) and the Primary Collocator) to a Shared Caged Collocation arrangement is sometimes referred to as a "**Resident Collocator**". An order for Shared Caged Collocation shall include blanket letters of authorization signed by the Primary Collocator that authorize each other Resident Collocator to utilize the Connecting Facility Assignments associated with the Primary Collocator and signed by each Resident Collocator that authorize the Primary Collocator to request and place firm orders for Shared Caged Collocation and facilities on behalf of such Resident Collocators.

- 4.1.2.1.2 New Shared Collocation is available in minimum increments of fifty (50) square feet (per caged space dimensions, not per Collocator). Space totaling less than fifty (50) square feet will be provided where technically feasible. Resident Collocators shall request New Shared Collocation from AM-OH in a single application. The Primary Collocator shall submit a request and any subsequent order for New Shared Collocation. The Collocator must use a contractor/vendor to perform the necessary preparation activities within the Collocator's Physical Collocation Space including the construction of the cage and any physical security arrangements, if applicable; provided, however, any such contractor/vendor shall be subject to the prior written approval of AM-OH, such Physical Collocation Space preparation activities shall be in accordance with all approved plans and specifications and coordinated with AM-OH, and the Collocator shall be solely responsible for all charges of any such

contractor/vendor. The Collocator must provide a cage enclosure (not including a top), cable rack and support structure inside the cage, lighting, receptacles, cage grounding, cage sign and door key set. AM-OH will prorate the Preparation Charges incurred by AM-OH to condition the space for Collocation use among the Resident Collocators utilizing the New Shared Collocation space, by determining the total preparation charges to make that space available and allocating that charge to each Resident Collocator based on the percentage attributable to each Resident Collocator as provided on the Collocation order by the Primary Collocator, provided that the percentage attributable to the Resident Collocators in a New Shared Collocation space equals in the aggregate one hundred percent (100%). AM-OH will prorate the charge for site conditioning and preparation undertaken to condition the collocation space so the first Collocator in an AM-OH Premise will not be responsible for the entire cost of site preparation. Allocation of Preparation Charges shall occur only upon the initial delivery of New Shared Collocation and AM-OH shall not be required to adjust such allocation if another Resident Collocator subsequently shares such space. Except with respect to prorated Preparation Charges, AM-OH shall bill only the Primary Collocator for, and the Primary Collocator shall be the primary obligor with respect to the payment of, all charges other than Preparation Charges billed on New Shared Collocation. It is the Primary Collocator's responsibility to recover from each other Resident Collocator such Collocator's proportionate share of such other charges billed to the Primary Collocator for the New Shared Cage Collocation. If Collocator is a Resident Collocator but not the Primary Collocator in a New Shared Collocation arrangement, Collocator agrees that the Primary Collocator's rates, terms and conditions relating to New Shared Collocation set forth in the Primary Collocator's Section 251/252 agreement or the applicable tariff under which the Primary Collocator purchases collocation shall apply to its New Shared Collocation arrangement in lieu of those set forth herein. Further, if Collocator is the Primary Collocator in a New Shared Collocation arrangement,

as a condition of ordering New Shared Allocation, Collocator shall require its Resident Collocator(s) to execute an agreement prior to the Delivery Date that, inter alia, requires such Resident Collocator(s)' compliance with the terms, conditions and restrictions relating to Collocation contained in this Agreement and designates **AM-OH** as a third party beneficiary of such agreement. Collocator, acting in its capacity as Primary Collocator, shall notify its Resident Collocator(s) of the obligation to comply with this Agreement with respect to the New Shared Collocation arrangement and shall be responsible for any breach of such provisions by the Resident Collocator(s).

- 4.1.2.1.3 For Subleased Shared Collocation, if the Collocator is the Primary Collocator, then that (Primary) Collocator shall be responsible for its and its Resident Collocator's compliance with the terms, conditions and restrictions of this Agreement. As a condition to permitting another Collocator to sublease space from Collocator, Collocator shall require such other Collocator(s) to execute a sublease agreement prior to the Delivery Date that, inter alia, requires such Collocator's compliance with the terms, conditions and restrictions relating to Collocation contained in this Agreement and designates **AM-OH** as a third party beneficiary of such agreement. Collocator, acting in its capacity as Primary Collocator, shall notify its Resident Collocator(s) of the obligation to comply with this Agreement relating to Physical Collocation and shall be responsible for any breach of such provisions by the Resident Collocator(s). If Collocator is the sublessee (i.e., not the Primary Collocator) in a Subleased Shared Collocation arrangement, Collocator agrees that Primary Collocator's rates, terms and conditions relating to Subleased Shared Collocations set forth in the Primary Collocator's Section 251/252 agreement or the applicable tariff under which the Primary Collocator purchases collocation shall apply to its Subleased Shared Collocation arrangement in lieu of those set forth herein.

4.1.2.1.4 The Primary Collocator represents and warrants to AM-OH that each Resident Collocator with which it shares Shared Caged Collocation space shall Collocate equipment only as permitted by Section 6.1 of this Appendix and which is necessary to Interconnect with AM-OH or for access to AM-OH's Unbundled Network Elements. AM-OH shall provide Collocator access to AM-OH's Unbundled Network Elements and permit Collocator to interconnect its network with AM-OH from Shared Caged Collocation, regardless if Collocator was the original Collocator. Collocator, however, shall have no right to request and AM-OH shall have no obligation to provide Collocator's Resident Collocators access to AM-OH's Unbundled Network Elements or AM-OH's network. Instead, a Resident Collocator's rights shall be as determined by such Resident Collocator's contractual arrangement (Section 251/252 agreement or tariff, as applicable) with AM-OH.

4.1.2.1.5 As a condition of entering into Shared Caged Collocation, Collocator agrees that if it is not the Primary Collocator in a New Shared Collocation, or if it is the sublessee in a Subleased Shared Collocation arrangement, it unconditionally and irrevocably undertakes and guarantees AM-OH the prompt and full payment of any charges assessed on the Shared Caged Collocation. If the Primary Collocator in a Shared Caged Collocation arrangement no longer occupies the space, the other Resident Collocators must immediately identify a new Primary Collocator. If only one Collocator remains in the Shared Cage Collocation, that Collocator shall become the Primary Collocator. AM-OH shall bill the new Primary Collocator any applicable charges to change AM-OH's records and databases to reflect such new Primary Collocator.

#### 4.1.3 Cageless Physical Collocation

4.1.3.1 Subject to technical feasibility and security requirements, AM-OH will allow Collocator to collocate in any Unused Space in AM-OH's Eligible Structure (eg. Central Office, CEV, Hut or Cabinet containing Telecommunications Equipment), without requiring the



construction of a cage or similar structure, and without requiring the creation of a separate entrance to Collocator's Physical Collocation Space. AM-OH will designate the space to be used for cageless collocation. AM-OH may require Collocator to use a central entrance to the building in which the cageless collocation is provided, but may not require construction of a new entrance for Collocator's use, and once inside the building, AM-OH must permit Collocator to have direct access to their equipment.

- 4.1.3.2 Collocator will install their own bay(s) by an AM-OH Approved Vendor. AM-OH will provide space for the bay(s) in either a Standard Bay arrangement of 10 sq. ft. or a Non-Standard Bay arrangement of 18 sq. ft. The standard bay and non-standard bay dimensions are as follows:
- 4.1.3.3 Standard bay dimensions cannot exceed 7'0" high, and 23" interior width, 26" exterior width, and up to 15" deep.
- 4.1.3.4 Non-standard bay dimensions cannot exceed 7'0" high, 36" in width and up to 36" in depth.
- 4.1.3.5 AM-OH prefers that the equipment mounted in the bay be flush mounted with the front of the bay; provided, however, in no event may the equipment be mounted beyond the lower front kick plate (normally 5") for appropriate egress. The total depth of bay, including equipment and associated cabling must not exceed 15" for a standard bay.
- 4.1.3.6 AM-OH may not require Collocator to use an intermediate interconnection arrangement (i.e., a POT bay) that simply increases collocation costs without a concomitant benefit to incumbents, in lieu of direct connection to AM-OH's network if technically feasible. AM-OH may take reasonable steps to protect its own equipment, such as, but not limited to, enclosing AM-OH equipment in its own cage, and other reasonable security measures examples of which are described herein Section 13 of this Appendix. AM-OH must make cageless collocation space available in single-bay increments, meaning that Collocator can purchase space in single bay increments. AM-OH will prorate the charge for site conditioning and preparation undertaken to construct or condition the collocation space so the first Collocator in an AM-OH Premise will not be responsible for the entire cost of site preparation. AM-OH will provide collocation space in CEV's, Huts or Cabinets in increments of "rack inches" (the amount of vertical

rack space required to mount the Collocator's equipment including any space required for equipment separation and heat dissipation).

#### 4.1.4 **Adjacent Structure Collocation**

- 4.1.4.1 When space is legitimately exhausted inside an **AM-OH** Eligible Structure, **AM-OH** will permit Collocator to physically collocate in an Adjacent Structure (e.g. controlled environmental vaults, controlled environmental huts or similar structures such as those used by **AM-OH** to house telecommunications equipment) located at **AM-OH**'s Premises to the extent technically feasible. **AM-OH** will permit Collocator or a third party to construct or otherwise procure such Adjacent Structure, subject to reasonable safety and maintenance requirements, zoning and other state and local regulations, and **AM-OH**'s right to exercise reasonable control over the design, construction, and placement of such Adjacent Structures. **AM-OH** will allow the Collocator to provide equipment installed within the Adjacent Structure subject to all the requirements set forth in this Appendix. Collocator will be responsible for securing the required licenses and permits, the required site preparations, and will retain responsibility for building and site maintenance associated with placing the Adjacent Structure. **AM-OH** may reserve reasonable amounts of space adjacent to its Eligible Structure needed to expand its Eligible Structure to meet building growth requirements. **AM-OH** will assign the location where the Adjacent Structure will be placed.
- 4.1.4.2 When requested, **AM-OH** will provide up to 100 AMPS of AC power to the Adjacent Structure when Central Office Switchboard AC capacity exists and up to 200 AMPS of DC power to the Adjacent Structure up to 50 cable feet from the Central Office. When power requirements are beyond these office capacities and distance limitations, **AM-OH** will treat the requirements as a non-standard request (ICB or NSCR) and coordinate a mutually agreeable solution for provisioning power with Collocator. At its option, Collocator may choose to provide its own AC and DC power to the Adjacent Structure. **AM-OH** will provide power and physical collocation services and facilities to such Adjacent Structures, subject to the same nondiscrimination requirements as other physical collocation arrangements in this Agreement
- 4.1.4.3 If Physical Collocation Space becomes available in a previously exhausted Eligible Structure, **AM-OH** will not require Collocator to move or prohibit Collocator from moving, a collocation arrangement into that structure. Instead **AM-OH** will continue to

allow the Collocator to collocate in any Adjacent Structure that the Collocator has constructed or otherwise procured.

- 4.2 All requests for “**Other Physical Collocation**” arrangements or other Collocation services not contained in this Appendix will be considered on a case-by-case basis (ICB or NSCR). Other Physical Collocation arrangements or other Collocation services requested via an ICB or NSCR shall (i) be subject to the payment by TWTC of all applicable costs in accordance with Section 252(d)(1) of the Act to process such request and develop, provision and bill such Collocation method or service, (ii) be excluded from any provisioning intervals or performance measures contained in this Agreement, and (iii) require the Parties to reach written agreement on any rates, terms and conditions applicable to such ICB or NSCR within thirty (30) days after TWTC confirms its order pursuant to the ICB or NSCR. When a Collocator requests a particular Physical Collocation arrangement, the Collocator is entitled to a rebuttable presumption that such arrangement is technically feasible if any incumbent LEC, with a substantially similar network, has deployed such collocation arrangement in any incumbent LEC Physical Collocation Space. If **AM-OH** refuses to provide a Physical Collocation arrangement, or an equally cost effective arrangement, it may do so if it rebuts the presumption before the state commission that the particular premises in question cannot support the arrangement because of either technical reasons or lack of space.
- 4.3 The Collocator’s **AM-OH** Approved Vendor will be permitted access to the **AM-OH** Main Distribution Frame and/or its equivalent for installation and termination of interconnection cabling and the cabling arrangement to provide grounding for equipment. Collocator must use an **AM-OH** Approved Power Installation Vendor to install power cable(s) from the Collocator’s Physical Collocation Space to the designated **AM-OH**’s Battery Distribution Fuse Bay (BDFB) or Power Plant Primary Distribution points, whichever is applicable. Additional requirements relating to installation and placement of interconnection cabling and power cabling is set forth in Section 10.5.3 and 10.6 of this Appendix.
- 4.4 **AM-OH** shall permit Collocator to place its own connecting transmission facilities within **AM-OH**’s Eligible Structure in the Physical Collocation space, without requiring the Collocator to purchase any equipment or connecting facilities solely from **AM-OH**, subject to reasonable safety limitations.
- 4.5 **AM-OH** shall voluntarily permit the Collocator to provide, via installation by an **AM-OH** approved vendor, a direct connection between its collocated equipment in a Physical Collocation Space to its collocated equipment located within the same **AM-OH** Eligible Structure provided such Collocator has satisfied the statutory and contractual requirements for collocation in each instance. In addition, **AM-OH** shall permit the Collocator to provide, via installation by an **AM-OH** approved vendor, a direct connection between its collocated equipment and the collocated equipment of one or more separate telecommunications carriers collocated within the same **AM-**

OH Premises provided that Collocator and each such carrier has satisfied the statutory and contractual requirements to qualify for collocation. Where technically feasible, a connection may be made using copper cable, dark fiber, lit fiber, or such other transmission medium (media) mutually agreed to by SBC and collocators in writing. A collocation application listing a different medium (media) for a connection, even if accepted by AM-OH, shall not constitute such a writing. A Collocator's request for a connection using other transmission medium (media) shall be submitted via the NSCR/ICB procedure.

4.5.1 AM-OH will designate and engineer the route, place cable racking (if applicable) and provide space to be used for such connections. Such connections and their installation shall be subject to the same reasonable safety requirements that AM-OH imposes on its own equipment and facilities, without requiring the Collocator to purchase any equipment or connecting facilities solely from AM-OH.

## 5. SPACE AVAILABILITY AND ASSIGNMENT

5.1 At the request of Collocator, AM-OH will provide space for Physical Collocation as described above. AM-OH is not required to provide Physical Collocation at a particular Eligible Structure if it demonstrates that physical collocation is not practical for technical reasons or because of space limitations. In such cases and with the qualifications set forth above, AM-OH will provide Adjacent Structure Collocation as described above or Virtual Collocation, as described in the Appendix Virtual Collocation, except where AM-OH proves that Adjacent Structure Collocation and/or Virtual Collocation is not technically feasible. If Adjacent Structure Collocation or Virtual Collocation is not technically feasible, AM-OH will make a good faith effort to negotiate other methods of interconnection and access to unbundled network elements to the extent technically feasible.

5.2 AM-OH will provide physical collocation arrangements in Eligible Structures and on its Premises on a "first-come, first-served" basis. The determination whether there is sufficient space to accommodate Physical Collocation at a particular Eligible Structure or at a particular Premise will be made initially by AM-OH. AM-OH will notify Collocator as to whether its request for space is been granted or denied due to a lack of space within ten (10) calendar days from receipt of a Collocator's accurate and complete Physical Collocation Application. If AM-OH determines that Collocator's Physical Collocation Application is unacceptable; AM-OH shall advise Collocator of any deficiencies within this ten (10) calendar day period. AM-OH shall provide Collocator with sufficient detail so that Collocator has a reasonable opportunity to cure each deficiency. To retain its place in the queue to obtain the Physical Collocation arrangement, Collocator must cure any deficiencies in its Application and resubmit such Application within ten (10) calendar days after being advised of deficiencies. Any changes to the amount or type of floor space, interconnection terminations, and power requested from the originally submitted

Physical Collocation Application will not be considered a deficiency, but rather as a new Physical Collocation Application with a new ten (10) calendar day space notification and delivery interval.

- 5.2.1 When space for Physical Collocation in a particular Eligible Structure is not available, AM-OH shall place Collocator on the waiting list for collocation in a particular Eligible Structure according to the date Collocator submitted its application for Physical Collocation in that Eligible Structure.
- 5.3 If AM-OH contends that space for Physical Collocation is not available in an Eligible Structure, AM-OH must allow Collocator to tour the entire central office or other Eligible Structure in question, without charge and within ten (10) calendar from the receipt of AM-OH's denial of space notification or such later date as mutually agreed by the parties. Prior to taking a tour, each representative must execute and deliver to AM-OH a standard nondisclosure agreement. In no event shall any camera or other video/audio-recording device be brought on or utilized during any tour of an AM-OH's Eligible Structure.
  - 5.3.1 If Collocator disputes AM-OH's determination, Collocator can elect a review to be made by a mutually agreed to third party engineer or a Commission designate, under a non-disclosure agreement. All costs of the third-party inspection including, but not limited to, all payments to the third-party engineer or Commission designate in connection with the inspection, shall be shared equally by AM-OH and the Collocator. The third party engineer shall take into consideration AM-OH's planned use for the Eligible Structure under review and, to the extent it can review Collocator space and how it is used.
  - 5.3.2 If AM-OH denies a Collocator's request for Physical Collocation because of space limitations and, after touring the applicable Eligible Structure, the Parties are unable to resolve the issue of whether the denial of space was proper, AM-OH shall, in connection with any complaint filed by Collocator, file with the appropriate Commission detailed floor plans or diagrams of such Eligible Structure along with whatever additional information has been ordered by such Commission, subject to protective order. These floor plans or diagrams must show what space, if any, AM-OH or any of its affiliates has reserved for future use, and must describe in detail the specific future uses for which the space has been reserved and the length of time for each reservation.
- 5.4 AM-OH will maintain a publicly available document, posted for viewing on AM-OH's CLEC ONLINE Web-site, indicating all Eligible Structures that are full, and will update such a document within ten (10) calendar days of the date at which an Eligible Structure runs out of Physical Collocation Space.

- 5.5 Upon receipt of a written request, **AM-OH** will submit to the Collocator within ten (10) calendar days of the submission of the request a report describing in detail the space that is available for collocation in a particular **AM-OH** Premises. This report will specify the amount of collocation space available at each requested Premises, the number of collocators, and any modifications in the use of the space since the last report. This report will also include measures that **AM-OH** is taking to make additional space available for collocation. **AM-OH** will provide a report for two (2) to five (5) requests in ten (10) business days and six (6) to twenty (20) requests in twenty-five (25) business days. Should the Collocator submit more than twenty (20) requests at once, **AM-OH** will provide the information on a scheduled basis of ten (10) additional offices for every ten (10) business days.
- 5.5.1 In **AM-OH**, reports shall be ordered via the Collocation order form on **SBC**'s CLEC ONLINE Web-site and shall specifically identify the CLLI code of each Premises for which a report is ordered.
- 5.5.2 **AM-OH** shall recover costs for the implementation of these reporting measures in a reasonable manner.
- 5.5.3 **AM-OH** shall permit a Collocator to submit Physical Collocation Space preferences prior to **AM-OH** assigning the carrier's space. Such preference shall be indicated on the Collocator's Physical Collocation application.
- 5.6 **AM-OH** is not required to lease or construct additional space to provide for Physical Collocation when existing space has been exhausted. Moreover, **AM-OH** is not required to, nor shall this Appendix create any obligation or expectation, to relinquish used, or forecasted space to undertake the construction of new quarters or to construct additions to existing quarters in order to satisfy any request for additional space or the placement of Collocator equipment or facilities, whether through an initial request for Physical Collocation or a subsequent request for more space in an Eligible Structure. **AM-OH** and Collocator shall not unreasonably warehouse forecasted space.
- 5.7 To the extent possible, **AM-OH** will make contiguous space available to a Collocator if a Collocator seeks to expand an existing Physical Collocation arrangement and such request meets **AM-OH**'s non-discriminatory practices regarding efficient space utilization.
- 5.8 When planning renovations of existing Eligible Structures or constructing or leasing new Eligible Structures, **AM-OH** will take into account future demand based upon its knowledge of Collocator demand for Collocation. Collocator will provide **AM-OH** with a two (2)-year rolling forecast of its requirements for Collocation that will be reviewed jointly on a yearly basis by the Parties.

