

**APPENDIX  
RIGHTS OF WAY**

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## 1. INTRODUCTION

- 1.1 This Appendix sets forth the terms and conditions for Rights of Way (ROW), Conduits and Poles provided by AT&T ILLINOIS to CLEC.
- 1.2 Intentionally Omitted.
- 1.3 Intentionally Omitted.
- 1.4 The prices at which AT&T ILLINOIS agrees to provide CLEC with ROW are contained in the applicable Appendix Pricing.

## 2. DEFINITIONS

- 2.1 Intentionally Omitted.
- 2.2 Anchor. The term "anchor" refers to a device, structure, or assembly, which stabilizes a pole and holds it in place. An anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or guy wire, which, in turn, is attached to the pole. The term "anchor" includes only those anchors, which are owned by AT&T ILLINOIS, as distinguished from anchors, which are owned and controlled by other persons or entities, and does not include the guy strand, which connects the anchor to the pole.
- 2.3 Anchor/guy strand. The term "anchor/guy strand" refers to supporting wires, typically stranded together, or other devices attached to a pole and connecting that pole to an anchor or to another pole for the purpose of increasing pole stability. The term "anchor/guy strand" includes, but is not limited to, strands sometimes referred to as "anchor strands," "down guys," "guy strands," and "pole-to-pole guys."
- 2.4 Approved Vendor. A vendor who is qualified by AT&T ILLINOIS for installation, maintenance, and/or repair. AT&T ILLINOIS shall not unreasonably withhold approval of vendors.
- 2.5 Assigned. The term "assigned", when used with respect to conduit or duct space or pole attachment space, refers to any space in such conduit or duct or on such pole that is occupied by an entity with authority to attach. To ensure the judicious use of poles and conduits, space "assigned" must be physically occupied by said entity within 9 months of the space being "assigned".
- 2.6 Available. The term "available", when used with respect to conduit or duct space or pole telecommunication space, refers to any usable space in such conduit or duct, or any usable telecommunication space on such pole not assigned to a specific provider at the applicable time.
- 2.7 Conduit Occupancy. The terms "conduit occupancy" and "occupancy" refer to the presence of wire, cable, optical conductors, or other facilities within AT&T ILLINOIS's conduit system.

- 2.8 Conduit System. The term "conduit system" refers to any combination of ducts, conduits, manholes or hand holes joined to form an integrated hole. As used in this Agreement, the term "conduit system" does not include (a) cable and other telecommunications equipment located in conduit structure or (b) central office vaults, controlled environmental vault, or other AT&T ILLINOIS structures (such as huts and cabinets) which branch off from or are connected to AT&T ILLINOIS conduit. In this Appendix, the term refers to conduit systems owned or controlled by AT&T ILLINOIS.
- 2.9 Duct. The term "duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities. As used in this Appendix, the term "duct" includes "inner-ducts" created by subdividing a duct into smaller channels.
- 2.10 Facilities. The terms "facility" and "facilities" refer to any property or equipment utilized in the provision of telecommunication services.
- 2.11 Inner-Duct. The term "inner-duct" refers to a pathway created by subdividing a duct into smaller channels.
- 2.12 Insufficient Capacity. The lack of existing available space on or in Structure and the inability to create the necessary space by taking all reasonable steps to do so.
- 2.13 Licensee. The term "licensee" refers to CLEC which has entered or may enter into an agreement or arrangement with AT&T ILLINOIS permitting CLEC to place its facilities in AT&T ILLINOIS' conduit system or attach its facilities to AT&T ILLINOIS' poles or anchors. Licensee and CLEC may be used interchangeably throughout this Appendix.
- 2.14 Intentionally Omitted.
- 2.15 License. The term "license" refers to any license issued pursuant to this Agreement and may, if the context requires, refer to conduit occupancy or pole attachment permits issued by AT&T ILLINOIS prior to the date of this Agreement.
- 2.16 Make-Ready work. The term "make-ready work" refers to all work performed or to be performed to prepare AT&T ILLINOIS's conduit systems, poles or anchors and related facilities for the requested occupancy or attachment of CLEC's facilities. "Make-Ready work" includes, but is not limited to, clearing obstructions (e.g., by "rodding" ducts to ensure clear passage), the rearrangement, transfer, replacement, and removal of existing facilities on a pole or in a conduit system where such work is required solely to accommodate CLEC's facilities and not to meet AT&T ILLINOIS' business needs or convenience. "Make-Ready work" may require "dig-ups" of existing facilities and may include the repair, enlargement or modification of AT&T ILLINOIS' facilities (including, but not limited to, conduits, ducts, handholes and manholes) or the performance of other work required to make a pole, anchor, conduit or duct usable for the initial placement of CLEC's facilities.
- 2.17 Manhole/Handhole. The term "manhole" refers to an enclosure, usually below ground level and entered through a covered hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in a conduit. The term "handhole" refers to a similar enclosure which is too small for personnel to enter.