- 5.9 AM-OH may retain a limited amount of floor space for AM-OH's own specific future uses; provided, however that neither AM-OH nor any of its affiliates may reserve space for future use for like equipment on terms more favorable than those that apply to other telecommunications carriers, including Collocator, seeking to reserve Collocation space for their own future use. Except for space needed for switching equipment "turnaround" (e.g., the installation of new switching equipment to replace then-existing switching equipment), other telecommunications equipment and infrastructure, if any, and/or otherwise permitted or directed by applicable rule or order, AM-OH will relinquish any space held for future use before denying a request for Virtual Collocation on grounds of space limitations, unless AM-OH proves to the Commission that Virtual Collocation at that point is not technically feasible, including that space does not exist. In any such event, AM-OH and the Collocator will attempt to reach a mutually agreeable alternative method of interconnection.
- 5.10 At the request of the Commission or Collocator, AM-OH shall remove any obsolete and unused equipment (e.g., retired in-place") from its Eligible Structures. AM-OH shall be permitted to recover the cost of removal and/or relocation of such equipment if AM-OH incurs expenses that would not otherwise have been incurred (at the time of the request or subsequent thereto) except to increase the amount of space available for collocation (e.g., costs to expedite removal of equipment or store equipment for reuse).
- 5.11 AM-OH may impose reasonable restrictions on its provision of additional Unused Space available for Collocation (so-called "warehousing") as described in paragraph 586 of the First Report and Order (96-325); provided, however, that AM-OH shall not set a maximum space limitation on Collocator unless AM-OH proves to the Commission that space constraints make such restrictions necessary.
- 5.12 Notwithstanding anything contrary in this Agreement, AM-OH maintains ultimate authority to assign and configure space for Physical Collocation within its Premises. AM-OH will assign Physical Collocation Space on rates, terms and conditions that are just, reasonable, and nondiscriminatory. AM-OH's space assignment will not (i) materially increase a Collocator's collocation costs or materially delay a Collocator's occupation and use of the AM-OH's Premises, unless required by operational constraints unrelated to competitive concerns, or (ii) reduce unreasonably the total space available for physical collocation or preclude unreasonably Physical Collocation within AM-OH's Premises. In addition, AM-OH will not assign Physical Collocation Space that will discriminatorily impair the quality of service or impose other material limitations on the service Collocator wishes to offer.
- 5.13 AM-OH may restrict Physical Collocation to space separated from space housing AM-OH's Equipment, provided that each of the following conditions is met:

- (1) Either legitimate security concerns, or operational constraints unrelated to AM-OH's or any of its Affiliates' or subsidiaries competitive concerns, warrant such separation;
  - (2) Any Physical Collocation Space assigned to an Affiliate or subsidiary of AM-OH is separate from space housing AM-OH's equipment;
  - (3) The separated space will be available in the same time frame as, or a shorter time frame than, non-separated space;
  - (4) The cost of the separate space to Collocator will not be materially higher than the cost of non-separated space; and
  - (5) The separated space is comparable, from a technical and engineering standpoint, to non-separated space.
- 5.14 AM-OH may require the employees and contractors of Collocator to use a central or separate entrance to the AM-OH Premises; provided, however, that where AM-OH requires that the employees or contractors of Collocator access collocated Equipment only through a separate entrance, employees and contractors of the AM-OH's Affiliates and Subsidiaries will be subject to the same restriction.
- 5.15 AM-OH may construct or require the construction of a separate entrance to access Physical Collocation Space, provided that each of the following conditions is met:
- (1) Construction of a separate entrance is technically feasible;
  - (2) Either legitimate security concerns, or operational constraints unrelated to AM-OH's or any of its Affiliates' or Subsidiaries competitive concerns, warrant such separation;
  - (3) Construction of a separate entrance will not artificially delay collocation provisioning; and
  - (4) Construction of a separate entrance will not materially increase Collocator's costs.

## 6. ELIGIBLE EQUIPMENT FOR COLLOCATION

- 6.1 AM-OH will allow Equipment to be collocated only if (1) it is "necessary" for interconnection to the AM-OH's network for the transmission and routing of telephone exchange service or exchange access, or for access to AM-OH's unbundled network elements ("UNEs") for the provision of a Telecommunications Service, under all the standards and requirements addressed in this Section 6, or (2) AM-OH voluntarily decides to allow the Equipment to be collocated on a non-discriminatory basis.



6.2 For purposes of this Section 6, Equipment is considered "necessary" as follows:

(1) Equipment is considered necessary for Interconnection if an inability to deploy that Equipment would, as a practical, economic, or operational matter, preclude the Collocator from obtaining interconnection with AM-OH at a level equal in quality to that which AM-OH obtains within its own network or AM-OH provides to any Affiliate, subsidiary, or other party.

(2) Equipment is considered necessary for access to a UNE if an inability to deploy that Equipment would, as a practical, economic, or operational matter, preclude Collocator from obtaining nondiscriminatory access to that UNE, including any of its features, functions, or capabilities.

6.3 Subject to the requirements of Section 6, "Stand-alone Function" Equipment that may be collocated include:

- (1) transmission equipment that is optical terminating equipment or a multiplexer
- (2) Equipment being collocated to terminate basic transmission facilities pursuant to sections 64.1401 and 64.1402 of 47 C.F.R. (Expanded Interconnection) as of August 1, 1996.
- (3) Equipment specified in the definition of "Advanced Services Equipment" in section 1.3.d of the SBC/Ameritech Merger Conditions. "Advanced Services Equipment" is defined as, and limited to, the following equipment: DSLAMs or functionally equivalent equipment; spectrum splitters that are used solely in the provision of Advanced Services; packet switches and multiplexers such as ATMs and Frame Relay engines used to provide Advanced Services; modems used in the provision of packetized data; and DACS frames used only in the provision of Advanced Services.
- (4) Optical Concentrator Devices ("OCDs") or functionally equivalent Equipment used to provide Advanced Services.
- (5) remote switch modules ("RSMs") used in conjunction, via an umbilical, with host switches located in different TWTC locations.

6.4 AM-OH may, at its option on a non-discriminatory basis, deny collocation of any of the above, or any other, Equipment if collocation of that Equipment would burden AM-OH's property interests and alternative Equipment not imposing such a burden is practically, economically, and operationally available to obtain interconnection or access to UNEs consistent with sections 251(c)(2) and 251(c)(3) of the Act. For AM-OH to consider whether a request avoids such burden, TWTC must provide all information needed by AM-OH concerning the equipment or facilities in question, including without limitation its size (height, width, and depth) and its requirements

for power, heat, ventilation, and air conditioning, and other resources. In addition, in order for AM-OH to determine whether or not Equipment meets the "necessary" standard, TWTC must provide information establishing how it intends to use the equipment for interconnection with AM-OH's network for the transmission and routing of telephone exchange service and exchange access and/or for access to AM-OH's UNEs for the provision of a Telecommunications Service. For this purpose, TWTC must identify what it intends to interconnect the Equipment to and/or what it intends to use the Equipment to access and must identify the services it intends to use the Equipment to provide. To qualify for collocation, any of the above Equipment that is used for switching or routing must be (1) "necessary" under the standards set forth above for access to a AM-OH UNE sub-loop and (2) used solely for that purpose unless it also meets the requirements set forth below for collocating "Multi-functional Equipment." Equipment excluded from collocation in any other subsection of this Section 6 also would be excluded as "stand-alone function" Equipment. AM-OH will make determinations on a request-by-request basis of whether or not Equipment meets these standards in order to be permitted, or whether or not Equipment will be voluntarily permitted. Moreover, if TWTC seeks to collocate a switch, TWTC must provide information establishing whether the switch is a packet switch, a circuit switch, or a combination. If the switch is a circuit switch or a combination, TWTC must provide information establishing whether or not the switch is used in conjunction, via an umbilical, with host switches located in different TWTC locations.

- 6.5 AM-OH will not allow collocation of, among other Equipment, traditional, circuit switches or enhanced/information services Equipment. For purposes of this section, "traditional, circuit switch" is defined as any Equipment that performs circuit switching independently of other switches or switching systems and does not meet the requirements set forth below for collocating "Multi-functional Equipment." "Traditional circuit switches" include, but are not limited to, the following examples of equipment when such equipment does not meet such requirements: (1) equipment with circuit switching capabilities included in 47 CFR section 51.319(c) which defines "local circuit switching capability" and "local tandem switching capability;" (2) equipment that is used to obtain circuit switching capabilities, without reliance upon a host switch; and (3) equipment with the functionality of a class 4 or 5 switch including, without limitation, the following: Lucent Pathstar, 5E, 4E, or 1A switch; DMS 10, 100, 200, or 250 switch; Ericsson AXE-10 switch; and Siemens EWSD. For purposes of this Section 6, "enhanced services" are defined as in 47 CFR section 64.702, and "information services" are defined as in section 3(20) of the Act.
- 6.6 For purposes of this Section 6, "Multi-functional Equipment" is defined as Equipment that combines one or more functions that are necessary for interconnection or access to UNEs with one or more functions that would not meet that standard as stand-alone functions ("Unnecessary Functions"). AM-OH will permit the collocation of Multi-functional Equipment if and only if the primary purpose and function of the Equipment, as the Collocator seeks to deploy it, meets all the requirements set forth Section 6.3

above for either interconnection or access to UNEs. For a piece of Multi-functional Equipment to be utilized primarily to obtain equal in quality interconnection or nondiscriminatory access to one or more UNEs, there also must be a logical nexus between the additional functions the Equipment would perform and the telecommunication services which the Collocator seeks to provide to its customers by means of the interconnection or UNE. The additional functions must aid in the actual transmission or routing of telephone exchange service and exchange access used with interconnection, or in the actual provision of the telecommunications service used with access to UNEs, in the manner that TWTC intends to provide such services. For example, AM-OH will not allow collocation of certain Equipment including, without limitation, Equipment used to provide payroll processing, data collection, billing, or Equipment that generates customer orders, manages trouble tickets or inventory, or stores customer records in centralized databases, or other operation support systems, or other Equipment that does not provide telecommunications services. Collocator may not collocate Multi-Functional Equipment that has Unnecessary Functions which significantly increases the burden on AM-OH's property interests. For example, the additional functions must not require reconfiguration of the outer boundaries of TWTC's collocation space, increased floor support, or upgrades to power, air conditioning, heating, or similar plant. AM-OH also will consider other potential burdens on a request-by request basis, together with making determinations of whether or not particular Equipment meets all the standards in this Section 6. For AM-OH to make these considerations, TWTC must provide, without limitation, the information described in Section 6.4.

- 6.7 Ancillary Equipment or facilities do not provide telecommunications services and are not "necessary" for interconnection or access to unbundled network elements. AM-OH voluntarily allows the Collocator to place in its Physical Collocation space certain ancillary Equipment or facilities solely to support and be used with Equipment that the Collocator has legitimately collocated in the same premises. Solely for this purpose, cross-connect and other simple frames, portable test equipment, equipment racks and bays, and potential other ancillary equipment or facilities may be placed in AM-OH's premises, on a non-discriminatory basis, only if AM-OH agrees to such placement.
- 6.8 Collocator may not collocate certain equipment, facilities, or hardware which duplicate equipment, facilities or hardware used, and functions performed, by AM-OH as part of its provision of infrastructure systems for collocation. Such equipment, facilities or hardware include, without limitation, Battery Distribution Fuse Bays, air conditioners, heaters, or bulk power plants. These and other types of equipment, facilities or hardware that do not provide Telecommunications Services may not be collocated.
- 6.9 AM-OH will consider other equipment that provides a Telecommunications Service on a request-by request basis, together with making determinations of whether or not particular Equipment meets all the standards in this Section 6.

- 6.10 AM-OH does not assume any responsibility for the installation, furnishing, designing, engineering, or performance of the Collocator's equipment and facilities.
- 6.11 All types of equipment placed in AM-OH Eligible Structures or on its Premises by Collocators must meet the AM-OH minimum safety standards. The minimum safety standards are as follows: (1) equipment complying with AM-OH LEC document TP76200MP which contains network equipment, power, grounding, environmental, and physical design requirements and also contains Level 1 safety requirements except in Texas and any other state that has adopted the same approach as Texas, where Collocator's equipment must meet Telcordia Level 1 safety requirements as set forth in Telcordia documents SR-3580 and GR-63-CORE, Network Equipment Building Systems (NEBS); or, (2) Collocator must demonstrate that its equipment has a history of safe operation defined by installation in an ILEC (including AM-OH) prior to January 1, 1998 with no known history of safety problems.
- 6.12 AM-OH will not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that AM-OH applies to its own network equipment. AM-OH will not object to the collocation of equipment on the ground that the equipment fails to comply with Network Equipment and Building Specifications performance standards or any other performance standards.
- 6.13 In the event that AM-OH denies Collocation of Collocator's equipment, citing minimum safety standards, AM-OH will provide within five (5) business days of Collocator's written request to AM-OH representative(s), a list of AM-OH equipment placed since January 1, 1998 within the network areas of the Eligible Structure for which Collocation was denied together with an affidavit attesting that all of such AM-OH equipment met or exceeded the then current minimum safety standards when such equipment was placed in the Eligible Structure.
- 6.14 In the event Collocator submits an application requesting collocation of certain equipment and AM-OH determines that such equipment is not necessary for interconnection or access to UNEs or does not meet the minimum safety standards or any other requirements of this Appendix, the Collocator must not collocate the equipment. If Collocator disputes such determination by AM-OH, Collocator may not collocate such equipment unless and until the dispute is resolved in its favor. If AM-OH determines that Collocator has already collocated equipment which is not necessary for interconnection or access to UNEs or does not meet the minimum safety requirements or any other requirements of this Appendix, the Collocator must remove the equipment from the collocation space within ten (10) business days of the date of the written notice from AM-OH. Collocator will be responsible for the removal and all resulting damages. If Collocator disputes such determination, Collocator must remove such equipment pending the resolution of the dispute. If the Parties do not resolve the dispute, AM-OH or Collocator may file a complaint at the Commission seeking a formal resolution of the dispute.

## 7. PHYSICAL COLLOCATION SPACE CHARGES

### 7.1 Physical Collocation Space

For each Physical Collocation request, Collocator must submit a separate Physical Collocation Application with the applicable Application and Project Management Fees including, but not limited to, the following types of requests: (i) a request to physically collocate equipment in a new Physical Collocation Space, (ii) a request to Augment an existing Physical Collocation Space, (iii) a request for direct cabling within an Eligible Structure, (iv) a request to partially disconnect and/or removal of Collocator's Eligible Equipment from an Eligible Structure, (v) a request to complete disconnect and/or removal of Collocator's Eligible Equipment from an Eligible Structure, (vi) an ICB or NSCR, and (vii) specified revisions to Collocation Applications. A copy of the Physical Collocation Application may be obtained from the **AM-OH** Collocation Services Account Manager or from the SBC CLEC ONLINE Web-Site.

7.2 **AM-OH** will contract for and perform the construction and preparation activities necessary to prepare the Physical Collocation Space, using the same or consistent practices that are used by **AM-OH** for other construction and preparation work performed in the Eligible Structure.

7.3 Recurring/Non-Recurring charges - Collocator shall pay **AM-OH** all associated non-recurring and recurring charges per month for use of the Physical Collocation Space. These charges may be generated on an ICB/NSCR basis or may be contained in the state specific Appendix Pricing. The recurring monthly charges for each Physical Collocation Space shall stay fixed for the term of this Appendix unless modified upon re-negotiation of the Interconnection Agreement and/or pursuant to a Commission order.

7.3.1 An ICB/NSCR quote is prepared by **AM-OH** to estimate non-recurring and recurring charges associated with the requested Physical Collocation Space, Augment, or Collocation services where a state specific Appendix Pricing rate element does not exist. This ICB/NSCR quote is prepared specifically for collocation requests and is not associated in any way with the Bona Fide Request (BFR) process used to request UNEs or other unique items not contained in a Collocator's ICA. The ICB/NSCR will be subject to true-up one hundred-twenty (120) calendar days following the job completion date.

7.4 Collocator shall pay its proportionate share of any reasonable security arrangements **AM-OH** employs to protect **AM-OH** equipment and ensure network reliability.

7.5 Payment of Preparation - Prior to any obligation on **AM-OH** to start any preparation of the Physical Collocation Space, Collocator shall pay **AM-OH** fifty percent (50%) of the Preparation Charge and eighty-five percent (85%) of any custom work charge

required to create or vacate any entrance facility for the Collocator ("Custom Work"). Collocator also has the option of submitting a surety bond to cover these charges, in lieu of a check. The remainder of the Preparation Charge and any Custom Work charge are due upon completion and prior to occupancy by the Collocator.

- 7.6 Occupancy Conditioned on Payment - **AM-OH** shall not permit Collocator to have access to the Physical Collocation Space for any purpose other than inspection during construction of Collocator's Physical Collocation Space until **AM-OH** is in receipt of complete payment of the Preparation Charge and any Custom Work charges.
- 7.7 Breach Prior to Commencement Date - In the event that the Collocator materially breaches this Agreement by purporting to terminate this Agreement after **AM-OH** has begun preparation of the Physical Collocation Space but before **AM-OH** has been paid the entire amounts due under this Appendix, then in addition to any other remedies that **AM-OH** might have, the Collocator shall be liable in the amount equal to the non-recoverable costs less estimated net salvage. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; the non-recoverable cost of installation and removal including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs.
- 7.8 Late Payment Charge - In the event that any charge is not paid when due, the unpaid amounts shall bear interest in accordance with the terms and conditions set forth in **AM-OH**'s intrastate tariff late payment provision(s) applicable to access services for the State in which the Physical Collocation Space is located, or the highest rate permitted by law, whichever is lower, from the due date until paid.
- 7.9 Charges will begin to accrue on the Effective Billing Date - The Effective Billing Date is the Delivery Date.
- 7.10 The monthly recurring charge(s) shall begin to apply, no later than five (5) calendar days from the date that **AM-OH** made the Physical Collocation Space available to the Collocator, Physical Collocation Space regardless of any failure by Collocators to complete its work. The fact that **AM-OH** may have additional work to perform after Collocator does complete its work shall not bar the start of such charges.
- 7.11 The charges for an Adjacent Structure Collocation and for a Physical Collocation arrangement that is provided in Eligible Structures other than Central Offices shall be determined on Individual Case Basis (ICB/NSCR) in **AM-OH**.

## **8. USE OF PHYSICAL COLLOCATION SPACE**

- 8.1 **AM-OH** shall ensure that the Physical Collocation Space and the Eligible Structure comply with all applicable fire and safety codes. The preparation shall be arranged

by AM-OH in compliance with all applicable codes, ordinances, resolutions, regulations and laws.

- 8.2 Restroom access and parking will be provided on a reasonable basis in AM-OH.
- 8.3 A list of all Collocator equipment that will be placed within the Physical Collocation Space shall be set forth on the Collocator's Physical Collocation Application, which includes associated power requirements, floor loading, and heat release of each piece of Collocator's equipment. Collocator warrants and represents that the Physical Collocation Application contains a complete and accurate list of such Collocator equipment. Collocator's AM-OH Approved Vendor shall not place or leave any other equipment or facilities within the Physical Collocation Space without the express written consent of AM-OH.
- 8.4 In the event that subsequent to the submission of the Physical Collocation Application and its list of the Collocator's equipment with the required technical information, Collocator desires to place in the Physical Collocation Space any telecommunications equipment or such ancillary telecommunications facilities not so set forth in the Physical Collocation Application, Collocator shall furnish to AM-OH a new Physical Collocation Application and any applicable charges to cover such equipment or facilities. Thereafter, consistent with its obligations under the Act and applicable FCC and Commission rules, orders, and awards, AM-OH may provide such written consent or may condition any such consent on additional charges arising from the request, including any applicable fees and any additional requirements such as power and environmental requirements for such requested telecommunications equipment and/or facilities. Upon the execution by both AM-OH and Collocator of a final list and description and receipt by AM-OH of payment of any applicable non-recurring charges, the Physical Collocation arrangement shall be deemed to have been amended and such requested telecommunications equipment and/or facilities shall be included within "Collocator's Equipment."
- 8.5 Collocator's Equipment, operating practices, or other activities or conditions attributable to Collocator that represents a demonstrable threat to AM-OH network, equipment, or facilities, including the Eligible Structure, or to the network, equipment, or facilities of any person or entity located in the Eligible Structure, is strictly prohibited.
- 8.6 Operation of any equipment, facilities or any other item placed in the Physical Collocation Space shall not interfere with or impair service over AM-OH network, equipment, or facilities, or the network, equipment, or facilities of any other person or entity located in the Eligible Structure; create hazards for or cause damage to those networks, equipment, or facilities, the Physical Collocation Space, or the Eligible Structure; impair the privacy of any communications carried in, from, or through the network, equipment, facilities the Physical Collocation Space or the Eligible

Structure; or create hazards or cause physical harm to any person, entity, or the public. Any of the foregoing events would be a material breach of this Appendix.

- 8.7 In no case shall the Collocator's AM-OH Approved Vendor or any person or entity purporting to be acting through or on behalf of the Collocator make any significant rearrangement, modification, improvement, addition, repair, or other alteration to the Physical Collocation Space the Eligible Structure or the Adjacent Structure without the advance written permission or direction of AM-OH. AM-OH shall consider a modification, improvement, addition, repair, or other alteration requested by Collocator, provided that AM-OH shall have the right to reject or modify any such request. If AM-OH performs any such construction, and the associated cost shall be paid by Collocator in accordance with AM-OH then-standard custom work order process, ICB or NSCR.

## **9. COLLOCATOR RESPONSIBILITIES**

- 9.1 Consistent with the nature of the Eligible Structure, the Adjacent Structure and the environment of the Physical Collocation Space, Collocator shall not use the Physical Collocation Space for office, retail, or sales purposes. No signage or markings of any kind by Collocator shall be permitted on the Eligible Structure, on the grounds surrounding the building, or on the Adjacent Structure.
- 9.2 Collocator represents and warrants that each item of Collocator's Equipment meets AM-OH minimum safety standards and are compliant with the other requirements set forth in this Appendix. DISCLOSURE OF ANY NON-COMPLIANT EQUIPMENT OR FACILITIES TO AM-OH IN A PHYSICAL COLLOCATION APPLICATION OR OTHERWISE SHALL NOT QUALIFY THIS ABSOLUTE CERTIFICATION REQUIREMENT IN ANY MANNER.
- 9.3 Procurement, installation and termination of interconnection cabling between Collocator's Physical Collocation Space and AM-OH Main Distribution Frame and/or interconnection points by Collocator's AM-OH Approved Vendor. Additional requirements relating to installation and termination of interconnection cabling is set forth in Section 10.5.3 of this Appendix.
- 9.4 Procurement and installation of power cable(s) by Collocator's AM-OH Approved Power Installation Vendor from the Physical Collocation Space to the designated AM-OH's Battery Distribution Fuse Bay (BDFB) or Power Plant Primary Distribution points, whichever is applicable. Additional requirements relating to installation of power cable(s) is set forth in Section 10.6 of this Appendix.



- 9.5 Collocator's employees, agents and contractors shall be permitted access to the Physical Collocation Space at all times, provided that Collocator's employees, agents and contractors comply with AM-OH's policies and practices pertaining to fire, safety and security. Collocator agrees to comply promptly with all laws, ordinances and regulations affecting the use of the Physical Collocation Space.
- 9.6 Collocator is solely responsible for the design, engineering, installation, testing, performance, and maintenance of the Collocator Telecom Equipment used by Collocator in the Physical Collocation Space. Collocator may not disassemble, remove or otherwise reconfigure the cage enclosure (Physical Collocation Space) at any time unless it has been provided by the Collocator. Collocator is also responsible for servicing, supplying, repairing, installing and maintaining the following facilities within the Physical Collocation Space in the AM-OH:
- 9.6.1 Its fiber optic cable(s);
- 9.6.2 Its Collocator Telecom Equipment;
- 9.6.3 Collocator requested dedicated point of termination frame maintenance, including replacement of fuses and circuit breaker restoration, to the extent that such fuses and circuit breakers are within Collocator's Physical Collocation Space; and
- 9.6.4 The connection cable and associated equipment which may be required within Collocator's Physical Collocation Space to the point(s) of termination of that cable within Collocator's Physical Collocation Space.
- 9.6.5 AM-OH requires that a Collocation Interconnect Power Panel (CIPP) must be used when the Physical Collocation arrangement is not served from AM-OH's BDFB. No CIPP is required for 20, 40 or 50 amp arrangements, which are served from AM-OH's BDFB. The CIPPs are designed to provide 20, 40, 50 or 100/200 (maximum) amp redundant increments of DC power. The CIPP is always required for 100/200 amp or greater power arrangements. The Collocator will furnish and install the (CIPP) within a Collocator-provided equipment bay designated by Collocator. The CIPP must meet TP76200MP Level 1 requirements.
- 9.7 Collocator will, whenever possible, place their telecom equipment in the Physical Collocation Space within ninety (90) calendar days of Delivery Date. Collocator must interconnect to AM-OH's network or gain access to AM-OH's unbundled network elements within one hundred eighty (180) calendar days of Delivery Date. If Collocator fails to do so, AM-OH may, upon written notice, terminate that Physical Collocation arrangement, and Collocator shall be liable in an amount equal to the unpaid balance of the charges due under this Appendix for the terminated arrangement and, further, shall continue to be bound by the provisions of this

Appendix, the terms and any context of which indicates continued viability or applicability beyond termination. For purposes of this Section, Collocator Telecom Equipment is considered to be interconnected when physically connected to AM-OH's network or a AM-OH unbundled network element for the purpose of Collocator providing a telecommunications service.

- 9.8 Orders for additional space will not be accepted until the existing Collocator's Physical Collocation Space in the requested Eligible Structure, is "efficiently used." Orders for additional Connecting Facility Assignments (CFAs) will not be accepted until the specific CFA type requested (i.e. DSO, DS1, Fiber, etc.) in the requested Eligible Structure is "efficiently used."

9.8.1 For purposes of this Appendix, "efficiently used" space means the Collocator is utilizing between sixty percent (60%) and one hundred percent (100%) of the Collocator's existing collocation space arrangement, caged and/or cageless, in a particular Eligible Structure. The determination as to whether this criterion is met or necessary is solely within the reasonable judgment of AM-OH.

9.8.2 For purposes of this Appendix, "efficiently used" CFA means that at least sixty percent (60%) of the Collocator's specific type of CFA (cable pairs, coaxial or fiber facilities) requested is currently being used for purpose of interconnecting to AM-OH network for the transmission and routing of telephone exchange service or exchange access. The determination as to whether this criterion is met or the use is necessary is solely within the reasonable judgment of AM-OH.

- 9.9 Subject to the limitations and restrictions of this Appendix, Collocator may place or install in or on the Physical Collocation Space such fixtures and unpowered facilities as it shall deem desirable for the proper use of the Physical Collocation Space as described above. Personal property, fixtures and unpowered facilities placed by Collocator in the Physical Collocation Space shall not become a part of the Physical Collocation Space, even if nailed, screwed or otherwise fastened to the Physical Collocation Space, but shall retain their status as personal property and may be removed by Collocator at any time. Any damage caused to the Physical Collocation Space by the removal of such property shall be repaired at Collocator's expense.

- 9.10 This Appendix and the Collocation provided hereunder is made available subject to and in accordance with Sections 9.10.1, 9.10.2, 9.10.3, and 9.10.4. Collocator shall strictly observe and abide by each in AM-OH.

9.10.1 SBC's TP76200MP, Network Equipment: Power, Grounding, Environmental, and Physical Design Requirements, and any successor document(s), including as such may be modified at any time and from time to time;

- 9.10.2 **SBC's** most current Interconnector's Collocation Services Handbook and any successor document(s), as may be modified from time to time as set forth below.
- 9.10.3 **SBC's** TP76300MP, standards and requirements for equipment and facilities installations, and any successor document(s) within **AM-OH** central offices and may be modified from time to time.
- 9.10.4 Any statutory and/or regulatory requirements in effect at the time of the submission of the Physical Collocation Application or that subsequently become effective and then when effective.

## 10. COOPERATIVE RESPONSIBILITIES

- 10.1 **AM-OH** will contract for and perform the construction and preparation activities necessary to prepare the Physical Collocation Space using the same or consistent practices that are used by **AM-OH** for other construction and preparation work performed in the Eligible Structure. **AM-OH** will permit Collocator to subcontract the construction of Physical Collocation arrangements with contractors/vendors approved by **AM-OH**, provided that **AM-OH** will not unreasonably withhold approval of contractors.
- 10.2 **AM-OH** will allow Collocator to select its own contractors for all required engineering and installation services associated with the Collocator Telecom Equipment (e.g., **AM-OH** shall not require Collocator to use **AM-OH's** internal engineering or installation work forces for the engineering and installation of the Collocator Telecom Equipment). Installation of the Collocator Telecom Equipment in the Physical Collocation Space must nevertheless comply with **SBC's** TP76300MP. Collocator-selected contractors must agree to all policies and procedures in this Appendix. Access to the Eligible Structure or **AM-OH's** Premises and the Physical Collocation Space for Collocator contractors is provided submit to the same requirements as the Collocator.
  - 10.2.1 In **AM-OH**, Collocator's contractors must be certified as required in the Interconnector's Collocation Handbook which is not incorporated herein but available on **SBC's** CLEC ONLINE Web-Site.
- 10.3 If the Interconnector's Collocation Services Handbook, **SBC's** CLEC ONLINE Web-Site or the **SBC's** TP76200MP, is modified subsequent to the effective date of this agreement from the attached, the following shall apply:
  - 10.3.1 If a modification is made after the date on which Collocator has or orders a Physical Collocation arrangement, **AM-OH** shall provide Collocator with those modifications or with revised versions of such, listing or noting the modifications as appropriate. Any such modification shall become effective

and thereafter applicable under this Appendix thirty (30) calendar days after such amendment is released by AM-OH.

- 10.4 The terms and conditions expressly set forth in this Appendix shall control in the event of an irreconcilable conflict with the Collocation Services Handbook, SBC's CLEC ONLINE Web-Site, SBC's TP76300MP, and the TP76200MP in AM-OH.
- 10.5 AM-OH shall provide an interconnection point or points, physically accessible by both AM-OH and Collocator (typically a AM-OH manhole) at which a Collocator fiber optic cable can enter the Eligible Structure, provided that AM-OH will designate interconnection points as close as reasonably possible to the Eligible Structure. AM-OH will provide at least two such interconnection points at each Eligible Structure where there are at least two entry points for AM-OH's cable facilities and at which space is available for new facilities in at least two of those entry points. Collocator shall use a single mode dielectric, plenum rated, fire retardant fiber optic cable as a transmission medium to the Physical Collocation Space. Collocator shall be permitted no more than two (2) entrance routes into the Building, if available.
- 10.5.1 Collocator is responsible for bringing its fiber optic cable to an accessible point outside of the Eligible Structure designated by AM-OH, and for leaving sufficient cable length to fully extend the fiber optic cable to the Collocator's assigned space within the Eligible Structure. Under AM-OH observation, the Collocator's AM-OH Approved Vendor will fully extend such Collocator-provided cable per the SBC's TP76300MP to the Collocator's assigned Physical Collocation Space. Coordination for placement of entrance cable facilities must be scheduled with AM-OH's designated Outside Plant Engineer and must obtain an approved Method of Procedures (MOP) from AM-OH.
- 10.5.2 AM-OH will permit interconnection of copper or coaxial cable only if first approved by the Commission and will permit collocation of microwave transmission equipment along with the microwave entrance facility except where such collocation is not practical for technical reasons or because of space limitations.
- 10.5.3 AM-OH will be responsible for determining equipment location within the Eligible Structure. Procurement, installation and termination of interconnection cabling between Collocator's Physical Collocation Space and AM-OH Main Distribution Frame and/or its equivalent will be installed by the Collocator's AM-OH Approved Vendor. The Collocator's AM-OH Approved Vendor must obtain an approved Method of Procedures (MOP) from AM-OH and follow the AM-OH's standards and requirements for installation of equipment and facilities. AM-OH will install and stencil the termination blocks or panels at AM-OH's Main

Distribution Frame and/or its equivalent for the hand off of the Actual Point of Termination (APOT) Connection(s) to the Collocator.

- 10.6 Unless otherwise expressly agreed in writing, AM-OH will provide for all AC and DC power requirements in the Eligible Structure. The Collocator is not permitted to, and will not, place any AC or DC power-generating or power-storing devices (including, for example but not limited to rectifiers, battery plants, AC or DC generators) in the Eligible Structure. Power will support Collocator Telecom Equipment at the specified DC and AC voltages. At a minimum, the power and AM-OH's associated performance, availability, restoration, and other operational characteristics shall be at parity with that provided to AM-OH's substantially similar telecommunications equipment unless otherwise mutually agreed in writing. Loads specified by the Collocator represent the peak current that will be imposed on a power feeder at any voltage within the emergency operating limits of the equipment and any normal operating condition (i.e. not a short circuit or other malfunction). Even though circuit design is based on peak current, DC power plant design sizing by the AM-OH's is based on demand management. AM-OH will engineer, design, and place cable racks for all power cable routes within the Eligible Structure. Collocator's AM-OH Approved Power Installation Vendor will install the power cable(s) from the Physical Collocation Space to AM-OH's dedicated termination points on the Battery Distribution Fuse Bay (BDFB). When the AM-OH's designated power termination point(s) is at the AM-OH's Power Plant Primary Distribution, the Collocator's AM-OH Approved Power Installation Vendor will install, but not terminate the Collocator's power cable(s). The Collocator must contact the assigned AM-OH Project Manager five (5) business days prior to scheduling a request for the termination of Collocator's power cable(s) to the AM-OH's Power Plant Primary Distribution, which will be performed by AM-OH. The Collocator's AM-OH Approved Power Installation Vendor must obtain an approved Method of Procedures (MOP) from AM-OH and follow the SBC's TP76300MP.
- 10.7 AM-OH will provide negative DC and AC power, back-up power, lighting, ventilation, heat, air conditioning and other environmental conditions necessary for the Collocator's equipment in the same manner and at the same standards that AM-OH provides such conditions for its own substantially similar equipment or facilities within that Eligible Structure.
- 10.8 Regeneration of either DS-1 or DS-3 signal levels may be provided by Collocator or AM-OH under its then-standard custom work order process or NSCR, including payment requirements prior to the installation of the regeneration equipment.
- 10.9 Collocator and AM-OH are each responsible for providing to the other contact numbers for technical personnel who are readily accessible twenty-four (24) hours a day, seven (7) days a week.

- 10.10 **AM-OH** shall maintain for the Eligible Structure customary building services, utilities (excluding telephone facilities), including janitor and elevator services, 24 hours a day.
- 10.11 **AM-OH** agrees to make, at its expense, all changes and additions to the Eligible Structure required by laws, ordinances, orders or regulations of any municipality, county, state or other public authority including the furnishing of required sanitary facilities and fire protection facilities, except fire protection facilities specially required because of the installation of telephone or electronic equipment and fixtures in the Physical Collocation Space.
- 10.12 Collocator and **AM-OH** are each responsible for providing trouble report status or any network trouble of problems when requested by the other.
- 10.13 In **AM-OH**, each Party is responsible for immediate verbal notification to the other of significant outages or operations problems which could impact or degrade that other's network, equipment, facilities, or services, and for providing an estimated clearing time for restoration. In addition, written notification must be provided within twenty-four (24) hours from verbal notification.
- 10.14 In the event **AM-OH** determines it necessary for Physical Collocation Space to be moved within the Eligible Structure in which the Physical Collocation Space is located or to another Eligible Structure, Collocator is required to do so. If such relocation arises from circumstances beyond the reasonable control of **AM-OH**, including condemnation or government order or regulation that makes the continued occupancy of the Physical Collocation Space or Eligible Structure too costly in **AM-OH**'s sole judgment, Collocator shall be responsible for the cost of preparing the new Physical Collocation Space at the new location. Otherwise **AM-OH** shall be responsible for any reasonable preparation costs.
- 10.14.1 In the event that a Collocator requests that the Physical Collocation Space be moved within the **AM-OH** Eligible Structure or to another Eligible Structure, **AM-OH** shall permit the Collocator to relocate the Physical Collocation Space, subject to the availability of space and associated requirements. Collocator shall be responsible for all charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new Physical Collocation Space and the new Wire Center as applicable.
- 10.15 In the event the Collocator cancels its order after **AM-OH** has begun preparation of the Physical Collocation Space, but before **AM-OH** has been paid the entire amount due under this Agreement, then in addition to other remedies that **AM-OH** might have, the Collocator shall be liable in the amount equal to the non-recoverable costs less estimated net salvage. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; the non-recoverable cost of

installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs. AM-OH shall provide the Collocator with a detailed invoice showing the costs it incurred associated with preparation of Collocator's Physical Collocation request.

- 10.16 Collocator may discontinue or terminate a Physical Collocation Arrangement on not less than thirty (30) days advance notice to AM-OH by submitting a complete and accurate Physical Collocation Application plus applicable fees. Upon the discontinuance or termination of a Physical Collocation arrangement, the Collocator shall pay to AM-OH all costs associated with returning the Physical Collocation Space to AM-OH in the same condition as when AM-OH first began any construction work on such space on behalf of Collocator. Such costs include, but are not limited to, costs associated with removal by AM-OH of facilities, cabling and cages.
- 10.17 Upon discontinuance or termination of the Physical Collocation arrangement, the Collocator will work cooperatively with AM-OH to remove the Collocator's equipment from AM-OH property subject to the condition that the removal of such equipment can be accomplished without damaging or endangering other equipment located in the central office. AM-OH is not responsible for and will not guarantee the condition of such equipment if removed by Collocator or an AM-OH vendor hired by Collocator. Collocator shall indemnify and hold AM-OH harmless from any damage or claims associated with removal of its equipment or other equipment located in the central office damaged while Collocator is removing its own equipment. The Collocator is responsible for arranging for and paying for the removal of physically collocated equipment including all costs associated with equipment removal, packing and shipping. Arrangements for and the removal of the Collocator's physically collocated equipment must be made within thirty (30) calendar days of AM-OH receipt of Collocator's Physical Collocation Application to terminate the Physical Collocation arrangement, unless a different time period is mutually agreed upon. The Collocator will pay all arrangement monthly charges until all equipment is removed. If the Collocator has not removed the equipment within this timeframe, AM-OH has the right to remove the equipment and bill the Collocator for any reasonable expense associated with removal of the equipment. AM-OH shall have no responsibility for damage done to such removed equipment caused by AM-OH or its contractors during the removal process. Collocator will indemnify and hold AM-OH harmless for any damage or claims associated with the removed equipment or other equipment located in the central office damaged if AM-OH removes Collocator's equipment. Any equipment not removed in this time frame may be removed by AM-OH and stored in a non- AM-OH location, at the expense of the Collocator.
- 10.18 Upon termination of the Physical Collocation arrangement, the Collocator must remove the fiber entrance cable used for the Physical Collocation. If the entrance cable(s) is not scheduled and removed within thirty (30) calendar days after discontinuance of use, AM-OH may arrange for the removal, and the Collocator will

be responsible for any charges incurred to remove the cable as set forth in Section 10.19 below. AM-OH and the Collocator will cooperatively manage the removal process. The Collocator is only responsible for physically removing entrance cables housed in conduits or inner-ducts and will only be required to do so when AM-OH instructs the Collocator such removal can be accomplished without damaging or endangering other cables contained in a common duct or other equipment residing in the central office.

- 10.19 If Collocator fails to remove its equipment and facilities from the Physical Collocation Space within thirty (30) calendar days after discontinuance of use, AM-OH may perform the removal and shall charge Collocator for any materials used in any such removal, and the time spent on such removal at the then-applicable hourly rate for custom work. Further, in addition to the other provisions herein, Collocator shall indemnify and hold AM-OH harmless from any and all claims, expenses, fees, or other costs associated with any such removal by AM-OH.
- 10.20 Other than the security restrictions described herein, AM-OH shall place no restriction on access to Collocator's central office Physical Collocation Space by Collocator's employees and designated agents. Such space shall be available to Collocator designated agents twenty-four (24) hours per day each day of the week. AM-OH will not impose unreasonable security restrictions for the Eligible Structure, including the Physical Collocation Space.
- 10.21 Demarcation Point – AM-OH shall designate the point(s) of termination within the Eligible Structure as the point(s) of physical demarcation between Collocator's network and AM-OH's network, with each being responsible for maintenance and other ownership obligations and responsibilities on its side of that demarcation point. Collocator is responsible for coordinating with AM-OH to ensure that services are installed in accordance with a service request.
- 10.22 Collocator is responsible for testing, isolating and clearing trouble when the trouble has been isolated to inside the Physical Collocation Space, or to any piece of Collocator Telecom Equipment, or any other Collocator-provided facility or piece of equipment. If AM-OH testing is also required, it will be provided at applicable charges.

## 11. TESTING AND ACCEPTANCE

- 11.1 Collocator and AM-OH will complete an acceptance walk-through of the Physical Collocation Space prior to AM-OH turning the Physical Collocation Space over to Collocator. Exceptions that are noted during this acceptance walk-through shall be corrected by AM-OH as soon as commercially reasonable after those exceptions are provided in writing, which exceptions shall be provided no more than five (5) business days after the walk through. The correction of these exceptions from Collocator's Physical Collocation request shall be at AM-OH's expense.



- 11.2 Once the Collocator's equipment installation is successfully completed, power must be turned up and tested, and connectivity must be tested. Power testing, and connectivity testing in certain situations, will require a cooperative test involving the Collocator, its AM-OH approved installation contractor, AM-OH, and/or AM-OH vendor.
- 11.3 All installations of equipment must be in accordance with the SBC's TP76300MP and subject to review by an AM-OH maintenance engineer for compliance. Should AM-OH maintenance engineer determine during their review audit that the installation is not compliant with specifications, the Collocator or it's AM-OH Approved Vendor must correct non compliant items and schedule an additional review audit after corrective work has been performed.
- 11.4 Collocator shall be responsible for coordination with its AM-OH Approved Vendor to be at the site for acceptance testing.
- 11.5 Once Collocator has accepted the facilities, the Collocator will order either interconnection or access to UNEs from AM-OH to be connected to their equipment.