- 2.18 Modification. Shall mean any action that either adds future capacity to, or increases the existing capacity of, a given facility. By way of example, adding a bracket to a pole that is immediately utilized or adding innerduct to an existing duct does not qualify as a "modification," while adding taller poles, adding new ducts between existing manholes and rebuilding manholes to accommodate additional cables would qualify as a "modification."
- 2.19 Occupancy. The term "occupancy" shall refer to the physical presence of telecommunication facilities in a duct, on a pole, or within a right-of-way.
- 2.20 Permit. Shall mean written permission granted by AT&T ILLINOIS to CLEC to construct and operate its attachment at the locations of AT&T ILLINOIS Structure(s).
- 2.21 Intentionally Omitted.
- 2.22 Intentionally Omitted.
- 2.23 Pole. The term "pole" refers to both utility poles and anchors but only to those utility poles and anchors owned or controlled by AT&T ILLINOIS, and does not include utility poles or anchors with respect to which (AT&T ILLINOIS has no legal authority to permit attachments by other persons or entities and does not include cables and other telecommunication equipment attached to pole structures.
- 2.24 Pre-permit (Field) Survey. The term "pre-permit survey" refers to all work and activities performed or to be performed to determine whether there is adequate capacity on a pole or in a conduit or conduit system (including manholes and handholes) to accommodate CLEC's facilities and to determine what make-ready work, if any, is required to prepare the pole, conduit or conduit system to accommodate CLEC's facilities.
- 2.25 Rights-of-way includes easements, licenses or any other right, whether based upon grant, reservation, contract, law or otherwise, to use property suitable for distribution facilities but does not include property owned or leased by AT&T ILLINOIS which is not used or suitable for distribution facilities such as business offices or corporate offices.

### **3. STRUCTURE AVAILABILITY**

- 3.1 AT&T ILLINOIS shall make available, pursuant to the Act and FCC rules and regulations, access to poles, ducts, conduits and Rights-of-way along AT&T ILLINOIS' distribution network that are owned or controlled by AT&T ILLINOIS (individually and collectively, "Structure") for the placement of CLEC's wires, cables and related facilities (individually and collectively, "attachments").
- 3.2 Nothing contained in this Appendix shall be construed as abridging any independent pole attachment rights or conduit or duct access rights which CLEC may have under the provisions of any applicable federal or state laws or regulations governing access to AT&T ILLINOIS's poles, conduits and ducts.
- 3.3 AT&T ILLINOIS will not make Structure available:

- 3.3.1 Where, after taking all reasonable steps to accommodate such request, there is Insufficient Capacity to accommodate the requested attachment, or;
  - 3.3.2 An attachment cannot be accommodated based upon nondiscriminatory applied safety, reliability or engineering principles.
  - 3.3.3 Before denying a request for access based upon Insufficient Capacity, AT&T ILLINOIS will, in good faith explore potential accommodations with CLEC. If AT&T ILLINOIS denies a request by CLEC for access to its structure for Insufficient Capacity, safety, reliability or engineering reasons, AT&T ILLINOIS will provide CLEC a detailed, written reason for such denial as soon as practicable but, in any event, within forty-five (45) days of the date of such request.
  - 3.3.4 In the case of pole attachments, AT&T ILLINOIS shall, consistent with prudent engineering and design standards and practices, and subject to all applicable laws, ordinances, rules and regulations, take reasonable steps to make space available for CLEC's use without replacement of the pole whenever possible.
- 3.4 Franchises, Permits and Licenses
- 3.4.1 CLEC shall be responsible to secure any necessary franchises, permits, licenses and/or consents from federal, state, county or municipal authorities and from the owners of private property, to construct and operate its attachments at the location of the AT&T ILLINOIS Structure it uses.
  - 3.4.2 Permits granted by AT&T ILLINOIS under this attachment authorize CLEC to place facilities in, or attach facilities to, poles, conduits and ducts owned or controlled by AT&T ILLINOIS but do not affect the rights of landowners to control terms and conditions of access to their property.
  - 3.4.3 AT&T ILLINOIS shall issue to CLEC one or more licenses authorizing CLEC to place or attach facilities in or to specified poles, conduits, ducts or rights-of-way owned or controlled by AT&T ILLINOIS located within this State on a first come, first served basis. If AT&T ILLINOIS determines that the pole, conduit or duct space specifically requested by CLEC is necessary to meet AT&T ILLINOIS' present needs or is licensed by AT&T ILLINOIS to another licensee, AT&T ILLINOIS shall have the right to designate the particular duct(s) to be occupied, the location and manner in which CLEC's facilities will enter and exit AT&T ILLINOIS' conduit system and the specific location and manner of installation for any associated equipment which is permitted by AT&T ILLINOIS to occupy the conduit system or right-of-way, provided that AT&T ILLINOIS shall provide written notice to CLEC within forty-five (45) days following CLEC's request specifying in detail the reasons for denying CLEC's request. If CLEC disagrees with AT&T ILLINOIS' determination, the matter shall be resolved in accordance with the Alternative Dispute Resolution Process.
  - 3.4.4 Licenses Required

- 3.4.4.1 Before placing any facilities in AT&T ILLINOIS' conduits or ducts or attaching any facilities to AT&T ILLINOIS's poles, anchors or anchor/guy strands, CLEC must first apply for and receive a written license from AT&T ILLINOIS. AT&T ILLINOIS shall not unreasonably deny or delay issuance of any license, and in any event, AT&T ILLINOIS shall issue such license within fifteen (15) Business Days from the submission of the license application if make-ready work is not required. If make-ready work is required, AT&T ILLINOIS shall issue such license at the same time the make-ready work is completed pursuant to Section 5.1.1.
- 3.5 If CLEC request access to an AT&T ILLINOIS Right-of-Way where AT&T ILLINOIS has no existing Structure, AT&T ILLINOIS shall not be required to construct new poles, conduits or ducts, or to bury cable for CLEC but will be required to make the Right-of-way available to CLEC to construct its own poles, conduits or ducts or to bury its own cable; provided, however, if AT&T ILLINOIS desires to extend its own attachments, AT&T ILLINOIS will construct Structure to accommodate CLEC's attachments.