## 12. DELIVERY INTERVALS

- 12.1 The construction interval relates to the period in which AM-OH shall construct and turnover to the Collocator the requested Physical Collocation Space. The delivery interval begins on the date AM-OH receives an accurate and complete Physical Collocation Application from the Collocator. The delivery interval ends on the date AM-OH is ready to turnover the Physical Collocation Space to the Collocator ("Delivery Date"). The Collocator must provide AM-OH, within seven (7) calendar days from the date of notification granting the application request, a confirmatory response in writing to continue construction along with the fifty percent (50%) payment of non-recurring charges (unless payment was received with application) or the delivery interval provided in table below will not commence until such time as AM-OH has received such response and payment. If the Collocator has not provided the AM-OH such response and payment by the twelfth (12) calendar day after the date AM-OH notified Collocator its request has been granted, the application will be canceled. Physical Collocation Space is not reserved until AM-OH's receipt of the confirmatory response in writing from the Collocator with applicable fees. The delivery interval assigned will be provided to the Collocator by AM-OH with the ten (10) calendar day space notification. Each complete and accurate Physical Collocation Application received by AM-OH from the Collocator will be processed in the order received unless the Collocator provides a priority list, whichever is applicable. The delivery interval for Physical Collocation is determined by AM-OH taking into consideration the various factors set forth in Table (1) below including, without limitation, the number of all Physical Collocation Applications submitted by Collocator and the need for additional preparation of the space such as overhead racking, additional power or HVAC.

**Table (1)**

Number of All Physical Collocation Applications submitted by One Collocator per state or metering region	Overhead Iron/Racking Exists for Active Collocation Space Use	Overhead Iron/Racking Does Not Exist for Active Collocation Space Use	Additional Power or HVAC is not Required for the assigned Inactive Collocation Space Use	Additional Power or HVAC is Required for the assigned Inactive Collocation Space Use
1 – 10	60 calendar days	80 calendar days	140 calendar days	180 calendar days
11-20	65 calendar days	85 calendar days	145 calendar days	185 calendar days

- 12.2 Should the Collocator submit twenty-one (21) or more applications within ten (10) business days, the above delivery intervals will be increased by five (5) calendar days for every five (5) additional applications or fraction thereof. Any material revision to an application will be treated as a new application and the delivery intervals set forth in Table (1) above will be re-started. All Physical Collocation Applications (except requests for Adjacent Structure Collocation) received by **AM-OH** from a Collocator within a ten (10) business day period shall be treated as submitted at the same time for purposes of administering the above staggering intervals. The Caged and Cageless collocation delivery interval ends when roughed in and the assigned space has been distinctly marked by **AM-OH**.

- 12.2.1 For example, but not by way of limitation, if a Collocator submits twelve (12) Caged/Cageless Physical Collocation Applications in a state, the delivery intervals assigned by **AM-OH** will depend on which variables apply within each Eligible Structure Physical Collocation is requested:

If Applications (1-4) are for Physical Collocation Space where Active Collocation Space is available and overhead racking exists, the delivery intervals assigned will be sixty (60) days. If Applications (5-6) are for Physical Collocation Space and only Inactive Collocation Space exists and additional power or HVAC is not required, the delivery interval assigned will be one hundred forty (140) calendar days. If Applications (7-12) are for Physical Collocation Space where Active Collocation Space is available and overhead racking does not exist, the delivery intervals assigned to Applications (7-10) will be eighty (80) calendar days and for Applications (11-12) will be assigned eighty five (85) calendar days.

- 12.3 The second fifty percent (50%) payment must be received by **AM-OH** prior to the space being turned over to the Collocator. At space turnover, the Actual Point of Termination (APOT) Connection(s) will be provided to the Collocator by **AM-OH**.
- 12.4 For the following interconnection cabling Augments, the Collocator must submit a complete and accurate Physical Collocation Application:
- 168 DS1 connections and/or
  - 48 DS3 connections and/or
  - 400 Copper (shielded or nonshielded) cable pair connections
  - 12 fiber pair connections

This application must include an up-front payment of the Application Fee and fifty percent (50%) of all applicable non-recurring charges.

- 12.5 The cabling Augment interval is determined by **AM-OH** taking into consideration the various factors set forth in Table (2) below including, without limitation, the number of all Physical Collocation Applications for the above Augments submitted by Collocator, the type of infrastructure available for collocation, and the need for additional preparation of the infrastructure such as overhead racking and additional power. The cabling Augment interval assigned will be provided to the Collocator by **AM-OH** with the ten (10) calendar day Augment notification. Each complete and accurate Physical Collocation Application received by **AM-OH** from the Collocator will be processed in the order received unless the Collocator provides a priority list, whichever is applicable. The cabling Augment interval is determined by **AM-OH** taking into consideration the various factors set forth in Table (2) below including, without limitation, the number of all Physical Collocation Applications for the above Augments submitted by Collocator, the type of infrastructure available for collocation, and the need for additional preparation of the infrastructure such as overhead racking and additional power.

**Table (2)**

Number of All Cabling Augment Applications submitted by One Collocator per state or metering region	Necessary Elements such as Iron/Racking and Power exist for Physical Collocation Use	Necessary Elements such as Iron/Racking and Power does not exist for Physical Collocation Use
1 – 10	30 calendar days	60 calendar days
11-20	35calendar days	65 calendar days

- 12.6 Should the Collocator submit twenty-one (21) or more Physical Collocation Applications for cabling Augments within ten (10) business days, the above delivery

intervals will be increased by five (5) calendar days for every five (5) additional application or fraction thereof. Any material revision to a Physical Collocation Application for cabling Augments will be treated as a new application and will be subject to the delivery intervals set forth in Table (2) above. All applications received by **AM-OH** from a Collocator within a ten (10) business day period shall be treated as submitted at the same time for purposes of administering the above staggering intervals.

12.6.1 For example, but not by way of limitation, if a Collocator submits twelve (12) Physical Collocation Applications for cabling Augments in a state, the delivery intervals assigned will depend on which variables apply within each Eligible Structure requested:

If Applications (1-4) are for Physical Collocation cabling Augments where necessary elements such as overhead racking and power exists, the delivery interval assigned will be thirty (30) days. If Applications (5-12) are for Physical Collocation where necessary elements such as overhead racking and power does not exists, the delivery interval assigned to Applications (5-10) will be sixty (60) calendar days and for Applications (11-12) sixty five (65) calendar days.

- 12.7 For all Augments other than provided above, **AM-OH** will work cooperatively with Collocator to negotiate a mutually agreeable delivery interval.
- 12.8 Within twenty (20) calendar days or mutually agreed upon time, from **AM-OH**'s receipt of the confirmatory response in writing to continue construction on the Physical Collocation arrangement requested along with the fifty percent (50%) payment of non-recurring charges (unless payment was received with application), Network Support and/or appropriate departments will schedule a walk through visit with TWTC and/or vendor to provide floor plans of space and the preliminary route design for the interconnection and power cabling.
- 12.9 **AM-OH** and the Collocator will come to agreement regarding Collocator inspection visits during the construction of the Physical Collocation Space. These visits will be allowed during regular business hours only and will require that the Collocator be escorted by an **AM-OH** employee. Escort charges will apply. These visits will be jointly agreed upon by **AM-OH** and the Collocator and will be determined on a case by case basis.
- 12.10 During **AM-OH** delivery interval, if engineering design work is complete, which includes asbestos removal, HVAC installation, filtration, floor loading, floor preparation, and overhead racking placement, **AM-OH** will notify Collocator that their vendors or contractors will be allowed to do work in parallel with **AM-OH** throughout the remaining delivery interval. The Collocator must obtain an approved Method of Procedures (MOP) from **AM-OH** and follow **SBC**'s Technical

Publication for installation of equipment and facilities. Security Access requirements in Section 13 of this Appendix will apply.

12.11 In responding to an application request that requires an ICB/NSCR, AM-OH shall advise the Collocator with the quote whether space for the Virtual Collocation requested is available.

12.12 Adjacent Structure Collocation Delivery Intervals

12.12.1 AM-OH Delivery Interval, rates, terms and conditions for Adjacent Structures Collocation will be determined on an individual case basis (ICB)/Non Standard Collocation Request (NSCR).

13. SECURITY

13.1 As provided herein, AM-OH may require reasonable security arrangements to protect its equipment and ensure network reliability. AM-OH may recover the costs of implementing security measures from Collocators in a reasonable manner via the appropriate State Commissions. Except as provided below, AM-OH may only impose security arrangements that are as stringent as the security arrangements that AM-OH maintains at its own premises for its own employees or authorized contractors. AM-OH must allow Collocator to access its installed Physical Collocation equipment twenty-four (24) hours a day, seven (7) days a week, in AM-OH Eligible Structures without requiring either a security escort of any kind or delaying a Collocator's employees' entry into AM-OH's Eligible Structure. Reasonable security measures that AM-OH may adopt include, but are not limited to, the following:

13.1.1 Installing security cameras or other monitoring systems; or

13.1.2 Requiring Collocator personnel to use badges with computerized tracking systems; or

13.1.3 Requiring Collocator employees to undergo the same level of security training, or its equivalent, that AM-OH's own employees, or third party contractors providing similar functions, must undergo; provided, however, that AM-OH may not require Collocator employees to receive such training from AM-OH itself, but must provide information to Collocator on the specific type of training required so Collocator's employees can conduct their own training. Qualification program and security training details shall be included in AM-OH's technical publications and/or Collocation website(s). AM-OH does not use any information collected in the course of implementing or operating security arrangements "for any marketing or other purpose in aid of competing with Collocators".

- 13.1.4 AM-OH may take reasonable steps to protect its own equipment, such as enclosing the equipment in a cage. If AM-OH chooses to construct an interior security partition around its own equipment, that partition may not interfere with Collocators' access to their own equipment, including equipment collocated directly adjacent to AM-OH's equipment. AM-OH's enclosure of its own equipment will not be a basis for a claim that space is exhausted.
- 13.2 Collocators and AM-OH will each establish disciplinary procedures up to and including dismissal or denial of access to the Eligible Structure and other AM-OH's property for certain specified actions that damage, or place the equipment, facilities, or the network or personnel of the Collocators or AM-OH in jeopardy. The following are actions that could damage or place the Eligible Structure, or the network or the personnel of the Collocators or AM-OH, in jeopardy and may justify disciplinary action up to and including dismissal or the denial of access to the Eligible Structure and other AM-OH property:
- 13.2.1 Theft or destruction of AM-OH's or any Collocator's property.
- 13.2.2 Use or attempted use/sale of alcohol or illegal drugs on AM-OH's property.
- 13.2.3 Industrial espionage.
- 13.2.4 Threats or violent acts against other persons on AM-OH's property.
- 13.2.5 Knowing violations of any local, state or federal law on AM-OH's property.
- 13.2.6 Permitting unauthorized persons access to AM-OH's or Collocator's equipment on AM-OH's property.
- 13.2.7 Carrying a weapon on AM-OH's property.
- 13.3 In addition, the Collocator and AM-OH will take appropriate disciplinary steps as determined by each party to address any violations reported by AM-OH or the Collocator of AM-OH's policies and practices on security, safety, network reliability, and business conduct as defined in SBC's Interconnector's Collocation Services Handbook and/or CLEC ONLINE Web-Site, provided the such information and any and all updates to it are timely provided to the Collocator.
- 13.4 Collocators will provide indemnification and insurance as set forth in this agreement to cover any damages caused by the Collocator's technicians at a level commensurate with the indemnification and insurance provided by AM-OH's authorized contractors with equivalent access. The indemnification provisions and requirements are reciprocal to AM-OH as well.

- 13.5 AM-OH may use reasonable security measures to protect its equipment, including, but not limited to, enclosing its equipment in its own cage, the use of security cameras or other monitoring devices, badges with computerized tracking systems, identification swipe cards, keyed access, and/or logs, as appropriate for the Eligible Structures where physical collocation will take place.

#### 14. CASUALTY LOSS

- 14.1 If the Eligible Structure or the Physical Collocation Space is damaged by fire or other casualty, and:
- 14.1.1 The Physical Collocation Space is not rendered untenable in whole or in part, AM-OH shall repair the same at its expense (as herein limited) and the recurring charges shall not be abated, or
- 14.1.2 The Physical Collocation Spaces is rendered untenable in whole or in part and such damage or destruction can be repaired within ninety (90) calendar days, AM-OH has the option to repair the Physical Collocation Space at its expense (as herein limited) and the recurring charges shall be proportionately abated to the extent and while Collocator was deprived of the use. If the Physical Collocation Space cannot be repaired within ninety (90) calendar days, or AM-OH opts not to rebuild, then the Physical Collocation arrangement provided in the Physical Collocation Space shall (upon notice to Collocator within thirty (30) calendar days following such occurrence) terminate as of the date of such damage. AM-OH shall endeavor to relocate Collocator equipment in alternative location, or assist Collocator in developing alternative to physical location.
- 14.2 Any obligation on the part of AM-OH to repair the Physical Collocation Space shall be limited to repairing, restoring and rebuilding the Physical Collocation Space as originally prepared for Collocator and shall not include any obligation to repair, restore, rebuild or replace any alterations or improvements made by Collocator or by AM-OH on request of Collocator; any Collocator Telecom Equipment; or other facilities or equipment located in the Physical Collocation Space by Collocator or by AM-OH on request of Collocator.
- 14.3 In the event that the Eligible Structure shall be so damaged by fire or other casualty that closing, demolition or substantial alteration or reconstruction thereof shall be necessary then, notwithstanding that the Physical Collocation Space may be unaffected thereby, AM-OH, at its option, may terminate any Physical Collocation arrangement in that Eligible Structure by giving Collocator ten (10) calendar days prior written notice within thirty (30) calendar days following the date of such occurrence, if at all possible.

**15. REMOVAL OF EQUIPMENT**

- 15.1 Unless otherwise set forth herein, if Collocator shall default in performance of any term or condition herein, and the default shall continue for thirty (30) calendar days after receipt of written notice, or if Collocator is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, **AM-OH** may, immediately or at any time thereafter, without notice or demand, enter and repossess the Physical Collocation Space, expel Collocator and any claiming under Collocator, remove any Collocator Telecom Equipment and any other items in the Physical Collocation Space, forcibly if necessary, and thereupon such Physical Collocation arrangement shall terminate, without prejudice to any other remedies **AM-OH** might have. **AM-OH** may exercise this authority on an individual collocation space basis. **AM-OH** may also refuse additional applications for collocation and/or refuse to complete any pending orders for additional space or collocation by Collocator at any time thereafter.

**16. LIMITATION OF LIABILITY**

- 16.1 Collocator acknowledges and understands that **AM-OH** may provide space in or access to the Eligible Structure to other persons or entities ("Others"), which may include competitors of Collocator; that such space may be close to the Physical Collocation Space, possibly including space adjacent to the Physical Collocation Space and/or with access to the outside of the physical collocation space; and that if Collocator requests a cage around its equipment, the cage Physical Collocation Space is a permeable boundary that will not prevent the Others from observing or even damaging Collocator's equipment and facilities. In addition to any other applicable limitation, **AM-OH** shall have absolutely no liability with respect to any action or omission by any other, regardless of the degree of culpability of any such other or **AM-OH**, and regardless of whether any claimed **AM-OH** liability arises in tort or in contract. Collocator shall save and hold **AM-OH** harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other acting for, through, or as a result of Collocator.

**17. INDEMNIFICATION OF AM-OH**

- 17.1 In addition to any indemnification obligations set forth in the General Terms and Conditions of this Agreement), Collocator's shall indemnify and hold harmless **AM-OH** the agents, employees, officers, directors and shareholders of any of them ("Indemnities"), from and against any and all liabilities, obligations, claims, causes of action, fines, penalties, losses, costs, expenses (including court costs and reasonable attorney's fees), damages, injuries, of any kind, (individually and collectively "Liabilities"), including but not limited to, Liabilities as a result of (a) injury to or death of any person; (b) damage to or loss or destruction of any property; or (c) Liabilities related in any manner to employee benefits, workers compensation, payroll tax, and any other employer obligations which may be asserted against **AM-OH** where such liabilities arise in connection with Collocator's use of persons that it



classifies as an independent contractor or subcontractor to perform obligations under this Agreement; (d) attachments, liens or claims of material persons or laborers, arising out of or resulting from or in connection with this Agreement or the performance of or failure to perform and directly or indirectly caused, in whole or part, by acts of omissions, negligent or otherwise, of Collocator or a contractor or a representative of Collocator or an employee of any one of them, except to the extent such Liabilities arise from the willful or intentional misconduct of AM-OH or its employees.

## 18. OSHA STATEMENT

- 18.1 Collocator, in recognition of AM-OH's status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of AM-OH with all federal, state and local laws, safety and health regulations relating to the Physical Collocation Space which Collocator has assumed the duty to maintain pursuant to this Agreement, and to indemnify and hold AM-OH harmless for any judgments, citations, fines, or other penalties which are assessed against AM-OH as the result of Collocator's failure to comply with any of the foregoing. AM-OH, in its status as an employer, shall comply with all federal, state and local laws, safety and health standards and regulations with respect to the structural and those other portions of the Physical Collocation Space which AM-OH has agreed to maintain pursuant hereto.

## 19. NOTICES

- 19.1 Except in emergency situations, AM-OH shall provide Collocator with written notice five (5) business days prior to those instances where AM-OH or its subcontractors may be undertaking a major construction project in the general area of the Physical Collocation Space or in the general area of the AC and DC power plants which support the Physical Collocation Space.
- 19.2 AM-OH will inform Collocator by telephone of any emergency-related activity that AM-OH or its subcontractors may be performing in the general area of the Physical Collocation Space occupied by Collocator or in the general area of the AC and DC power plants which support the Physical Collocation Space. Notification of any emergency related activity should be made to Collocator as soon as reasonably possible so that Collocator can take any action required to monitor or protect its service.
- 19.3 AM-OH will provide Collocator with written notification within ten (10) business days of any scheduled AC or DC power work or related activity in the Eligible Structure that will cause an outage or any type of power disruption to Collocator Telecom Equipment. AM-OH shall provide Collocator immediate notification by telephone of any emergency power activity that would impact Collocator Telecom Equipment.

- 19.4 Except as may be specifically permitted in this Agreement, any notice or demand, given by one party to the other shall be in writing and shall be valid and sufficient if dispatched by registered or certified mail, return receipt requested, postage prepaid, in the United States mails, or by facsimile transmission; provided, however, that notices sent by such registered or certified mail shall be effective on the third business day after mailing and those sent by facsimile transmission shall only be effective on the date transmitted if such notice is also sent by such registered or certified mail no later than the next business day after transmission, all addressed as follows:

If to (AR, CA, CT, KS, MO, NV, OK, TX)  
**Account Manager - Collocation**  
**2600 North Central Expressway**  
**6th Floor,**  
**Richardson, Texas 75080**

If to (IL, IN, MI, OH, WI)  
**Account Manager - Collocation**  
**350 N. Orleans St., 5<sup>th</sup> Flr.**  
**Chicago, Illinois 60654**  
**Fax: 312-527-2670**

If to Collocator:

**(FOR IN, WI, OH)**  
**Pamela Sherwood**  
**Time Warner Telecom**  
**Regulatory VP Mid West**  
**4625 West 86<sup>th</sup> Street**  
**Suite 500**  
**Indianapolis, IN 46268**  
**Fax: 317-713-8923**

Either party hereto may change its address by written notice given to the other party hereto in the manner set forth above.

- 19.5 Except as may be specifically permitted in this Agreement, any payment desired or required to be given by one party to the other shall be dispatched by registered or certified mail, return receipt requested, postage prepaid, in the United States mails, and shall be addressed as follows:

**CSC**  
**2600 North Central Expressway,**  
**6<sup>th</sup> Floor,**  
**Richardson, Texas 75080**

If to Collocator: **Pamela Sherwood**  
**Time Warner Telecom**  
**Regulatory VP Mid West**  
**4625 West 86<sup>th</sup> Street**  
**Suite 500**  
**Indianapolis, IN 46268**

## **20. INSURANCE**

- 20.1 Collocator shall furnish AM-OH with certificates of insurance which evidence the minimum levels of insurance set forth in the General Terms and Conditions of this Agreement, and state the types of insurance and policy limits provided by Collocator. AM-OH shall be named as an ADDITIONAL INSURED on general liability policy.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED OR MATERIALLY CHANGED, THE ISSUING COMPANY WILL MAIL THIRTY (30) CALENDAR DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER (S).

- 20.1.1 In addition to the insurance requirements set forth in this Agreement, Collocator must maintain all Risk Property coverage on a full replacement cost basis insuring all of Collocator's personal property situated on or within the Eligible Structure. Collocator releases AM-OH from and waives any and all right of recovery, claim, action or cause of action against AM-OH, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to Collocator or located on or in the space at the request of Collocator when such loss or damage is by reason of fire or water or the elements or any other risks that would customarily be included in a standard all risk insurance policy covering such property, regardless of cause or origin, except for gross negligence of AM-OH, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on Collocator's fixtures and other personal property shall contain a waiver of subrogation against AM-OH, and any rights of Collocator against AM-OH for damage to Collocator's fixtures or personal property are hereby waived. Collocator may also elect to purchase business interruption and contingent business interruption insurance, knowing that AM-OH has no liability for loss of profit or revenues should an interruption of service occur that is attributable to any Physical Collocation arrangement provided under this Appendix.
- 20.2 The limits for insurance set forth in the General Terms and Conditions of this Agreement may be increased by reasonably AM-OH from time to time during the term of a Collocation arrangement to at least such minimum limits as shall then be customary in respect of comparable situations within the existing AM-OH structure.

- 20.3 All policies purchased by Collocator shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by **AM-OH**.
- 20.4 All insurance must be in effect on or before occupancy date and shall remain in force as long as any of Collocator's equipment or other Collocator facilities or equipment remain within the Eligible Structure.
- 20.5 Collocator shall submit certificates of insurance reflecting the coverages specified in the General Terms and Conditions of this Agreement prior to, and as a condition of, **AM-OH**'s obligation to turn over the Physical Collocation Space to Collocator or to permit any Collocator-designated subcontractors into the Eligible Structure. Collocator shall arrange for **AM-OH** to receive thirty (30) calendar day's advance written notice from Collocator's insurance company(ies) of cancellation, non-renewal or substantial alteration of its terms.
- 20.6 Collocator must also conform to recommendations made by **AM-OH**'s Property Insurance Company, if any, unless a recommendation is also applicable to **AM-OH** and **AM-OH** does not so conform in the Eligible Structure where the Physical Collocation space is located.
- 20.7 Failure to comply with the provisions of this "Insurance" Section will be deemed a material breach of this Agreement.

## **21. PROTECTION OF SERVICE AND PROPERTY**

- 21.1 **AM-OH** shall use its existing power back-up and power recovery plan in accordance with its standard policies for the specific Central Office.
- 21.2 For the purpose of notice permitted or required by this Appendix, each Party shall provide the other Party a Single Point of Contact (SPOC) available twenty-four (24) hours a day, seven (7) days a week.
- 21.3 Except as may otherwise be provided:
  - 21.3.1 **AM-OH** and Collocator shall each exercise reasonable care to prevent harm or damage to the other Party, its employees, agents or customers, or their property; and
  - 21.3.2 Each Party, its employees, agents, or representatives agree to take reasonable and prudent steps to ensure the adequate protection of property and services of the other Party.
  - 21.3.3 Each Party shall restrict access to the Eligible Structure and the Physical Collocation Space to employees and authorized agents of that other Party to the extent necessary to perform their specific job function.

- 21.4 **AM-OH** shall use electronic access controls to protect all spaces which house or contain Collocator equipment or equipment enclosures, but if electronic controls are not available, **AM-OH** shall either furnish security guards at those **AM-OH** locations already protected by security guards on a seven (7) day per week, twenty-four (24) hour a day basis; and if none, **AM-OH** shall permit Collocator to install monitoring equipment in the collocation space to carry data back to Collocator's work center for analysis. Collocator agrees that Collocator is responsible for problems or alarms related to Collocator's equipment or equipment enclosures located on **AM-OH**'s Physical Collocation Space.
- 21.5 **AM-OH** shall furnish Collocator with the identifying credentials to be carried by its employees and authorized agents to be paid for by the Collocator. The Collocator must maintain an updated list of all authorized employees and authorized agents on an individual Collocation Space basis for every Eligible Structure where there are **AM-OH** security guards.
- 21.6 Collocator shall comply with the security and safety procedures and requirements of **AM-OH**, including but not limited to sign-in, and identification.
- 21.7 **AM-OH** shall furnish Collocator with all keys, entry codes, lock combinations, or other materials or information that may be needed to gain entry into any secured Collocator space in central offices. In the event of an emergency, Collocator shall contact a SPOC provided by **AM-OH** for access to spaces which house or contain Collocator equipment or equipment enclosures.
- 21.8 **AM-OH** shall use reasonable measures to control unauthorized access from passenger and freight elevators to spaces which contain or house Collocator equipment or equipment enclosures.
- 21.9 **AM-OH** shall use best efforts to provide notification within two (2) hours to designated Collocator personnel to indicate an actual security breach.
- 21.10 **AM-OH** shall be responsible for the security of the Eligible Structure. If a security issue arises or if Collocator believes that **AM-OH**'s security measures are unreasonably lax, Collocator shall notify **AM-OH** and the Parties shall work together to address the problem. **AM-OH** shall, at a minimum, do the following:
- 21.10.1 Where a cage is used, **AM-OH** shall design collocation cages to prevent unauthorized access; provided, however, that Collocator realizes and assents to the fact that the cage will be made of wire mesh.
- 21.10.2 **AM-OH** shall establish procedures for controlling access to the collocation areas by employees, security guards and others. Those procedures shall limit access to the collocation areas to **AM-OH**'s employees, agents or invitees having a business need, such as a periodic review of the Physical

Collocation Space, to be in these areas. **AM-OH** shall require all persons entering the collocation areas to wear identification badges.

21.10.3 **AM-OH** shall provide card key access to all collocation equipment areas where a secured pathway to the collocation space is made available to Collocators, along with a positive key control system for each Collocator's caged Physical Collocation Space. **AM-OH** shall respond immediately to reported problems with Collocator key cards.

21.10.4 In emergency situations, common courtesy will be extended between Collocator and **AM-OH**'s employees, including the provision of first aid and first aid supplies.

21.11 Collocator shall limit access to Collocator employees directly to and from the Physical Collocation Space and will not enter unauthorized areas under any circumstances.

## **22. RESERVATION OF RIGHTS**

22.1 The Parties acknowledge and agree that certain rights and obligations including without limitation, the ability to collocate and use equipment meeting the "necessary" standard, the provision of 251(c)(6) cross-connections, and adherence to certain policies and practices of assigning space set forth in this Appendix are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). If any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory body or court of competent jurisdiction stays, modifies, or otherwise affects any of those rights and obligations, or the related rates, terms and conditions herein, specifically including those arising with respect to Federal Communications Commission's *Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, FCC 01-204, CC Docket No. 98-147 (Rel. August 8, 2001) or any other proceeding, the affected rights, obligations, or the related rates and/or terms and conditions shall be (i) immediately and automatically invalidated, modified, or stayed consistent with the action of the legislative body, court or regulatory agency with respect to any collocation applications then pending (i.e., for physical collocation, the space has not been completed and turned over to TWTC) and any thereafter submitted, and (ii) invalidated, modified or stayed consistent with the action of the legislative body, court or regulatory agency with respect to then existing collocation arrangements to the extent set forth in and in accordance with a written notice of either Party. In any such event, the Parties shall expend diligent, good faith efforts to arrive at an agreement on any modifications that may be required to the Appendix as a result of such invalidation, modification, or stay, and any Party's notice. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or the provisions affected shall be handled under the Dispute Resolution procedures set forth in this Agreement.

**23. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS**

- 23.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the this Agreement are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

## **APPENDIX VIRTUAL COLLOCATION**



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## APPENDIX VIRTUAL COLLOCATION

### 1. INTRODUCTION

- 1.1 This Appendix sets forth terms and conditions for Virtual Collocation provided by the applicable **SBC Communications Inc. (SBC)** owned Incumbent Local Exchange Carrier (ILEC) and Collocator.

### 2. DEFINITIONS

- 2.1 **SBC Communications Inc. (SBC)** means the holding company which owns, directly or indirectly, the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 2.2 **THIS SECTION INTENTIONALLY LEFT BLANK.**
- 2.3 AM-OH - As used herein, AM-OH means the applicable above listed ILEC, Ohio Bell Telephone Company Incorporated doing business in Ohio.
- 2.4 “**Approved Vendor**” is a vendor who is qualified by AM-OH for installation, and/or removal of central office equipment, which is administered by **SBC Procurement** on a state by state basis.
- 2.5 “**Active Central Office Space**” denotes the existing, central office switch room space, which can be designated for virtual collocation, with sufficient infrastructure systems. Also, denotes central office space that may contain obsolete unused equipment.
- 2.6 “**Application Fee**” means the charge assessed by AM-OH to process the Collocator’s application for virtual collocation requests.
- 2.7 “**Augment**” is a request from the Collocator to add equipment, cable, and/or Collocation services to or to remove cable and/or Collocation services from an existing Virtual Collocation arrangement.
- 2.8 “**Collocator**” is any individual, partnership, association, joint-stock company, trust corporation, or governmental entity or any other entity who is collocated in AM-OH location, for purposes of interconnection with AM-OH or access to Unbundled Network Elements (UNEs).

- 2.9 **"Delivery Date"** is the date, which AM-OH provides the requested collocation space to the Collocator in accordance with the Delivery Intervals set forth in Section 12 of this Agreement.
- 2.10 **"Eligible Equipment"** is the equipment eligible for collocation as defined in Section 6.0 of this Appendix.
- 2.11 **"Eligible Structure"** is (1) a AM-OH central office, serving wire center or tandem office, or (2) a building or similar structure owned or leased by AM-OH that houses its network facilities, or (3) a structure that houses AM-OH transmission facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures.
- 2.12 **"Entrance Fiber Facility"** is an arrangement where a Collocator provided single mode fire retardant dielectric fiber optic cable extends from the AM-OH designated manhole into the AM-OH Eligible Structure designated splice point. It is used as a transmission medium to the designated splice point. Collocator shall be permitted no more than two (2) entrance routes into the AM-OH Eligible Structure, if available.
- 2.13 **"Fiber Distribution Frame (FDF)"** is an architecture which serves as the primary interface between outside plant (OSP) fiber optic facilities entering a Central Office structure and the fiber optic equipment installed within that same location. The FDF provides a centralized point for the organization and administration of the fiber optic facility and intra-building fiber equipment cables, provides a flexible platform for future fiber growth, and provides rearrangeable connections between any two terminations or appearances.
- 2.14 **"Individual Case Basis (ICB)"** is a pricing method used for services that are not tariffed or are not standard offerings or configurations.
- 2.15 **"Infrastructure Systems"** - include, but are not limited to, structural components, such as floors capable of supporting equipment loads, frames, heating, ventilating and air conditioning ("HVAC") systems, electrical systems (AC power), DC power, power distribution via frames or bays, high efficiency filtration, humidity controls, remote alarms, compartmentation, and smoke purge.
- 2.16 **"Interconnector's Collocation Services Handbook"** or like document is a publication provided to the Collocators, which provides information on how to order collocation arrangements and the processes and requirements for collocation in the AM-OH, which is located on the SBC CLEC ONLINE Web-Site (<https://clec.sbc.com/>), as amended from time to time.
- 2.17 **"Manned Office"** A Central Office where AM-OH has actual technicians present to perform repair, installation, and/or maintenance during the time the Collocator requests under this Agreement.

- 2.18 **"Non Standard Collocation Request (NSCR)"** in AM-OH, is a pricing method used for services that are not tariffed or are not standard offerings or configurations.
- 2.19 **"Project Management Fee"** reflects AM-OH labor costs to manage the provisioning of the individual Collocator's space requirements for a particular Virtual Collocation Space request. This fee is applicable upon submission of an application.
- 2.20 **"Technically Feasible"** - A collocation arrangement is technically feasible if, in accordance with either national standards or industry practice, there is no significant technical impediment to its establishment. Deployment by any incumbent LEC of a collocation arrangement gives rise to a rebuttable presumption in favor of a Collocator seeking collocation in AM-OH's Eligible Structures that such an arrangement is technically feasible.
- 2.21. **"Unmanned Office"** Any Central Office which does not meet the definition of Manned Office.
- 2.22 **"Virtual Collocation"** is as defined in 4.2 of this Appendix.

### 3. PURPOSE AND SCOPE OF APPENDIX

- 3.1 The purpose of this Appendix is to set forth the terms and conditions, including pricing, in which AM-OH will provide Virtual Collocation to Collocator.
- 3.2 Preparation Prior to Regulatory Approval
  - 3.2.1 Upon the written request of Collocator, AM-OH shall consider an application for collocation space submitted prior to receiving the approval. Upon such an election, this Appendix shall become effective but only insofar as to be applicable to the consideration of an application for collocation space. In the event that the Appendix does not become fully effective as contemplated by this Section, Collocator shall not be entitled to any refund or return of any such payments beyond any portion of the charges paid but not attributable to costs incurred by AM-OH. To the extent that AM-OH has incurred preparation costs not included within any payment made by Collocator, Collocator shall pay those costs within thirty (30) calendar days of notice by AM-OH.
  - 3.2.2 Collocator is responsible for obtaining an approved Interconnection Agreement (ICA) and meeting the state certification requirements. The following shall apply:
    - 3.2.2.1 If the Commission has not approved the ICA prior to completion of the build-out, AM-OH will not process service orders for interconnection or access to UNEs. However, the requested space

will be turned over to the Collocator if the final non-recurring costs have been received. Monthly recurring charges will commence when space is turned over.

3.2.2.2 If the Collocator has not received their state certification prior to completion of the build-out, AM-OH will not process service orders for interconnection or access to UNEs. However, the requested space will be turned over to the Collocator if the final non-recurring costs have been received. Monthly recurring charges will commence when space is turned over.

3.2.2.3 If the Collocator has not received their state certification or the Commission has not approved the ICA by day one hundred eighty (180) calendar days after space turnover, then the Collocator (forfeits) all charges collected to date by AM-OH and the collocation space. The Collocator will have thirty (30) calendar days to remove any equipment and bays placed by the Collocator in the premise.

3.3 The Parties agree that billing for all costs incurred in the establishment of Virtual Collocation for the Collocator will be provided to the Collocator within one hundred eighty (180) calendar days of the billing cycle. Billing will be subject to true up if interim rates are pending Commission or FCC approval.

#### **4. GENERAL OFFERINGS**

4.1 Except where Virtual Collocation is not practical for technical reasons or because of space limitations, AM-OH will provide Virtual Collocation to Collocator for the purpose of interconnecting to AM-OH network for the transmission and routing of telephone exchange service or exchange access, or both pursuant to 47 U.S.C. §251 (c)(2), or for obtaining access to AM-OH Unbundled Network Elements ("UNEs") for the provision of a telecommunications service pursuant to 47 U.S.C. §251 (c)(3) of the Act. Virtual Collocation will be provided on a "first come, first served" basis, in accordance with the requirements of the Act (including 47 U.S.C. 251 (c)(6) of the Act).

4.2 In the case of AM-OH Virtual Collocation, the Collocator is responsible for engineering and furnishing the virtually collocated equipment. Collocator must use an AM-OH Approved Vendor to perform the installation of such in the AM-OH Eligible Structure. The Collocator's AM-OH Approved Vendor will be permitted access to the AM-OH Main Distribution Frame or its equivalent for installation and termination of interconnection cabling and the cabling arrangement to provide grounding for equipment. Collocator must use an AM-OH Approved Power Installation Vendor to install power cable(s) from the Collocator's Virtual Collocation Space to the designated AM-OH's Battery Distribution Fuse Bay (BDFB) or Power Plant Primary Distribution

points, whichever is applicable. Additional requirements relating to installation and placement of interconnection cabling and power cabling is set forth in Section 10.5 and 10.6 of this Appendix. AM-OH will exercise physical control over, but not ownership of, the equipment installed by Collocator in a Virtual Collocation arrangement. The equipment and associated facilities will be maintained and repaired at the direction of the Collocator by AM-OH.

4.2.1 Collocator will install their own bay(s) by an AM-OH Approved Vendor. AM-OH will provide space for the bay(s) in either a Standard Bay arrangement of 10 sq. ft. or a Non-Standard Bay arrangement of 18 sq. ft. The standard bay and non-standard bay dimensions are as follows:

4.2.1.1 Standard bay dimensions cannot exceed 7'0" high, and 23" interior width, 26" exterior width, and up to 15" deep.

4.2.1.2 Non-standard bay dimensions cannot exceed 7'0" high, 36" in width, and up to 36" in depth.

4.2.1.3 AM-OH prefers that the equipment mounted in the bay be flush mounted with the front of the bay, however the equipment must not be mounted beyond the lower front kick plate (normally 5") for appropriate egress. The total depth of bay, including equipment and associated cabling must not exceed 15" for a standard bay.

4.2.1.4 At AM-OH option, where an individual standard bay owned by AM-OH in a Central Office is shared with a Collocator, the standard bay will be apportioned on a quarter rack basis.

4.2.2 Virtual Collocation is available at AM-OH Eligible Structures as specified in the National Exchange Carrier Association, Inc., Tariff FCC No. 4.

4.2.3 AM-OH will exercise physical control, but not ownership, over any equipment deployed for the purposes of Virtual Collocation.

4.2.4 Upon request, AM-OH will designate the floor space for the "occupancy" of a Collocator provided storage cabinet for circuit packs, plug-ins, test equipment, etc. The Collocator's provided storage cabinet will be installed and grounded by the Collocator's AM-OH Approved Vendor. The ground point will be designated by AM-OH. Installation of additional Collocator storage cabinet(s) will be mutually agreed upon between the parties.

4.2.4.1 AM-OH standard floor space for Collocator's provided storage cabinet is 10 sq. ft. that cannot exceed 7'0 high, 31" exterior width, up to 15" depth with a swing radius of (Front) aisle egress of 36" or (Rear) aisle egress of 30".

- 4.2.4.2 AM-OH non-standard floor space for Collocator's provided storage cabinet is 18 sq. ft. that cannot exceed 7'0 high, 38" exterior width, and up to 36" depth with a swing radius of (Front) aisle egress of 36" or (Rear) aisle egress of 36".
- 4.2.5 Virtual Collocation is separate and distinct from Physical Collocation. Requests to convert from Virtual Collocation to Physical Collocation will require re-design and re-termination of the services to a Physical Collocation arrangement. Any requests to convert requires a new physical application be submitted, and the appropriate charges will apply.
- 4.2.6 The Collocator is responsible for all alarm monitoring of its virtually collocated equipment and all expenses associated. Since the maintenance of the Collocator's equipment is at the direction and control of the Collocator, AM-OH will not be responsible for responding to alarms and will only conduct maintenance and repair activities at the direction of the Collocator.
- 4.2.7 Virtual Collocation is ordered as set forth in AM-OH Virtual Interconnector's Collocation Services Handbook or like document found on the SBC CLEC ONLINE Web-Site for Virtual Collocation. AM-OH will designate the location or locations within its Eligible Structure for the placement of all equipment and facilities associated with virtual collocation. Virtual Collocation does not involve the reservation of segregated Central Office or CEV, Hut and Cabinet space for the use of Collocators.
- 4.2.8 Virtual Collocation is available for the direct connection of one Collocator provided facility to a separate Collocator provided facility within the same AM-OH wire center provided the Collocators are interconnected with AM-OH network. Available connections include copper cable, coaxial cable, and fiber optic cable.
- 4.2.8.1 AM-OH will designate and engineer the route, place cable racking (if applicable) and provide space to be used for such facilities. AM-OH shall permit Collocator's AM-OH Approved Vendor to install such facilities using copper or optical fiber facilities subject to the same reasonable safety requirements that AM-OH imposes on its own equipment and facilities, without requiring the Collocator to purchase any equipment or connecting facilities solely from AM-OH.

## 5. SPACE AVAILABILITY

- 5.1 At the request of Collocator, AM-OH will provide space for Virtual Collocation as described above. AM-OH is not required to provide Virtual Collocation at a particular Eligible Structure, if it demonstrates that Virtual Collocation is not practical for technical reasons or because of space limitations. When Virtual Collocation is not

technically feasible, AM-OH will make a good faith effort to negotiate other methods of interconnection and access to unbundled network elements to the extent technically feasible.

- 5.2 AM-OH will provide Virtual Collocation arrangements in Eligible Structures on a "first-come, first-served" basis. The determination whether there is sufficient space to accommodate Virtual Collocation at a particular Eligible Structure will be made initially by AM-OH. AM-OH will notify Collocator as to whether its request for space has been granted or denied due to a lack of space within ten (10) calendar days from receipt of a Collocator's accurate and complete Virtual Collocation Application. If AM-OH determines that Collocator's Virtual Collocation Application is unacceptable, AM-OH shall advise Collocator of any deficiencies within this ten (10) calendar day period. AM-OH shall provide Collocator with sufficient detail so that Collocator has a reasonable opportunity to cure each deficiency. To retain its place in the queue to obtain the Virtual Collocation arrangement, Collocator must cure any deficiencies in its Application and resubmit such Application within ten (10) calendar days after being advised of the deficiencies. Any changes to the amount or type of floor space, interconnection terminations, and power requested from the originally submitted Virtual Collocation Application will not be considered a deficiency, but rather as a new Virtual Collocation Application with a new ten (10) calendar day space notification and a new delivery interval.

- 5.2.1 When space for Virtual Collocation in a particular Eligible Structure is not available, AM-OH shall place Collocator on the waiting list for Virtual Collocation in a particular Eligible Structure according to the date the Collocator submitted its application for Virtual Collocation in that Eligible Structure.

## 6. ELIGIBLE EQUIPMENT FOR COLLOCATION

- 6.1 In accordance with Section 251(c)(6) of the Telecommunications Act, TWTC may collocate equipment "necessary for interconnection or access to unbundled network elements," if the equipment also meets AM-OH's equipment safety standards, which are described in another section. For purposes of this section, "necessary" means directly related to and thus necessary, required, or indispensable to interconnection or access to unbundled network elements. Such uses are limited to interconnection to the AM-OH's network "for the transmission and routing of telephone exchange service or exchange access," or for access to AM-OH's unbundled network elements "for the provision of a telecommunications service." Equipment that may be collocated solely for these purposes includes: (1) transmission equipment including, but not limited to, optical terminating equipment and multiplexers; and (2) equipment being collocated to terminate basic transmission facilities pursuant to sections 64.1401 and 64.1402 of 47 C.F.R. (Expanded Interconnection) as of August 1, 1996.