#### **4. APPLICATION PROCESS**

- 4.1 Provision of Records
- 4.1.1 In order to obtain information regarding facilities, CLEC shall make a written request to AT&T ILLINOIS, identifying with reasonable specificity the geographic area for which facilities are required. In response to such request, AT&T ILLINOIS shall provide CLEC with information regarding the types, quantity and location (which may be provided by provision of route maps) of AT&T ILLINOIS poles, conduit and right-of-way located within the geographic area specified by CLEC within twenty (20) Business Days. Provision of information herein shall include the right of CLEC employees or agents to inspect and copy engineering records or drawings which pertain to those facilities within the geographic area identified in CLEC's request. Such inspection and copying shall be done at a time and place mutually agreed upon by the Parties.
- 4.1.2 For any information that is readily available, AT&T ILLINOIS shall use its best efforts to produce said information within five (5) days of the written requests. CLEC may elect to be present at any field based survey of facilities identified pursuant to this paragraph and AT&T ILLINOIS shall provide CLEC at least forty-eight (48) hours' notice prior to initiating such field survey. CLEC employees or agents shall be permitted to enter AT&T ILLINOIS manholes and inspect such structures to confirm usability and/or evaluate condition of the structure(s) with at least forty-eight (48) hours' notice to AT&T ILLINOIS, with an AT&T ILLINOIS representative present and at CLEC's expense.
- 4.1.3 AT&T ILLINOIS will provide CLEC, at CLEC's request and expense, with access to maps, records and additional information relating to its Structure; provided that AT&T ILLINOIS may redact any Proprietary Information (of AT&T ILLINOIS or Third Parties) contained or reflected in any such maps, records or additional information before providing

access to such information to CLEC. Upon request, AT&T ILLINOIS will meet with CLEC to clarify matters relating to maps, records or additional information. AT&T ILLINOIS does not warrant the accuracy or completeness of information on any maps or records. Maps, records and additional information are provided solely for the use by CLEC and such materials may not be resold, licensed or distributed to any other person.

#### 4.2 Application Form and Fees

4.2.1 Any request by CLEC for access to AT&T ILLINOIS' Structure shall be in writing and submitted to AT&T ILLINOIS' Structure Access Center, who shall be CLEC's single point of contact for all matters relating to CLEC's access to AT&T ILLINOIS's Structure. Each CLEC's attachment to AT&T ILLINOIS's Structure shall be pursuant to a permit issued by AT&T ILLINOIS for each request for access. The Structure Access Coordinator shall be responsible for processing requests for access to AT&T ILLINOIS's Structure, administration of the process of delivery of access to AT&T ILLINOIS's Structure and for all other matters relating to access to AT&T ILLINOIS's Structure. CLEC may obtain copies of forms and contact information for the AT&T ILLINOIS region via the Structure Access Coordinator at 281-878-5500.

#### 4.3 Pre-permit (Field) Survey

4.3.1 After CLEC has submitted its written application for a license, a pre-permit survey (including a field inspection) will be performed by either Party, in the company of a representative of the other Party, as mutually agreed, to determine whether AT&T ILLINOIS' poles, anchors and anchor/guy strands, or conduit system, in their present condition, can accommodate CLEC's facilities, without substantially interfering with the ability of AT&T ILLINOIS or any other authorized person or entity to use or access the pole, anchor or anchor/guy strand or any portion of AT&T ILLINOIS' conduit system or facilities attached to AT&T ILLINOIS' pole or placed within or connected to AT&T ILLINOIS' conduit system. If CLEC gives its prior written consent in writing, the determination of duct availability may include the "rodding" of ducts at CLEC's expense.

4.3.2 Based on information provided by AT&T ILLINOIS, CLEC shall determine whether AT&T ILLINOIS' pole, anchor, anchor/guy strand, conduit and duct facilities are suitable to meet CLEC's needs.

4.3.3 AT&T ILLINOIS may not unreasonably refuse to continue to process an application based on AT&T ILLINOIS' determination that CLEC's proposed use of AT&T ILLINOIS' facilities will not be in compliance with applicable requirements, specifications, rules, regulations, ordinances, and laws. CLEC acknowledges that AT&T ILLINOIS is not explicitly or implicitly warranting to CLEC that CLEC's proposed use of AT&T ILLINOIS' facilities will be in compliance with applicable requirements, specifications, rules, regulations, ordinances, and laws.

#### 4.4 Notice of Environmental, Health, and Safety Inspections

4.4.1 AT&T ILLINOIS shall provide CLEC with reasonable notice of environmental, health and safety inspections that is equivalent to the information that AT&T ILLINOIS provides to its employees who access rights-of-way, conduits, and pole attachments.