- 6.2 Multifunctional Equipment is not "necessary" for interconnection or access to unbundled network elements. TWTC may not collocate Multifunctional Equipment except as expressly and specifically allowed, on a voluntary basis, in this Section or mutually agreed to by AM-OH and TWTC. For purposes of this section, "Multifunctional Equipment," means equipment that has both (1) functions that make the equipment "necessary for interconnection or access to unbundled network elements" and (2) additional functions that are not "necessary" for these purposes. Such additional functions include, but are not limited to, switching and enhanced service functions.
- 6.3 AM-OH permits TWTC collocation, on a non-discriminatory basis, of complete pieces or units of equipment specified in the definition of "Advanced Services Equipment" in section 1.3.d of the SBC/Ameritech Merger Conditions. To the extent that certain complete units of Advanced Services Equipment are not "necessary" for interconnection or access to unbundled network elements because they are Multifunctional Equipment and for other reasons, AM-OH voluntarily allows such TWTC collocation. Under the SBC/Ameritech Merger Conditions, "Advanced Services Equipment" is defined as, and limited to, the following equipment: "(1) DSLAMs or functionally equivalent equipment; (2) spectrum splitters that are used solely in the provision of Advanced Services; (3) packet switches and multiplexers such as ATMs and Frame Relay engines used to provide Advanced Services; (4) modems used in the provision of packetized data; and (5) DACS frames used only in the provision of Advanced Services. Spectrum splitters (or the equivalent functionality) used to separate the voice grade channel from the Advanced Services channel shall not be considered Advanced Services Equipment; any such splitters installed after the Merger Closing Date that are located at the customer premises shall be considered network terminating equipment." To qualify for collocation, the complete units of Advanced Services Equipment must either (A) be solely of the types, and exclusively for the uses, included in this definition or (B) be of such types, and for such uses, combined solely with additional functions that are "necessary for interconnection or access to unbundled network elements." For instance, additional switching use, except as included below, or enhanced services functionality would disqualify the equipment from collocation. AM-OH voluntarily allows TWTC to collocate Optical Concentrator Devices ("OCDs") or functionally equivalent equipment used to provide Advanced Services.
- 6.4 To qualify for collocation, the equipment must be a complete piece, unit, or item of such equipment, not a piece-part or sub-component (such as a line card) of a complete unit of equipment. TWTC may not collocate, or place into AM-OH's equipment, TWTC's equipment sub-components or piece-parts.
- 6.5 AM-OH does not allow collocation of other Multifunctional Equipment, except that AM-OH voluntarily allows TWTC collocation, on a non-discriminatory basis, of remote switch modules ("RSMs") solely under the following conditions: (1) the RSM may not be used as a stand-alone switch; the RSM must report back to and be controlled by TWTC identified and controlled (*i.e.*, TWTC owned or leased) host switch, and direct trunking to the RSM will not be permitted, and (2) the RSM must be used only for the purpose of

interconnection with the AM-OH's network for the transmission and routing of telephone exchange service or exchange access or for access to the AM-OH's unbundled network elements for the provision of a telecommunications service. AM-OH voluntarily will allow TWTC to collocate, on a non-discriminatory basis, other multi-functional equipment only if AM-OH and TWTC mutually agree to such collocation.

- 6.6 AM-OH will not allow collocation of stand-alone switching equipment, equipment used solely for switching, or any enhanced services equipment. For purposes of this section, "stand-alone switching equipment" is defined as any equipment that can perform switching independently of other switches or switching systems. "Stand-alone switching equipment" includes, but is not limited to, the following examples: (1) equipment with switching capabilities included in 47 C.F.R. section 51.319(c); (2) equipment that is used to obtain circuit switching capabilities, without reliance upon a host switch, regardless of other functionality that also may be combined in the equipment; and (3) equipment with the functionality of a class 4 or 5 switch including, without limitation, the following: Lucent Pathstar, 5E, 4E, or 1A switch; DMS 10, 100, 200, or 250 switch; Ericsson AXE-10 switch; Siemens EWSD; and any such switch combined with other functionality.
- 6.7 Ancillary equipment is not "necessary" for interconnection or access to unbundled network elements. AM-OH voluntarily allows TWTC to place in its premises certain ancillary equipment solely to support and be used with equipment that TWTC has legitimately collocated in the same premises. Solely for this purpose, cross-connect and other simple frames, routers, portable test equipment, equipment racks and bays, and potential other ancillary equipment may be placed in AM-OH's premises, on a non-discriminatory basis, only if AM-OH and TWTC mutually agree to such placement. TWTC may not place in AM-OH's premises types of ancillary equipment, including but not limited to Battery Distribution Fuse Bays ("BDFBs"), that would duplicate equipment used by AM-OH, and/or that would duplicate functions performed by AM-OH, as part of its provision of infrastructure systems for collocation. Such placement would waste space and other resources and, in at least some cases (such as BDFBs), harm AM-OH's ability to plan for and provide service to other customers including, but not limited to, other CLECs.
- 6.8 Pending the FCC's reasonably timely completion of remand proceedings in accordance with the Court's Opinion in *GTE Service Corporation v. FCC*, 205 F.3d 416 (D.C. Cir. 2000) ("*GTE Opinion*"), AM-OH voluntarily will not disturb (1) equipment and (2) connection arrangements between different collocators' equipment in an AM-OH premises, that prior to the May 11, 2000 effective date of the *GTE Opinion* (1) were in place in AM-OH or (2) were requested by TWTC and accepted by AM-OH on the same basis as under the FCC's original, pre-partially-vacated Collocation Order (*Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *First Report and Order* (FCC 99-48), 14 FCC Rcd 4761 (1999)). AM-OH's agreement not to disturb these collocation arrangements pending timely completion of the remand proceedings will immediately expire if a federal or state court or regulatory agency (1) attempts to apply any of the most favored nation provisions of the Act, of any

state Merger Conditions, or of the FCC SBC/Ameritech Merger Conditions to such arrangements or (2) deems such arrangements to be discriminatory vis-à-vis other carriers.

- 6.9 AM-OH does not assume any responsibility for the installation, furnishing, designing, engineering, or performance of the Collocator's equipment and facilities.
- 6.10 All types of equipment placed in AM-OH Eligible Structures by Collocators must meet the AM-OH minimum safety standards. The minimum safety standards are as follows: (1) equipment complying with AM-OH ILEC document TP76200MP which contains network equipment, power, grounding, environmental, and physical design requirements and contains Level 1 safety requirements except in Texas, and any other state that has adopted the same approach as Texas, where Collocator's equipment must meet Telcordia Level 1 safety requirements as set forth in Telcordia documents SR-3580 and GR-63-CORE, Network Equipment Building Systems (NEBS); or, (2) Collocator must demonstrate that its equipment has a history of safe operation defined by installation in an ILEC (including AM-OH) prior to January 1, 1998 with no known history of safety problems.
- 6.11 AM-OH will not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that AM-OH applies to its own network equipment. AM-OH will not object to the collocation of equipment on the ground that the equipment fails to comply with Network Equipment and Building Specifications performance standards or any other performance standards.
- 6.12 In the event that AM-OH denies Collocation of Collocator's equipment, citing minimum safety standards, AM-OH will provide within five (5) business days of Collocator's written request to AM-OH representative(s), a list of AM-OH equipment placed since January 1, 1998 within the network areas of the Eligible Structure for which Collocation was denied together with an affidavit attesting that all of such AM-OH equipment met or exceeded the then current minimum safety standards when such equipment was placed in the Eligible Structure.
- 6.13 In the event Collocator submits an application requesting collocation of certain equipment and AM-OH determines that such equipment is not necessary for interconnection or access to UNEs or does not meet the minimum safety standards or any other requirements of this Appendix, the Collocator must not collocate the equipment. If Collocator disputes such determination by AM-OH, Collocator may not collocate such equipment unless and until the dispute is resolved in its favor. If AM-OH determines that Collocator has already collocated equipment which is not necessary for interconnection or access to UNEs or does not meet the minimum safety requirements or any other requirements of this Appendix, the Collocator must remove the equipment from the collocation space within ten (10) business days of the date of the written notice from AM-OH. Collocator will be responsible for the removal and

all resulting damages. If Collocator disputes such determination, Collocator must remove such equipment pending the resolution of the dispute. If the Parties do not resolve the dispute, AM-OH or Collocator may file a complaint at the Commission seeking a formal resolution of the dispute.

## 7. VIRTUAL COLLOCATION SPACE CHARGES

### 7.1 Virtual Collocation Space

7.1.1 For each Virtual Collocation request, Collocator must submit a separate Virtual Collocation Application with the applicable Application and Project Management Fees including, but not limited to, the following types of requests: (i) a request to virtually collocate equipment in a new Virtual Collocation Space, (ii) a request to Augment, (iii) an ICB or NSCR, and (iv) specified revisions to Collocation Applications. A copy of the Virtual Collocation Application may be obtained from the AM-OH Collocation Services Account Manager or from the SBC CLEC ONLINE Web-Site.

7.2 AM-OH will contract for and perform the construction and preparation activities necessary to prepare the Virtual Collocation Space, using the same or consistent practices that are used by AM-OH for other construction and preparation work performed in the Eligible Structure.

7.3 Recurring/Non-Recurring charges - Collocator shall pay AM-OH all associated non-recurring and recurring charges for use of the Virtual Collocation Space. These charges may be generated on an ICB/NSCR basis or may be contained in the state specific Appendix Pricing attached. The recurring monthly charges for each Virtual Collocation space shall stay fixed for the term of this Agreement unless modified upon re-negotiation of the Interconnection Agreement and/or pursuant to a Commission order.

7.3.1 An ICB/NSCR quote is prepared by AM-OH to estimate non-recurring and recurring charges associated with the requested Virtual Collocation Space, Augment, or Collocation services where a state specific rate element does not exist in the attached Appendix Pricing. This ICB/NSCR quote is prepared specifically for collocation requests and is not associated in any way with the Bona Fide Request (BFR) process used to request UNEs or other unique items not contained in a Collocator's ICA. The ICB/NSCR will be subject to true-up one hundred-twenty (120) days following the job completion date.

7.4 Payment of Space Preparation - Prior to any obligation on AM-OH to start any preparation of the Virtual Collocation space, Collocator shall pay AM-OH fifty percent (50%) of the non-recurring charges and eighty-five percent (85%) of any custom work charge required to create or vacate any entrance facility for the Collocator ("Custom Work"). The remainder of the non-recurring charges and any

custom work charge are due upon completion and prior to occupancy by the Collocator.

- 7.5 Occupancy Conditioned on Payment - AM-OH shall not permit Collocator's AM-OH Approved Vendor to have access to the Virtual Collocation space for any purpose during construction of the Collocator's Virtual Collocation space until AM-OH is in receipt of complete payment of the non-recurring and any custom work charges.
- 7.6 Breach Prior to Commencement Date - In the event that the Collocator materially breaches this Agreement by purporting to terminate this Agreement after AM-OH has begun preparation of the Virtual Collocation space but before AM-OH has been paid the entire amounts due under this Article, then in addition to any other remedies that AM-OH might have, the Collocator shall be liable in the amount equal to the non-recoverable costs less estimated net salvage. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs.
- 7.7 Late Payment Charge - In the event that any charge, when billed in a timely manner is not paid when due, the unpaid amounts shall bear interest in accordance with the terms and conditions set forth in AM-OH General Terms and Conditions (GT&C) attached.
- 7.8 Charges will begin to accrue on the Effective Billing Date - The Effective Billing Date is the Delivery Date.
- 7.9 The monthly recurring charge(s) shall begin to apply within, but no later than five (5) calendar days from the date that AM-OH made the Virtual Collocation Space available to the Collocator. The fact that AM-OH may have additional work to perform after Collocator does complete its work shall not bar the start of such charges.
- 7.10 AM-OH shall ensure that the Virtual Collocation Space and the Eligible Structure comply with all applicable fire and safety codes. The preparation shall be arranged by AM-OH in compliance with all applicable codes, ordinances, resolutions, regulations and laws.

## 8. USE OF VIRTUAL COLLOCATION SPACE

- 8.1 A list of all Collocator equipment that will be placed within the Virtual Collocation Space shall be set forth on the Collocator's Virtual Collocation Application, which includes associated power requirements, floor loading, and heat release of each piece of Collocator's equipment. Collocator warrants and represents that the Virtual Collocation Application contains a complete and accurate list of such Collocator equipment. Collocator's AM-OH Approved Vendor shall not place or leave any other

equipment or facilities within the Virtual Collocation space without the express written consent of AM-OH.

- 8.2 In the event that subsequent to the submission of the Virtual Collocation Application and its list of the Collocator's equipment with the required technical information, Collocator desires to place in the Virtual Collocation Space any telecommunications equipment or such ancillary telecommunications facilities not so set forth in the Virtual Collocation Application, Collocator shall furnish to AM-OH a new Virtual Collocation Application and any applicable charges to cover such equipment or facilities. Thereafter, consistent with its obligations under the Act and applicable FCC and Commission rules, orders, and awards, AM-OH may provide such written consent or may condition any such consent on additional charges arising from the request, including any applicable fees and any additional requirements such as power and environmental requirements for such requested telecommunications equipment and/or facilities. Upon the execution by both AM-OH and Collocator of a final list and description and receipt by AM-OH of payment of any applicable non-recurring charges, the Virtual Collocation arrangement shall be deemed to have been amended and such requested telecommunications equipment and/or facilities shall be included within "Collocator's Equipment."
- 8.3 Collocator's Equipment, operating practices, or other activities or conditions attributable to Collocator that represents a demonstrable threat to AM-OH network, equipment, or facilities, including the Eligible Structure, or to the network, equipment, or facilities of any person or entity located in the Eligible Structure, is strictly prohibited.
- 8.4 Operation of any equipment, facilities or any other item placed in the Virtual Collocation Space shall not interfere with or impair service over AM-OH network, equipment, or facilities, or the network, equipment, or facilities of any other person or entity located in the Eligible Structure; create hazards for or cause damage to those networks, equipment, or facilities, the Virtual Collocation Space, or the Eligible Structure; impair the privacy of any communications carried in, from, or through the network, equipment, facilities the Virtual Collocation Space or the Eligible Structure; or create hazards or cause physical harm to any person, entity, or the public. Any of the foregoing events would be a material breach of this Appendix.
- 8.5 In no case shall Collocator's AM-OH Approved Vendor or any person or entity purporting to be acting through or on behalf of Collocator make any significant rearrangement, modification, improvement, addition, repair, or other alteration to the Virtual Collocation Space or the Eligible Structure without the advance written permission or direction of AM-OH. AM-OH shall consider a modification, improvement, addition, repair, or other alteration requested by Collocator, provided that AM-OH shall have the right to reject or modify any such request. AM-OH will perform any such construction, and the associated cost shall be paid by Collocator in accordance with AM-OH then-standard custom work order process or ICB/NSCR.

## **9. COLLOCATOR RESPONSIBILITIES**

- 9.1 The Collocator will provide at its expense, all facilities and equipment necessary to facilitate interconnection and access to AM-OH UNEs including, without limitation, the following:
- 9.1.1 All plug-ins and/or circuit packs (working, spare, and replacements).
  - 9.1.2 All provisioning of virtually collocated equipment.
  - 9.1.3 Any ancillary equipment and cabling used for remote monitoring alarms and control.
  - 9.1.4 Any technical publications and updates associated with all Collocator-owned and provided equipment.
  - 9.1.5 Any Product Change Notice (PCN) modifications, upgrades, and/or changes to the Collocator's equipment that requires the work to be performed within the Eligible Structure must be completed by an AM-OH Approved Vendor or Manufacturer. Escort charges will apply. Collocator must make access arrangements with the Customer Response Unit (LOC) for AM-OH, as described in Section 14.1.4.1 of this Appendix.
  - 9.1.6 All training as specified in Section 9.14.
  - 9.1.7 All defective hard-wired equipment upgrades or changes within the Eligible Structure must be completed by an AM-OH Approved Vendor or Manufacturer. Escort charges will apply. Collocator must make access arrangements with the LOC for AM-OH, as described in Section 14.1.4.1 of this Appendix.
  - 9.1.8 A storage cabinet for the storage of Collocator's spare circuit packs, unique tools, test equipment, etc. used by AM-OH to maintain and repair virtually collocated equipment.
  - 9.1.9 Procurement, installation and termination of interconnection cabling between Collocator's Virtual Collocation Space and AM-OH Main Distribution Frame or its equivalent by Collocator's AM-OH Approved Vendor. Additional requirements relating to installation and termination of interconnection cabling is set forth in Section 10.5 of this Appendix.
  - 9.1.10 Procurement and installation of power cable(s) by Collocator's AM-OH Approved Power Installation Vendor from the Virtual Collocation Space to the designated AM-OH's Battery Distribution Fuse Bay (BDFB) or Power Plant Primary Distribution points, whichever is applicable. Additional requirements

relating to installation of power cable(s) is set forth in Section 10.6 of this Appendix.

- 9.2 The Collocator is responsible for coordinating with the LOC in arranging mutually agreed upon visits to the Eligible Structure during the following timeframes and escort charges will apply. The Collocator must identify employee(s) and/or Collocator's AM-OH Approved Vendor(s) that will attend the visit and arrange access for these visit(s) as described in Section 9.2.6 of this Appendix.
- 9.2.1 Once when beginning the initial equipment installation.
- 9.2.2 Once during the middle of the equipment installation.
- 9.2.3 Once at turn-up completion of such equipment installation.
- 9.2.4 One (1) general visit per calendar year.
- 9.2.5 Additional mutually agreed upon visits. (Examples: Acceptance of Virtual Collocation Space and the purpose of performing a visual inspection on the installed equipment completed by the Collocator's AM-OH Approved Vendor prior to turn-up.)
- 9.2.6 These visits must be arranged ten (10) business days in advance with the LOC. The LOC will generate the appropriate trouble ticket as described in Section 14. A maximum of two (2) Collocator's representatives per escort may participate in any one (1) of the site visits.
- 9.3 Collocator's AM-OH Approved Vendor shall install all plug-ins and/or circuit packs (working and spare) for fully equipped bays. As an alternative to fully equipped bays, Collocator shall equip the bay(s) with sufficient common equipment and cabling for a minimum of one year's projected growth.
- 9.4 When Collocator requires additional capacity, a collocation Augment application is required. For Augments of this type, Collocator may fully equip the additional bay, or may equip the additional bay as described below.
- 9.4.1 For either an initial installation or an Augment as described above, when a bay is in place but Collocator has elected under Section 9.3 above not to fully equip the bay.
- 9.4.2 All bays will be powered, cabled, and equipped with sufficient common plugs, so that joint test and acceptance can be completed.
- 9.4.3 Collocator will pay the monthly recurring charges for the space occupied by the bay regardless of how many shelves are filled.



- 9.4.3 Collocator will be responsible for capacity management of the equipment placed.
- 9.5 After the initial installation, or an Augment, AM-OH shall only install additional plug-ins and circuit packs for a minimum of one (1) shelf at a time upon the Collocator's request. Collocator may use an AM-OH Approved Vendor for installing plug-ins and circuit packs when less than one full shelf is required. Access for such services will be arranged by the Collocator by contacting the LOC. The LOC will generate appropriate trouble ticket as described in Section 14 for AM-OH to perform the installation, routine maintenance, or to escort the AM-OH Approved Vendor, whichever applies. If the Collocator's AM-OH Approved Vendor has a current existing Installation Agreement (IA) in a central office, then escort charges will not apply.
- 9.6 In circumstances where shelves only capable of single use plug-in(s) and/or circuit pack(s), the Collocator shall, within thirty (30) calendar days, fully populate the shelf to which the plug-in(s) or circuit pack(s) will be added.
- 9.7 Standard offered interval for installation of plug-ins and/or circuit packs that involves no more than plugging in the circuit packs or plug-ins will be performed by AM-OH as described in Section 14.
- 9.8 Non-standard offered interval request for the installation of plug-ins and/or circuit packs performed by AM-OH that is less than the minimum standard requirement described in Section 9.5 and involves no more than plugging in the circuit packs and/or plug-ins will be charged a minimum of a 4-hour holiday call-out. This will be a mutual agreed arrangement with the LOC and the Collocator. The LOC will generate appropriate trouble ticket as described in Section 14 of this Appendix for AM-OH to perform the installation and the shipment of the circuit packs and/or plug-ins will be arranged by the Collocator. If the interval exceeds the 4-hour call-out, the additional hours will be charged at 2.5 times the labor rate for the state the request is generated.
- 9.9 The Collocator must provide, at its expense, replacements for any recalled, obsolete, defective, or damaged interconnection or entrance cables, equipment, plug-ins, circuit packs, unique tools, test equipment, or any other item or material provided by the Collocator for placement in/on AM-OH property. Collocator shall provide a stock of such items (excluding unique tools and test equipment) to AM-OH to replace non-functioning items when needed, with a goal of shipping replacement stock no more frequently than once per quarter. AM-OH shall notify Collocator as it uses packs from the stock so that Collocator may replenish the stock. Collocator will provide pre-addressed postage paid mailing packages for return shipment of non-functioning circuit pack(s), plug-in(s), or any other item or material being used by AM-OH to repair and maintain Collocator's virtually collocated equipment. AM-OH shall notify Collocator when any other types of replacement parts or equipment are required. During repair calls, AM-OH technician shall confirm to Collocator representative

when AM-OH has used a circuit pack/plug-in or other types of replacement parts or equipment. AM-OH shall notify Collocator upon discovery that test equipment or tools are damaged or otherwise not functioning properly. Notification shall be given to the Collocator personnel participating in the repair efforts if the discovery is made during the course of a repair, or to a contact specified by the Collocator if the discovery is made at some other time.

- 9.10 The Collocator is responsible for providing the appropriate number of usable equipment spares. Arranging movement of any circuit pack(s) or plug-in(s) between Eligible Structures will be at the Collocator's expense and their responsibility. Replacements must be delivered to the AM-OH central office or AM-OH designated location using the equipment spare within five (5) business days of notification that a spare was used or tested defective.
- 9.11 The Collocator must provide identification markings on all circuit packs, spares, test equipment, equipment, bays, and any other Collocator owned property provided to AM-OH for Virtual Collocation.
- 9.12 The Collocator will provide at the initial Method and Procedure (MOP) meeting the following:
  - 9.12.1 Escalation documentation.
  - 9.12.2 Test and acceptance package as described in the SBC ILEC's installation testing standards and requirements located on the SBC CLEC ONLINE Web-Site.
  - 9.12.3 Contact names and numbers to arrange for return shipment of defective circuit packs and plug-ins. Collocator will keep this information current.
  - 9.12.4 Functional contacts for the virtual collocation arrangements, including names, telephone numbers, and each person's responsibilities (e.g., Augments, trouble reports, emergency contact). Collocator will keep this information current.
- 9.13 To the extent known, the Collocator can provide forecasted information to AM-OH on anticipated additional Virtual Collocation requirements. Forecasts are for planning purposes only and will not be used for provisioning space or interconnection arrangements.
- 9.14 AM-OH will identify the training needs of AM-OH personnel from the list of equipment received by the Collocator on the AM-OH Virtual Application Form. The Collocator will be responsible for training AM-OH personnel on the repair and maintenance of the Collocator's equipment, unless: (a) the equipment is already used by AM-OH in the Eligible Structure; or (b) AM-OH technicians assigned to the Eligible Structure have already been trained on the repair and maintenance of that

type of equipment. Notwithstanding the foregoing, if the equipment is already used by AM-OH, but Collocator uses the equipment in a different configuration, Collocator will be responsible for any additional training required for repair and maintenance of the equipment in the configuration used by the Collocator. AM-OH will contact Collocator with the required number of AM-OH personnel to be trained and the contact name for the Collocator to coordinate training schedules. The Collocator will be responsible for the following:

- 9.14.1 Arrange for the training supplier and pay all costs for the training sessions including, without limitation, the cost of the trainer(s), transportation and lodging of such trainer(s), required course material.
- 9.14.2 Pay all costs associated with AM-OH's employee(s) attendance at the training including, without limitation, lodging, transportation, employees labor rate for time away from job, and per diem, if applicable.
- 9.14.3 AM-OH may require additional training requirements to adequately provide 7 X 24 hour coverage on the Collocator's virtually collocated equipment when labor resources change for a particular Eligible Structure. AM-OH will notify the Collocator when applicable.
- 9.14.4 Training may be provided on-site when possible.
- 9.14.5 The training for which the Collocator will be responsible includes training for the following functions to the extent such functions will be performed by AM-OH and additional training is necessary.
  - 9.14.5.1 Installation, repair, and maintenance of any unique cabling and circuits inside the bay of equipment.
  - 9.14.5.2 Use of on-line documentation or schematics unique to the equipment and unlike that commonly used by AM-OH.
  - 9.14.5.3 Any testing, repair methods, and procedure documents utilized by Collocator, consistent with the manufacturer's operations and maintenance (O&M) manual.
  - 9.14.5.4 Training when updates of technical publications or equipment information are issued.
  - 9.14.5.5 AM-OH will work cooperatively with Collocator to schedule and complete the training requirements prior to Collocator's equipment turn-up. When Collocator provides scheduled training, AM-OH is responsible for employee attendance.

- 9.15 Collocator will provide remote, real-time network technical support, guidance and direction to AM-OH for all collocated facilities and equipment using on-line telephone support.
- 9.16 Collocator is responsible for coordinating with AM-OH to ensure that services are installed in accordance with a service request.
- 9.17 Collocator's AM-OH Approved Vendor will, whenever possible, install the Collocator's equipment in the Virtual Collocation Space within ninety (90) calendar days of Delivery Date. Collocator's AM-OH Approved Vendor must interconnect to AM-OH's network or gain access to AM-OH's unbundled network elements within one hundred eighty (180) calendar days of Delivery Date. If Collocator fails to do so, AM-OH may, upon written notice, terminate that Virtual Collocation arrangement, and Collocator shall be liable in an amount equal to the unpaid balance of the charges due under and, further, shall continue to be bound by the provisions of this Appendix, the terms and any context of which indicates continued viability or applicability beyond termination. For purposes of this Section, Collocator equipment is considered to be interconnected when physically connected to AM-OH network or a AM-OH UNE for the purpose of Collocator providing a telecommunications service.

## **10. COOPERATIVE RESPONSIBILITIES**

- 10.1 AM-OH will work cooperatively with the Collocator to develop implementation plans including timelines associated with the following:
  - 10.1.1 Ensuring that the Collocator's AM-OH Approved Vendor meets required safety standards as contained in SBC's TP76200MP and SBC ILEC's standards and requirements for equipment and facility installations.
  - 10.1.2 AM-OH placement of Collocator's fiber into an AM-OH Eligible Structure.
  - 10.1.3 Location and completion of all splicing.
  - 10.1.4 Completion of installation of equipment and facilities.
  - 10.1.5 Removal of above facilities and equipment.
- 10.2 This Appendix and the Collocation provided hereunder is made available subject to and in accordance with Sections 10.2.1, 10.2.2, 10.2.3, 10.2.4 and 10.2.5. Collocator shall strictly observe and abide by each.
  - 10.2.1 SBC TP76200MP, standards for network equipment, power, grounding, environmental, and virtual design requirements, and any successor document(s), including as such may be modified at any time and from time to time.

- 10.2.2 **SBC** ILEC's Interconnector's Collocation Services Handbook or like document, and any successor document(s), as may be modified from time to time as set forth below in Section 10.3.
- 10.2.3 **SBC** TP76300MP, standards and requirements for equipment and facility installations, and any successor document(s) within AM-OH central offices and may be modified from time to time.
- 10.2.4 Any statutory and/or regulatory requirements in effect at the time of the submission of the Virtual Collocation Application or that subsequently become effective and then when effective.
- 10.2.5 The **SBC** ILEC's Interconnector's Collocation Services Handbook or like document, **SBC** TP76300MP, and the **SBC** TP 76200MP standards are not incorporated herein but are available on the **SBC** CLEC ONLINE Web-Site.
- 10.3 If the **SBC** ILEC's Interconnector's Collocation Services Handbook or like document, **SBC** TP76300MP for equipment and facility installations, and the **SBC** TP 76200MP standards are modified subsequent to the effective date of this Appendix from the attached, the following shall apply:
  - 10.3.1 If a modification is made after the date on which Collocator has or orders a Virtual Collocation arrangement, AM-OH shall provide Collocator with those modifications or with revised versions of such, listing or noting the modifications as appropriate. Any such modification shall become effective and thereafter applicable under this Appendix thirty (30) calendar days after such amendment is released by AM-OH.
  - 10.3.2 Notwithstanding Section 10.3.1, any modification made to address situations potentially harmful to AM-OH or another's network, equipment, or facilities, the Eligible Structure, the Virtual Collocation Space, or to comply with statutory or regulatory requirements shall become effective immediately. AM-OH will immediately notify Collocator of any such modification.
- 10.4 AM-OH shall provide an interconnection point or points, physically accessible by both AM-OH and Collocator (typically a AM-OH manhole) at which a Collocator fiber optic cable can enter the Eligible Structure, provided that AM-OH will designate interconnection points as close as reasonably possible to the Eligible Structure. The Collocator's fiber must be a single mode fire retardant dielectric fiber optic cable used as a transmission medium to the dedicated splice point. The fiber cable will be spliced to a fiber cable tail at the dedicated splice point by AM-OH and terminated to the Fiber Distribution Frame (FDF) or panel. All fiber termination requests will be distributed from the FDF or panel to the Collocator's designated bay per the Front Equipment Drawing by fiber cross-connects with sufficient slack for the Collocator to terminate in their equipment. Collocator shall be permitted no more than two (2) entrance routes

into the Eligible Structure, if available; AM-OH will provide at least two such interconnection points at each Eligible Structure where there are at least two entry points for AM-OH cable facilities and at which space is available for new facilities in at least two of those entry points.

10.4.1 Collocator is responsible for bringing its fiber optic cable to an accessible point outside of the Eligible Structure designated by AM-OH, and for leaving sufficient cable length in order for AM-OH to fully extend such Collocator-provided cable to the vault. The fiber optic entrance cable must be provided by the Collocator to AM-OH prior to the schedule Delivery Date for the Virtual Collocation arrangement. If the fiber optic entrance cable is not provided by the Collocator prior to the scheduled Delivery Date, AM-OH will advise the Collocator's AM-OH Approved Vendor at space turnover that the costs associated with the fiber optic entrance cable placement will be refunded at AM-OH's earliest convenience and the job will be closed. The Collocator will need to submit an Augment Virtual Collocation Application when ready to request the fiber optic entrance cable placement into the Virtual Collocation arrangement.

10.4.2 AM-OH will permit interconnection of copper or coaxial cable only if first approved by the appropriate State Commission, and will permit collocation of microwave transmission equipment along with the microwave entrance facility, except where such collocation is not practical for technical reasons or because of space limitations.

10.5 AM-OH will be responsible for determining equipment location within the Eligible Structure. Procurement, installation and termination of interconnection cabling between Collocator's Virtual Collocation Space and AM-OH Main Distribution Frame or its equivalent will be installed by the Collocator's AM-OH Approved Vendor. The Collocator's AM-OH Approved Vendor must obtain an approved Method of Procedures (MOP) from AM-OH and follow the SBC TP76300MP standards and requirements for installation of equipment and facilities. AM-OH will install and stencil termination blocks or panels at AM-OH's Main Distribution Frame or its equivalent for the hand off of the Actual Point of Termination (APOT) Connection(s) to the Collocator.

10.6 Unless otherwise expressly agreed in writing, AM-OH will provide for all AC and DC power requirements in the Eligible Structure. The Collocator Approved Vendor is not permitted to, and will not, place any AC or DC power-generating or power-storing devices (including, for example but not limited to rectifiers, battery plants, AC or DC generators) in the Eligible Structure. Power will support Collocator's equipment at the specified DC and AC voltages. At a minimum, the power and AM-OH associated performance, availability, restoration, and other operational characteristics shall be at parity with that provided to AM-OH substantially similar telecommunications equipment unless otherwise mutually agreed in writing. Loads specified by the

Collocator represent the peak current that will be imposed on a power feeder at any voltage within the emergency operating limits of the equipment and any normal operating condition (i.e. not a short circuit or other malfunction). Even though circuit design is based on peak current, DC power plant design sizing by the AM-OH is based on demand management. AM-OH will engineer, design, and place cable racks for all power cable routes within the Eligible Structure. Collocator's AM-OH Approved Power Installation Vendor will install and terminate the power cable(s) from the Virtual Collocation Space to AM-OH's designated termination points on the Battery Distribution Fuse Bay (BDFB). When the AM-OH's designated power termination point(s) is at the AM-OH's Power Plant Primary Distribution, the Collocator's AM-OH Approved Power Installation Vendor will install, but not terminate the Collocator's power cable(s). The Collocator must contact the assigned AM-OH Project Manager five (5) business days prior to scheduling a request for the termination of Collocator's power cable(s) to the AM-OH's Power Plant Primary Distribution, which will be performed by AM-OH. The Collocator's AM-OH Approved Power Installation Vendor must obtain an approved Method of Procedures (MOP) from AM-OH and follow the SBC ILEC's standards and requirements for installation of equipment and facilities.

- 10.7 AM-OH will provide negative DC and AC power, back-up power, lighting, ventilation, heat, air conditioning and other environmental conditions necessary for the Collocator's equipment in the same manner and at the same standards that AM-OH provides such conditions for its own substantially similar equipment or facilities within that Eligible Structure.
- 10.8 Regeneration of either DS-1 or DS-3 signal levels may be provided by Collocator or AM-OH under the custom work order process or ICB/NSCR, including payment requirements prior to the installation of the regeneration equipment.
- 10.9 Collocator and AM-OH are each responsible for providing to the other contact numbers for technical personnel who are readily accessible twenty-four (24) hours a day, seven (7) days a week.
- 10.10 AM-OH shall maintain for the Eligible Structure customary building services, utilities (excluding telephone facilities), including janitor and elevator services, 24 hours a day.
- 10.11 AM-OH agrees to make, at its expense, all changes and additions to the Eligible Structure required by laws, ordinances, orders or regulations of any municipality, county, state or other public authority including the furnishing of required sanitary facilities and fire protection facilities, except fire protection facilities specially required because of the installation of telephone or electronic equipment and fixtures in the Virtual Collocation Space.

- 10.12 Collocator and AM-OH are each responsible for providing trouble report status or any network trouble of problems when requested by the other.
- 10.13 Each Party is responsible for immediate verbal notification to the other of significant outages or operations problems which could impact or degrade that other's network, equipment, facilities, or services, and for providing an estimated clearing time for restoration. In addition, written notification must be provided within twenty-four (24) hours from verbal notification.
- 10.14 In the event AM-OH determines it necessary for the Virtual Collocation Space to be moved within the Eligible Structure in which the Virtual Collocation Space is located or to another Eligible Structure, Collocator is required to do so. If such relocation arises from circumstances beyond the reasonable control of AM-OH, including condemnation or government order or regulation that makes the continued occupancy of the Virtual Collocation Space or Eligible Structure too costly in AM-OH sole judgment, Collocator shall be responsible for the cost of preparing the new Virtual Collocation Space at the new location. Otherwise AM-OH shall be responsible for any reasonable preparation costs.
- 10.15 In the event the Collocator cancels its order after AM-OH has begun preparation of the Virtual Collocation Space, but before AM-OH has been paid the entire amounts due under this Agreement, then in addition to other remedies that AM-OH might have, the Collocator shall be liable in the amount equal to the non-recoverable costs less estimated net salvage. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; the on-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs. AM-OH shall provide the Collocator with a detailed invoice showing the costs it incurred associated with preparation of Collocator's Virtual Collocation request.
- 10.16 Collocator may discontinue or terminate a Virtual Collocation Arrangement on not less than thirty (30) days advance notice to AM-OH by submitting a complete and accurate Virtual Collocation Application plus applicable fees. Upon the discontinuance or termination of a Virtual Collocation arrangement, the Collocator shall pay to AM-OH all costs associated with returning the Virtual Collocation Space to AM-OH in the same condition as when AM-OH first began any construction work on such Virtual Collocation Space. Such costs include, but are not limited to, costs associated with removal by AM-OH of facilities and cabling.
- 10.17 Upon discontinuance or termination of the Virtual Collocation arrangement, the Collocator will work cooperatively with AM-OH to remove the Collocator's equipment from AM-OH property subject to the condition that the removal of such equipment can be accomplished without damaging or endangering other equipment located in the central office. AM-OH is not responsible for and will not guarantee the condition of such equipment if removed by the Collocator's AM-OH vendor hired by



Collocator. Collocator shall indemnify and hold AM-OH harmless from any damage or claims associated with removal of its equipment or other equipment located in the central office damaged while Collocator's AM-OH vendor is removing its own equipment. The Collocator is responsible for arranging for and paying for the removal of virtually collocated equipment including all costs associated with equipment removal, packing and shipping. Arrangements for and the removal of the Collocator virtually collocated equipment must be made within thirty (30) calendar days of AM-OH receipt of Collocator's Virtual Collocation Application to terminate the virtual collocation arrangement, unless a different time period is mutually agreed upon. The Collocator will pay all arrangement monthly charges until all equipment is removed. If the Collocator has not removed the equipment within this timeframe, AM-OH has the right to remove the equipment and bill the Collocator for any reasonable expense associated with removal of the equipment. AM-OH shall have no responsibility for damage done to such removed equipment caused by AM-OH or its contractors during the removal process. Collocator will indemnify and hold AM-OH harmless for any damage or claims associated with the removed equipment or other equipment located in the central office damaged if AM-OH removes Collocator's equipment. Any equipment not removed in this time frame may be removed by AM-OH and stored in a non- AM-OH location, at the expense of the Collocator.

10.18 Upon termination of the Virtual Collocation arrangement, the Collocator must remove the fiber entrance cable used for the Virtual Collocation. If the entrance cable(s) is not scheduled and removed within (30) calendar days after discontinuance of use, AM-OH may arrange for the removal, and the Collocator will be responsible for any charges incurred to remove the cable as set forth in Section 10.19 below. AM-OH and the Collocator will cooperatively manage the removal process. The Collocator is only responsible for physically removing entrance cables housed in conduits or inner-ducts and will only be required to do so when AM-OH instructs the Collocator such removal can be accomplished without damaging or endangering other cables contained in a common duct or other equipment residing in the central office.

10.19 If Collocator fails to remove its equipment and facilities from the Virtual Collocation Space within thirty (30) calendar days after discontinuance of use, AM-OH may perform the removal and shall charge Collocator for any materials used in any such removal, and the time spent on such removal at the then-applicable hourly rate for custom work. Further, in addition to the other provisions herein, Collocator shall indemnify and hold AM-OH harmless from any and all claims, expenses, fees, or other costs associated with any such removal by AM-OH.

## 11. TEST AND ACCEPTANCE

11.1 Collocator and AM-OH will complete an acceptance walk-through visit of the Virtual Collocator's Space prior to turning the Virtual Collocation Space over to the Collocator's AM-OH Approved Vendor. Exceptions that are noted during this acceptance walk-through visit shall be corrected by AM-OH as soon as commercially

reasonable after those exceptions are provided in writing, which exceptions shall be provided no more than five (5) business days after the walk through. The correction of these exceptions from Collocator's Virtual Collocation request shall be at AM-OH expense.

- 11.2 Prior to Collocator's installation vendor powering up equipment, and after the frame connections and equipment has been installed, Collocator will schedule a pre-performance visual inspection visit with the LOC as specified in Section 9.2.5. The Collocator is responsible for visually inspecting the installation and to assure compliance with technical publication specifications. This visit shall be scheduled to take place within ten (10) business days after Collocator's request and shall take no longer than eight (8) hours. Should Collocator determine during the visual inspection that the installation is not compliant with specifications, Collocator may schedule an additional visual inspection after corrective work has been performed. Collocator shall be responsible for coordination with its AM-OH Approved Vendor to be at the site for the visual inspection, acceptance testing and, when necessary, corrective work.
- 11.3 Prior to scheduled turn-up of the virtual collocated equipment, the Collocator will arrange to deliver to the AM-OH Central Office, or other pre-designated location by AM-OH, any spare plug-ins, circuit packs, tests sets, unique tools, circuit design information, technical publications, and any other necessary items that are needed to maintain and repair the Collocator's equipment. It is the Collocator's responsibility to arrange with their AM-OH Approved Vendor to place any of the items provided into the Collocator's designated storage cabinet or shelf, if applicable.
- 11.4 Once the Collocator's equipment installation inspection is successfully completed, power must be turned up and tested, the virtually collocated equipment and remote monitoring capabilities must be tested, and connectivity must be tested. Power testing, and connectivity testing in certain situations, will require a cooperative test involving the Collocator, its AM-OH approved installation contractor, AM-OH, and/or AM-OH vendor. Collocator and its installation contractor will perform the equipment and remote monitoring testing. To the extent possible, AM-OH will work with Collocator to coordinate testing to minimize the number of visits required by Collocator and its contractor.
- 11.5 All installations of equipment must be in accordance with the AM-OH TP76300MP standards and requirements for equipment and facility installations and subject to review by an AM-OH maintenance engineer for compliance. Should AM-OH maintenance engineer determine during their review that the installation is not compliant with specifications, Collocator may schedule an additional visual inspection after corrective work has been performed.
- 11.6 Collocator shall be responsible of coordination with its AM-OH Approved Vendor to be at the site for acceptance testing.