4.5 Issuance of Licenses When No Make-Ready Work is Required

4.5.1 If AT&T ILLINOIS determines that no make-ready work is required, AT&T ILLINOIS shall approve applications for pole attachment and conduit occupancy licenses and issue such licenses within fifteen (15) Business Days of receipt of CLEC's application.

**5. MAKE-READY WORK**

5.1 Upon request, AT&T ILLINOIS shall permit CLEC to conduct Make Ready Work itself or through an AT&T ILLINOIS Approved Vendor(s), if allowed by applicable union contracts.

5.1.1 If AT&T ILLINOIS determines that make ready work is required, the Parties shall negotiate a mutually acceptable completion date, based on securing construction permits, material availability and scope and complexity of the job, within ten (10) business days of completion of the field survey. If CLEC is not satisfied with AT&T ILLINOIS' due date for completion of make ready work, CLEC may perform the make ready work itself or elect to have the work completed by an AT&T ILLINOIS approved contractor.

5.2 Before commencing Make-Ready Work necessary to provide such additional capacity, AT&T ILLINOIS will notify all other Parties having attachments on or in the Structure of the proposed Modification to the Structure. If possible, AT&T ILLINOIS shall allow other attaching Parties, including AT&T ILLINOIS to modify their attachment(s).

5.3 The costs of modifying a Structure to accommodate CLEC's request, an existing or prospective attaching Party's request, or the needs of AT&T ILLINOIS, shall be borne by the Party requesting such modification. With respect to the allocation of modification costs, to the extent the cost of a modification is incurred for the specific benefit of any particular Party, the benefiting Party will be obligated to assume the cost of the modification, or to bear its proportionate share of cost with all other attaching entities participating in the modification. If a user's modification affects the attachments of others who do not initiate or request the modification, such as the movement of other attachments as part of a primary modification, the modification cost will be covered by the initiating or requesting Party. Where multiple Parties join in the modification, each Party's proportionate share of the total cost shall be based on the ratio of the amount of new space occupied by that Party to the total amount of new space occupied by all of the Parties joining in the modification. An attaching Party, including AT&T ILLINOIS, with a pre-existing attachment to the Structure shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another attaching Party, including CLEC. To protect the initiators of modifications from absorbing costs that should be shared by others, the modifying Party or Parties

will be allowed to recover a proportionate share of the modification costs from Parties that later are able to obtain access as a result of the modification.

- 5.4 All Modifications to AT&T ILLINOIS' Structure will be owned by AT&T ILLINOIS. CLEC and other Parties, including AT&T ILLINOIS, who contributed to the cost of a Modification, may recover their proportionate share of the depreciated value of such modifications from Parties subsequently seeking attachment to the modified structure.

## **6. INSTALLATION AND MAINTENANCE RESPONSIBILITIES**

- 6.1 Except where otherwise mutually agreed, CLEC shall, at its own expense, install and maintain its attachments in a safe condition and in thorough repair so as not to conflict with the use of the Structure by AT&T ILLINOIS or by other attaching Parties. AT&T ILLINOIS will specify the location on the Structure where CLEC's attachment shall be placed, which location shall be designated in a nondiscriminatory manner. CLEC shall construct each attachment in conformance with the permit issued by AT&T ILLINOIS for such attachment. Other than routine maintenance and service wire attachments, CLEC shall not modify, supplement or rearrange any attachment without first obtaining a permit therefore. CLEC shall provide AT&T ILLINOIS with notice before entering any Structure for construction or maintenance purposes.

### **6.2 Installation and Maintenance Standards**

- 6.2.1 CLEC's attachments shall be installed and maintained in accordance with the rules, requirements and specifications of the National Electrical Code, National Electrical Safety Code, the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book", the FCC, the Commission, the Occupational Safety & Health Act and the valid and lawful rules, requirements and specifications of any other governing authority having jurisdiction over the subject matter.