- 11.7 Upon successful completion of the testing as described in Section 11.4 above, AM-OH shall provide Collocator with written acceptance notification no more than five (5) business days after turnup of the virtually collocated equipment. Immediately following this notification, AM-OH will begin to maintain and repair the virtual collocated equipment at the direction of the Collocator, if all training requirements have been met.
- 11.8 Collocator shall accept the installation of equipment and facilities prior to the installation of services using the equipment. Once the equipment is installed and accepted, Collocator will either order interconnection or network elements from AM-OH to connect to the equipment.

## 12. DELIVERY INTERVALS

- 12.1 The delivery interval relates to the period in which AM-OH shall construct and turnover to the Collocator's AM-OH Approved Vendor the requested Virtual Collocation Space. The delivery interval begins on the date AM-OH receives an accurate and complete Virtual Collocation Application from the Collocator. The delivery interval ends on the date AM-OH is ready to turnover the Virtual Collocation Space to Collocator's AM-OH Approved Vendor ("Delivery Date"). The Collocator must provide the AM-OH, within seven (7) calendar days from the date of notification granting the application request, a confirmatory response in writing to continue construction along with the fifty percent (50%) payment of non-recurring charges (unless payment was received with application) or the delivery interval provided in table below will not commence until such time as AM-OH has received such response and payment. If the Collocator has not provided the AM-OH such response and payment by the twelfth (12th) calendar day after the date AM-OH notified Collocator its request has been granted, the application will be canceled. Virtual Collocation Space is not reserved until AM-OH's receipt of the confirmatory response in writing from the Collocator with applicable fees. The delivery interval assigned will be provided to the Collocator by AM-OH with the ten (10) calendar day space notification. Each complete and accurate Virtual Collocation Application received by AM-OH from the Collocator will be processed in the order received unless the Collocator provides a priority list, whichever is applicable. The delivery interval for Virtual Collocation is determined by AM-OH taking into consideration the various factors set forth in Table (1) below including, without limitation, the number of all Virtual Collocation Applications submitted by Collocator and the need for additional preparation of the space such as overhead racking, additional power or HVAC.

**Table (1)**

Number of All Virtual Collocation Applications submitted by One Collocator per state or metering region	Overhead Iron/Racking Exists for Virtual Collocation Space Use	Overhead Iron/Racking Does Not Exist for Virtual Collocation Space Use	Additional Power or HVAC is Required for Virtual Collocation Space Use
1 – 10	60 calendar days	80 calendar days	180 calendar days
11-20	65 calendar days	85 calendar days	185 calendar days

- 12.2 Should the Collocator submit twenty-one (21) or more applications within ten (10) business days, the above delivery intervals will be increased by five (5) calendar days for every five (5) additional applications or fraction thereof. Any material revision to an application will be treated as a new application and the delivery intervals set forth in Table (1) above will be re-started. All Virtual Collocation Applications received by **AM-OH** from a Collocator within a ten (10) business day period shall be treated as submitted at the same time for purposes of administering the above staggering intervals. Virtual Collocation delivery interval ends when roughed in and the assigned space has been distinctly marked by **AM-OH**.

- 12.2.1 For example, but not by way of limitation, if a Collocator submits twelve (12) complete and accurate Virtual Collocation Applications in a state, the delivery intervals assigned by **AM-OH** will depend on which variables apply within each Eligible Structure Virtual Collocation is requested:

If Applications (1-4) are for Virtual Collocation Space where overhead racking exists, the delivery intervals assigned will be sixty (60) days. If Applications (5-11) are for Virtual Collocation Space where overhead racking does not exist, the delivery intervals assigned to Applications (5-10) will be eighty (80) calendar days and Application (11) will be assigned eighty five (85) calendar days. The Virtual Collocation Application (12) was requested in an Eligible Structure that needs additional HVAC added and would be assigned one hundred and eight five (185) calendar days.

- 12.3 The second fifty percent (50%) payment must be received by **AM-OH** prior to the space being turned over to the Collocator's **AM-OH** Approved Vendor. At space turnover, the Actual Point of Termination (APOT) Connection(s) will be provided to the Collocator's **AM-OH** Approved Vendor by **AM-OH**.
- 12.4 For the following interconnection cabling Augments, the Collocator must submit a complete and accurate Virtual Collocation Application:
- 168 DS1 connections and/or
  - 48 DS3 connections and/or

- 400 Copper (shielded or nonshielded) cable pair connections
- 12 fiber pair connections

This application must include an up-front payment of the Application Fee and fifty percent (50%) of all applicable non-recurring charges.

- 12.5 The cabling Augment interval is determined by **AM-OH** taking into consideration the various factors set forth in Table (2) below including, without limitation, the number of all Virtual Collocation Applications for the above Augments submitted by Collocator, the type of infrastructure available for collocation, and the need for additional preparation of the infrastructure such as overhead racking and additional power. The cabling Augment interval assigned will be provided to the Collocator by **AM-OH** with the ten (10) calendar day Augment notification. Each complete and accurate Virtual Collocation Application received by **AM-OH** from the Collocator will be processed in the order received unless the Collocator provides a priority list, whichever is applicable. The cabling Augment interval is determined by **AM-OH** taking into consideration the various factors set forth in Table (2) below including, without limitation, the number of all Virtual Collocation Applications for the above Augments submitted by Collocator, the type of infrastructure available for collocation, and the need for additional preparation of the infrastructure such as overhead racking and additional power.

Table (2)

Number of All Cabling Augment Applications submitted by One Collocator per state or metering region	Necessary Elements such as Iron/Racking and Power exist for Virtual Collocation Use	Necessary Elements such as Iron/Racking and Power do not exist for Virtual Collocation Use
1 – 10	30 calendar days	60 calendar days
11-20	35calendar days	65 calendar days

- 12.6 Should the Collocator submit twenty-one (21) or more Virtual Collocation Applications for cabling Augments within ten (10) business days, the above cabling Augment intervals will be increased by five (5) calendar days for every five (5) additional application or fraction thereof. Any material revision to a Virtual Collocation Application for cabling Augments will be treated as a new application and the cabling Augment delivery intervals set forth in Table (2) above. All cabling Augment applications received by **AM-OH** from a Collocator within a ten (10) business day period shall be treated as submitted at the same time for purposes of administering the above staggering intervals.

- 12.6.1 For example, but not by way of limitation, if a Collocator submits twelve (12) Virtual Collocation Applications for cabling Augments in a state, the delivery intervals assigned will depend on which variables apply within each Eligible Structure requested:

If Applications (1-4) are for Virtual Collocation cabling Augments where necessary elements such as overhead racking and power exists, the delivery interval assigned will be thirty (30) calendar days. If Applications (5-12) are for Physical Collocation where necessary elements such as overhead racking and power does not exist, the delivery interval assigned to Applications (5-10) will be sixty (60) calendar days and for Applications (11-12) sixty five (65) calendar days.

- 12.7 For all Augments other than provided above, AM-OH will work cooperatively with Collocator to negotiate a mutually agreeable delivery intervals.
- 12.8 Within twenty (20) calendar days or mutually agreed upon time, from AM-OH's receipt of the confirmatory response in writing to continue construction on the Virtual Collocation arrangement requested along with the fifty percent (50%) payment of non-recurring charges (unless payment was received with application), AM-OH will schedule a walk through visit with TWTC and/or vendor to provide floor plans of space and the preliminary route design for the interconnection and power cabling.
- 12.9 During AM-OH delivery interval, if engineering design work is complete, which includes asbestos removal, HVAC installation, filtration, floor loading, floor preparation, and overhead racking placement, AM-OH will notify Collocator that their AM-OH Approved Vendor will be allowed to do work in parallel with AM-OH throughout the remaining delivery interval. The Collocator must obtain an approved Method of Procedures (MOP) from AM-OH and follow AM-OH's Technical Publication for installation of equipment and facilities.
- 12.10 In responding to an application request that requires an ICB/NSCR, AM-OH shall advise the Collocator with the quote whether space for the Virtual Collocation requested is available.

### **13. REPAIR AND MAINTENANCE OF EQUIPMENT**

- 13.1 Except in emergency situations, and/or except when AM-OH network reliability is at risk, Collocator will initiate the repair and maintenance process by contacting AM-OH LOC. Collocator-owned fiber optic facilities and central office terminating equipment will be repaired and maintained only upon the request and direction of the Collocator. In an emergency, AM-OH may perform necessary repairs without prior notification or both Parties agree to delineate methods and procedures for emergency notification handling with the LOC. The labor rates applicable to Virtual Collocation are contained within the state specific Appendix Pricing that apply to AM-OH central offices and

AM-OH CEVs, Huts and Cabinets for all maintenance and repairs performed at the direction of the Collocator by AM-OH.

- 13.2 When initiating repair or maintenance requests of Collocator provided virtually collocated equipment, Collocator shall provide the LOC with the following:
  - 13.2.1 Notification that the purpose of the call is to establish a virtual collocation trouble ticket;
  - 13.2.2 AM-OH Eligible Structure's CLLI, circuit identification and/or telephone number;
  - 13.2.3 Location of virtually collocated equipment (Bay, frame, shelf, circuit pack, location and type);
  - 13.2.4 A detailed description of the trouble;
  - 13.2.5 The name and telephone number of the Collocator's employee or Center that will cooperatively test with AM-OH at no charge to AM-OH; and
  - 13.2.6 The type of the trouble.
- 13.3 When an AM-OH technician calls the Collocator to perform repair/maintenance initiated by a trouble ticket, the Collocator will provide the AM-OH technician with the proper sequencing of repair tasks, including any testing necessary to determine needed repairs.
- 13.4 AM-OH is not obligated to provide any test equipment to support the Collocator's equipment. To the extent that test equipment owned by AM-OH is located in the central office with the Collocator's equipment, is compatible with Collocator's equipment and is not currently being used to repair AM-OH owned equipment, AM-OH can use this test equipment for test operations directed by the Collocator. AM-OH assumes no liability for damage to Collocator's equipment caused by using AM-OH test equipment.

AM-OH is not obligated to move test equipment from one central office to another or to provide any test equipment specifically for use on Collocator's equipment. AM-OH is under no obligation to provide lists of test equipment available at central offices and availability is not implied or guaranteed. Test set availability can only be guaranteed by the Collocator providing test equipment for their exclusive use in maintaining their equipment.
- 13.5 Upon mutual agreement, when service affecting reports cannot be restored and it is determined support is necessary, the Collocator's AM-OH Approved Vendor may enter the Eligible Structure to assist in troubleshooting and resolving problems

associated with the trouble report. If AM-OH, working with the Collocator believes that it would be beneficial to allow the Collocator on site to aid in troubleshooting or restoring equipment, it will so request. Charges for an escort will apply in either situation and the Collocator must identify the employee and/or AM-OH Approved Vendor that will assist in the restoration.

- 13.6 The Collocator may request AM-OH to perform routine maintenance and scheduled events, at mutually agreed upon times, which will be billed on a time and material basis and performed on a case by case basis. When requesting maintenance on Collocator owned equipment, the Collocator shall provide AM-OH with location and identification of the equipment, a detailed description of the maintenance requested, and the estimated time required performing the routine maintenance.
- 13.7 For routine maintenance, product upgrades, PCN's, Engineering Complaints, storage cabinet inventories, and generic upgrades, etc., the Collocator will contact the LOC to arrange access for the Manufacturer or Collocator's AM-OH Approved Vendor to perform the necessary work and escort charges will apply as described in Section 14. For service affecting problems covered by the Manufacturer's warranty, AM-OH shall perform repairs as described in Section 14 of this Appendix.
- 13.8 AM-OH is responsible for maintaining 7 X 24 maintenance and repair schedule for the Collocator's virtual collocation equipment at the direction of the Collocator on at a time and material basis, however, maintenance and repair will only be provided on a 7 X 24 basis if the Collocator trains the adequate number of AM-OH personnel provided to the Collocator per Eligible Structure.

#### **14. MEAN TIME RESPONSE INTERVAL (MTRI)**

- 14.1 AM-OH will be responsible for repairing/maintaining Collocator's virtually collocated equipment at the direction of the Collocator with the same diligence it repairs/maintains its own equipment. At a minimum, AM-OH agrees to meet service response interval for installation, repair, and/or maintenance as defined below. Collocator will advise the LOC verbally, of the priority level for each trouble report based on the criteria below. The response interval is defined as the time from the conclusion of a trouble report call from Collocator to the LOC, to the time a AM-OH technician notifies the Collocator's technical support center from the specified trouble location, of the Collocator's virtually collocated equipment that the technician is ready to begin repairs. The Mean Time Response Intervals (MTRIs) for each priority level follows:
  - 14.1.1 **Priority 1 Tickets.** The MTRI for a Priority 1 Ticket is as follows: two (2) hours Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. for Manned Offices; four (4) hour minimum callout Monday through Friday between the hours of 5:01 p.m. to 7:59 a.m.; Saturday and Sunday; and Unmanned Offices. If the callout exceeds the 4-hour minimum, additional



hours will be charged at the callout rate for the duration of the ticket. A Priority 1 Ticket is issued for the following reasons:

14.1.1.1 Any network trouble reports where equipment and associated cabling indicates service degradation. This could include LOS (Loss of Signal), LOF (Loss of Frame), LOP (Loss of Pointer) or excessive errors.

14.1.1.2 Telemetry problems causing the loss of surveillance.

14.1.1.3 Remote access to the virtually collocated equipment.

14.1.2 **Priority 2 Tickets**—The MTRI for a Priority 2 Ticket is twenty-four (24) hours. A Priority 2 Ticket is issued for the following reasons:

14.1.2.1 All other non-service affecting report that is not a threat to customer service over night. Also, issue this type of priority ticket when a non-standard installation of plug-in(s) and/or circuit pack(s) is requested by the Collocator as described in Section 9.8.

14.1.3 **Priority 3 Tickets**—The MTRI for a Priority 3 Ticket is seventy-two (72) hours. A Priority 3 Ticket is issued for the following reasons:

14.1.3.1 Minor reports that have been determined not to be an immediate threat to customer service.

14.1.4 **Priority 4 Tickets**—The MTRI for a Priority 4 Ticket is four (4) business days. A Priority 4 Ticket is issued for the following reasons:

14.1.4.1 Installation of plug-ins or circuit packs, routine maintenance, etc. as described in Section 9.5 and 13.7. When installation is performed by the Collocator's AM-OH Approved Vendor or Manufacturer, the Collocator will make arrangements with the LOC for a mutual agreed arrangement and escort charges will apply, unless the Collocator's AM-OH Approved Vendor has a current existing Installation Agreement (IA) for the installation being performed in the Central Office. All jobs as described above that are to be performed by AM-OH shall be requested through the LOC by the Collocator and completed at the direction of the Collocator. Collocator must identify the Manufacturer and/or AM-OH Approved Vendor performing the work.

14.2 Charges to install, repair, and maintain Collocator's equipment will be billed per the state specific rates provided in the attached Appendix Pricing. If Collocator has not supplied sufficient replacement/installment part(s) or appropriate test equipment at the time AM-OH's technician is ready to begin work at a Central Office, AM-OH will close out the ticket. Collocator must generate another trouble report to request the

repair, installation, and/or maintenance once such part(s) and/or equipment have been delivered to the Eligible Structure.

## 15. CASUALTY LOSS

15.1 If the Eligible Structure is damaged by fire or other casualty, and:

15.1.1 The Virtual Collocation Space is rendered non-tenantable in whole or in part, AM-OH shall repair the same at its expense (as herein limited) and the recurring charges shall not be abated; or

15.1.2 The Virtual Collocation Space is rendered non-tenantable in whole or in part and such damage or destruction can be repaired within ninety (90) calendar days, AM-OH has the option to repair the collocation space at its expense (as herein limited) and the recurring charges shall be proportionately abated to the extent and while Collocator was deprived of the use. If the collocation space cannot be repaired within ninety (90) calendar days, or AM-OH opts not to rebuild, then the collocation arrangement provided shall (upon notice to Collocator within thirty (30) calendar days following such occurrence) terminate as the date of such damage. AM-OH shall endeavor to relocate Collocator equipment to an alternative location.

15.2 Any obligation on the part of AM-OH to repair the collocation space shall be limited to repairing, restoring, and rebuilding the collocation space as originally prepared for Collocator and shall not include any obligation to repair, restore, rebuild or replace any Collocator equipment; or other facilities or equipment located in the Virtual Collocation Space. Upon mutual agreement, when Collocator's space or equipment is damaged, the Collocator may arrange a visit with the LOC to inspect the condition and escort charges will apply. The Collocator must identify the employee(s) and/or AM-OH Approved Vendor that will attend in the visit.

15.3 In the event the Eligible Structure shall be so damaged by fire or other casualty that closing, demolition or substantial alteration or reconstruction thereof shall be necessary then, notwithstanding that the collocation space may be unaffected thereby, AM-OH at its option, may terminate any collocation arrangement in that Eligible Structure by giving Collocator ten (10) business days prior written notice within thirty (30) business days following the date of such occurrence, if at all possible.

## 16. REMOVAL OF EQUIPMENT

16.1 Unless otherwise set forth herein, if Collocator shall default in performance of any term or condition herein, and the default shall continue for thirty (30) calendar days after receipt of written notice, or if Collocator is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, AM-OH may, immediately or at any time thereafter, without notice or demand, expel Collocator and any claiming under

Collocator, remove any Collocator equipment and any other items in the Virtual Collocation Space, forcibly if necessary, and there upon such Virtual Collocation arrangement shall terminate, without prejudice to any other remedies AM-OH might have. AM-OH may exercise this authority on an individual collocation space basis. AM-OH may also refuse additional applications for collocation and/or refuse to complete any pending orders for additional space or collocation by Collocator at any time thereafter.

## 17. LIMITATION OF LIABILITY

17.1 Collocator acknowledges and understands that AM-OH may provide space in or access to the Eligible Structure to other persons or entities ("Others"), which may include competitors of Collocator's; that such space may be close to the Virtual Collocation Space, possibly including space adjacent to the Virtual Collocation Space and/or with access to the outside of the Virtual Collocation Space. In addition to any other applicable limitation, AM-OH shall have absolutely no liability with respect to any action or omission by any other, regardless of the degree of culpability of any such other or AM-OH, and regardless of whether any claimed AM-OH liability arises in tort or in contract. Collocator shall save and hold AM-OH harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other acting for, through, or as a result of Collocator.

## 18. INDEMNIFICATION OF AM-OH

### 18.1 Indemnification of AM-OH

18.1.1 In addition to any indemnification obligations set forth in the General Terms and Conditions of this Agreement), Collocator's shall indemnify and hold harmless AM-OH the agents, employees, officers, directors and shareholders of any of them ("Indemnities"), from and against any and all liabilities, obligations, claims, causes of action, fines, penalties, losses, costs, expenses (including court costs and reasonable attorney's fees), damages, injuries, of any kind, (individually and collectively "Liabilities"), including but not limited to, Liabilities as a result of (a) injury to or death of any person; (b) damage to or loss or destruction of any property; or (c) Liabilities related in any manner to employee benefits, workers compensation, payroll tax, and any other employer obligations which may be asserted against AM-OH where such liabilities arise in connection with Collocator's use of persons that it classifies as an independent contractor or subcontractor to perform obligations under this Agreement; (d) attachments, liens or claims of material persons or laborers, arising out of or resulting from or in connection with this Agreement or the performance of or failure to perform and directly or indirectly caused, in whole or part, by acts of omissions, negligent or otherwise, of Collocator or a contractor or a representative of Collocator or an employee of any one of

them, except to the extent such Liabilities arise from the willful or intentional misconduct of AM-OH or its employees.

**19. NOTICES**

- 19.1 Except in emergency situations, AM-OH shall provide Collocator with written notice five (5) business days prior to those instances where AM-OH or its subcontractors may be undertaking a major construction project in the general area of the Virtual Collocation Space or in the general area of the AC and DC power plants which support the Virtual Collocation Space.
- 19.2 AM-OH will inform Collocator by telephone of any emergency-related activity that AM-OH or its subcontractors may be performing in the general area of the Virtual Collocation Space occupied by Collocator or in the general area of the AC and DC power plants which support the Virtual Collocation Space. Notification of any emergency related activity should be made to Collocator as soon as reasonably possible so that Collocator can take any action required monitoring or protecting its service.
- 19.3 AM-OH will provide Collocator with written notification within ten (10) business days of any scheduled AC or DC power work or related activity in the Eligible Structure that will cause an outage or any type of power disruption to Collocator's equipment. AM-OH shall provide Collocator immediate notification by telephone of any emergency power activity that would impact Collocator's equipment.
- 19.4 Except as may be specifically permitted in this Agreement, any notice or demand, given by one party to the other shall be in writing and shall be valid and sufficient if dispatched by registered or certified mail, return receipt requested, postage prepaid, in the United States mails, or by facsimile transmission; provided, however, that notices sent by such registered or certified mail shall be effective on the third business day after mailing and those sent by facsimile transmission shall only be effective on the date transmitted if such notice is also sent by such registered or certified mail no later than the next business day after transmission, all addressed as follows:

If to (AR, CA, CT, KS, MO, NV, OK, TX)

Account Manager - Collocation  
2600 North Central Expressway  
6<sup>th</sup> Floor,  
Richardson, Texas 75080