### **6.3 Maintenance of CLEC's Facilities**

- 6.3.1 Each license granted under this attachment authorizes CLEC to engage in maintenance of CLEC's facilities located on or in AT&T ILLINOIS' poles, conduits, ducts and rights-of-way pursuant to such license. CLEC shall give reasonable notice to the affected public authority or private landowner, as appropriate, before commencing the construction or installation of its attachments or making any material alterations thereto. CLEC shall give reasonable notice to AT&T ILLINOIS before performing any work.

### **6.4 Emergency Repairs and Pole Replacements**

- 6.4.1 Intentionally Omitted.
- 6.4.2 CLEC shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices which will enable it to make such emergency repairs.

**7. UNUSED SPACE**

- 7.1 Except for maintenance ducts and ducts required to be reserved for use by municipalities, all useable but unused space on Structure owned and controlled by AT&T ILLINOIS shall be available for the attachments of CLEC, AT&T ILLINOIS or other providers of Telecommunications Services, cable television systems and other persons that are permitted by Applicable Law to attach. AT&T ILLINOIS shall not reserve space on AT&T ILLINOIS Structure for the future need of AT&T ILLINOIS nor permit any other person to reserve such space. Notwithstanding the foregoing, CLEC may provide AT&T ILLINOIS with a two (2)-year rolling forecast of its growth requirements for Structure that will be reviewed jointly on an annual basis.

**8. MAINTENANCE DUCTS**

- 8.1 If currently available, one duct and one inner-duct in each conduit section shall be kept vacant as maintenance ducts. If not currently available and additional ducts are added, AT&T ILLINOIS shall provide maintenance ducts at no cost to CLEC. Maintenance ducts shall be made available to CLEC for maintenance purposes if it has a corresponding attachment. CLEC utilizing a maintenance spare must vacate it within sixty (60) days or provide an equivalent spare.

**9. OTHER ARRANGEMENTS**

- 9.1 Cost of Certain Modifications
- 9.1.1 If AT&T ILLINOIS is required by a governmental entity, court or Commission to move, replace or change the location, alignment or grade of its conduits or poles, each Party shall bear its own expenses of relocating its own equipment and facilities. CLEC acknowledges that, from time to time, it may be necessary or desirable for AT&T ILLINOIS to change out poles, relocate, reconstruct, or modify portions of its conduit system or rearrange facilities contained therein or connected thereto and that such changes may be necessitated by AT&T ILLINOIS' business needs or by an authorized application or license of another entity seeking access to AT&T ILLINOIS' poles, conduit systems, ducts and/or Rights-of-Way. If a move of CLEC's attachment is required by AT&T ILLINOIS or another attaching Party, CLEC shall move its attachment, at the expense of the Party requesting such move, within thirty-six (36) days after notification of the required move. If CLEC fails to move its attachment with the foregoing period, CLEC authorizes AT&T ILLINOIS to move such attachment at CLEC's expense.

**10. TERM AND TERMINATION OF PERMIT**

- 10.1 CLEC's occupancy of Structure shall be pursuant to a permit issued by AT&T ILLINOIS for each requested Attachment. Each permit issued hereunder shall be for an indefinite term. Any such permit shall terminate:
- 10.1.1 Upon thirty (30) days written notice of termination by CLEC.

- 10.1.2 If CLEC's franchise, permit, license and/or consent or other authorization from federal, state, county or municipal entities or private property owners is terminated,
- 10.1.3 If CLEC has not placed and put into service its attachments within 9 months from the date AT&T ILLINOIS has notified CLEC that such Structure is available for CLEC's attachments, unless this period is extended by agreement of the Parties, which agreement shall not be unreasonable withheld.
- 10.1.4 If CLEC ceases to use such attachments for any period of 9 months, unless this period is extended by agreement of the Parties, which agreement shall not be unreasonable withheld.
- 10.2 If AT&T ILLINOIS ceases to have the right or authority to maintain its Structure, or any part thereof, to which CLEC has attachments, AT&T ILLINOIS shall:
  - 10.2.1 Provide CLEC notice within ten (10) Business Days after AT&T ILLINOIS has knowledge of such fact and shall not require CLEC to remove its attachments from such Structure prior to AT&T ILLINOIS' removal of its own attachments.
- 10.3 AT&T ILLINOIS will provide CLEC with at least sixty (60) days written notice prior to:
  - 10.3.1 Terminating a permit for an attachment or terminating service to CLEC's attachment,
  - 10.3.2 Any increase in the rates for attachments to AT&T ILLINOIS' Structure permitted by the terms of this Appendix, or
  - 10.3.3 Any Modification to AT&T ILLINOIS' Structure to which CLEC has an attachment, other than a modification associated with routine maintenance or as a result of an emergency.
- 10.4 If CLEC surrenders its permit for any reason (including forfeiture under the terms of this Appendix), but fails to remove its attachments from the Structure within 9 months after the event requiring CLEC to so surrender such permit, AT&T ILLINOIS shall remove CLEC's attachments at CLEC's expense and without any liability on the part of the AT&T ILLINOIS for damage or injury to CLEC's attachments unless caused by the negligence or intentional misconduct of AT&T ILLINOIS.
- 10.5 If AT&T ILLINOIS discovers that CLEC has placed an attachment on AT&T ILLINOIS' Structure without a valid permit, AT&T ILLINOIS shall notify CLEC of the existence of such unauthorized attachment and CLEC shall pay to AT&T ILLINOIS within ten (10) Business Days after receipt of such notice an unauthorized attachment fee equal to five (5) times the annual attachment fee for an authorized attachment.
- 10.6 Within the foregoing period, CLEC shall also apply for an Occupancy Permit for the unauthorized Attachment.
- 10.7 In addition, CLEC shall go through the process of any Make Ready Work that may be required for the unauthorized attachment.

- 10.8 If CLEC fails to pay the unauthorized attachment fee or apply for the required Occupancy Permit within the foregoing period, AT&T ILLINOIS shall have the right to remove such unauthorized attachment from AT&T ILLINOIS' Structure at CLEC's expense.

## 11. NONCOMPLIANCE

### 11.1 Notice of Noncompliance

- 11.1.1 If, at any time, AT&T ILLINOIS determines that CLEC's facilities or any part thereof have not been placed or maintained or are not being used in accordance with the requirements of this Appendix, AT&T ILLINOIS may send written notice to CLEC specifying the alleged noncompliance. CLEC agrees to acknowledge receipt of the notice as soon as practicable. If CLEC does not dispute AT&T ILLINOIS' assertion that such facilities are not in compliance, CLEC agrees to provide AT&T ILLINOIS with a schedule for bringing such facilities into compliance, to bring the facilities into compliance within a reasonable time, and to notify AT&T ILLINOIS in writing when the facilities have been brought into compliance.

### 11.2 Disputes over Alleged Noncompliance

- 11.2.1 If CLEC disputes AT&T ILLINOIS' assertion that CLEC's facilities are not in compliance, CLEC shall notify AT&T ILLINOIS in writing of the basis for CLEC's assertion that its facilities are in compliance.

### 11.3 Failure to Bring Facilities into Compliance

- 11.3.1 If CLEC has not brought the facilities into compliance within a reasonable time or provided AT&T ILLINOIS with proof sufficient to persuade AT&T ILLINOIS that AT&T ILLINOIS erred in asserting that the facilities were not in compliance, and if AT&T ILLINOIS determines in good faith that the alleged noncompliance causes or is likely to cause a material safety hazard or material damage to AT&T ILLINOIS' facilities or those of others users, AT&T ILLINOIS may, at its option and CLEC's expense, take such steps as may be required to bring CLEC's facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this Appendix. If the steps taken are to be service affecting, AT&T ILLINOIS must give CLEC thirty (30) business days advance notice. If the steps taken are to be non-service affecting, AT&T ILLINOIS must give CLEC fifteen (15) business days advance notice.

### 11.4 Correction of Conditions by AT&T ILLINOIS

- 11.4.1 AT&T ILLINOIS will, whenever practicable, notify CLEC in writing before performing such work. The written notice shall describe the nature of the work to be performed and AT&T ILLINOIS' schedule for performing the work.

11.4.2 If CLEC's facilities have become detached or partially detached from supporting racks or wall supports located within an AT&T ILLINOIS manhole, AT&T ILLINOIS may, at CLEC's expense, reattach them but shall not be obligated to do so. If AT&T ILLINOIS does not reattach CLEC's facilities, AT&T ILLINOIS shall cooperate with CLEC for the reattachment of any facilities affected.

11.4.3 AT&T ILLINOIS shall, as soon as practicable after performing the work, advise CLEC in writing of the work performed or action taken. Upon receiving such notice, CLEC may inspect the facilities, after notice to AT&T ILLINOIS, and take such steps as CLEC may deem necessary to insure that the facilities meet CLEC's performance requirements.

#### 11.5 CLEC to Bear Expenses

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

### 12. INSPECTIONS

12.1 AT&T ILLINOIS may make periodic inspections of any part of the attachments of CLEC located on AT&T ILLINOIS Structure for the limited purpose of determining whether CLEC's facilities are in compliance with the terms of this Appendix and licenses granted hereunder; provided that such inspections must be non-invasive (e.g. no splice cases may be opened). Where reasonably practicable, AT&T ILLINOIS shall provide prior written notice to CLEC of such inspections and CLEC shall have the right to have a representative attend such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been forwarded to CLEC.

### 13. DAMAGE TO ATTACHMENTS

13.1 Both CLEC and AT&T ILLINOIS will exercise precautions to avoid damaging the attachments of the other or to any AT&T ILLINOIS Structure to which CLEC obtains access hereunder. The Party damaging the attachments of the other Party through negligence or willful misconduct shall be responsible to such other Party therefore.

### 14. CHARGES

14.1 AT&T ILLINOIS's charges for Structure provided hereunder shall be determined in compliance with the regulations to be established by the FCC pursuant to Section 224 of the Communication Act and in compliance with applicable commission rules, regulations and orders thereunder. The charges applicable to Structure hereunder shall be as set forth in the Appendix Pricing. AT&T ILLINOIS reserves the right to adjust the charges for Structure provided hereunder consistent with the foregoing. Notwithstanding the foregoing, AT&T

ILLINOIS reserves the right to price on a case-by-case basis any extraordinary attachment to Structure. An extraordinary attachment is an attachment to a pole that occupies more than one foot of space on the pole in addition to the primary cable or anything other than a standard field splice enclosure in a manhole.

- 14.2 Advance payment of 50% (fifty percent) of the total amount shall be required from CLEC for map preparation, field surveys and Make-Ready Work. The balance shall be due upon completion.

**15. NONDISCRIMINATION**

- 15.1 Access to AT&T ILLINOIS owned or controlled Structure under this Appendix shall be provided to CLEC on a basis that is nondiscriminatory to that which AT&T ILLINOIS provides its Structure to itself, its affiliates, customers, or any other person.

**16. JOINING OF ATTACHMENTS**

- 16.1 Upon request by CLEC, AT&T ILLINOIS will permit the joining of ducts or conduits owned by CLEC in AT&T ILLINOIS manholes.

**17. COST IMPUTATION**

- 17.1 AT&T ILLINOIS will impute costs consistent with the rules under Section 224 (g) of the Act.

**18. ABANDONMENT, SALES, OR DISPOSITIONS**

- 18.1 AT&T ILLINOIS shall notify CLEC of the proposed abandonment, sale or other intended disposition of any Structure. In the event of a sale or other disposition of the conduit system or pole, AT&T ILLINOIS shall condition the sale or other disposition to include and incorporate the rights granted to CLEC hereunder.