

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application by Webpass Telecommunications, LLC
(U7278C) pursuant to Decision 98-10-058 for
Arbitration of Dispute over Denial by Pacific Bell
Telephone Company (U1001C) of Nondiscriminatory
Access to Utility Support Structures.

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**APPLICATION BY WEBPASS TELECOMMUNICATIONS, LLC
(U7278C) FOR ARBITRATION OF DISPUTE**

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Dated: May 25, 2016

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A.

**APPLICATION BY WEBPASS TELECOMMUNICATIONS, LLC
(U7278C) FOR ARBITRATION OF DISPUTE**

Pursuant to Decision (D.) 98-10-058 and Article 2 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Webpass Telecommunications, LLC ("Webpass") requests arbitration under the expedited dispute resolution procedures established by D.98-10-058 of a pending dispute with Pacific Bell Telephone Company ("AT&T California") regarding access to AT&T California's conduit systems.

AT&T California has denied Webpass the ability to install splice cases and similar equipment in AT&T California's conduit systems and has also stated that it will deny Webpass the right to install fiber optic cable in a conduit that is partially occupied by an existing AT&T California cable except in entrance facilities owned by other parties or unless AT&T California's cable is enclosed in an innerduct. Even then, however, AT&T California will never allow joint occupation of available space in conduit unless a "full vacant spare" remains available to AT&T California. In cases where Webpass is allowed to override an AT&T

California innerduct, AT&T California requires Webpass to install an extra innerduct in the conduit for AT&T California's use.

None of these same restrictions and requirements apply to AT&T California's own use of its conduit systems. AT&T California's reliance on these policies in refusing to provide Webpass with requested access to AT&T California's conduit systems is discriminatory, in breach of AT&T California's contractual obligations, and violates the Commission's rules.

I. INTRODUCTION AND FACTUAL BACKGROUND

Webpass holds authority under D.15-04-011 to operate as a competitive local exchange carrier ("CLEC") within the service territories of AT&T California, Frontier California Inc. (formerly known as Verizon California Inc.), Consolidated Communications of California Company (formerly known as SureWest Telephone), and Citizens Telecommunications Company of California, Inc. Consistent with that authority, Webpass is engaged in the buildout of "last-mile" broadband network infrastructure for use by its wholesale customers in the provision of advanced data and voice telecommunications capabilities to California consumers.

Webpass is constructing its network using combinations of overhead and underground facilities. In many areas, such as San Francisco, the ability to use aerial facilities is limited, which requires Webpass to install a good portion of its facilities, such as fiber optic cabling, underground. While Webpass has authority from the Commission to construct its own underground conduit systems and other support structures, so long as exemptions from CEQA exist, it is generally uneconomical and, due to the imposition of moratoriums and other restrictions on trenching within roadways, often highly impractical, to do so. Therefore, like other CLECs, Webpass must rely on the availability of unused capacity in existing utility infrastructure, such as that owned by AT&T California.

Under D.98-10-058 and 47 U.S.C. § 224, Webpass has the right to access such utility support structures, including ducts, conduit, and other support structures, along with utility rights-of-way (“ROW”) for the purpose of installing cabling and other facilities to be used by it in providing telecommunications services.

To that end, Webpass has entered into an interconnection agreement (“ICA”) with AT&T California, which includes provisions in “Attachment 03 Structure Access” (the “Structure Access Attachment”) requiring AT&T California to “provide CLEC [i.e., Webpass] with equal and nondiscriminatory access to Pole space, Conduits, Ducts, and ROW on terms and conditions equal to those provided by [AT&T California] to itself or to any other Telecommunications Service provider.”¹ A copy of the “Structure Access Attachment” is attached hereto as Exhibit A.

Consistent with its rights under the ICA and pursuant to AT&T California’s business procedures, Webpass has submitted detailed applications to install its fiber facilities at various locations. Exhibit B, is a sample of mapping and design drawings submitted to AT&T California for a proposed installation along Main Street, San Francisco. Pages 2-5 contain details for installations at three different manholes. The drawings identify conduits in which Webpass seeks to install fiber, and points at which Webpass intends to locate splice cases and cable coils.

AT&T California denied Webpass’ application in part, specifying its reasons (shown in red) on the plans included in Exhibit B. As shown by these notations, AT&T California rejected Webpass’ plans to install splice cases and coil loops. In addition, while the drawings show that many ducts are only partially-filled, AT&T California has stated to Webpass

¹ Structure Access Attachment, section 3.1.1.

that a fiber optic cable override (i.e., installation of fiber optic cable in available space that is already partially occupied by an existing AT&T California cable) is never allowed except in entrance facilities owned by other parties² or unless AT&T California's cable is enclosed in an innerduct, which is rarely the case. This means that even though there may be ample space in multiple partially-used conduits, in most cases AT&T California refuses to allow Webpass to install fiber in those conduits. And, in cases where Webpass is allowed to override an existing AT&T California innerduct containing a fiber optic cable, AT&T California requires Webpass to install two additional innerducts, one for Webpass' use and one to be reserved for AT&T California's use.

What is more, AT&T always denies access to the last open conduit in any location, because AT&T California claims a right to reserve that conduit for AT&T California's exclusive future use. Such conduit might be for entrance to a new building to which AT&T California just installed service (for which a spare conduit would likely remain unneeded for many years) or it could be an open conduit between two manholes in the street. In either event, if it is the last open conduit, AT&T California has been very clear that access will be denied 100% of the time.

AT&T California's policies are blatantly discriminatory and anticompetitive.

AT&T California installs its own splice cases in manholes, and Webpass is informed that AT&T

² Entrance facilities (or laterals) are the pathways from a building to AT&T California's underground conduit system. If a building owner had installed a direct conduit from the basement of the building to an AT&T California manhole, that conduit is deemed to be owned by the building. Therefore Webpass can and does override any existing cables in the conduit to access the building. The only buildings to which Webpass has been permitted to connect its fiber optic network have this arrangement. On the other hand, if a building owner had installed a conduit from the basement to an AT&T California "sub box" and another conduit from the sub box to an AT&T California manhole, that second conduit is deemed to be owned by AT&T California.

California has permitted other communications providers to do so as well. Exhibit C is a photograph of splice cases in an AT&T California manhole. Webpass is also informed that AT&T California freely overrides its own cables and innerducts (as well as cables and innerducts owned by other companies) in partially vacant conduit, including where the existing cable in the conduit consists of copper pairs.³ Additionally AT&T California does not go through the same roping and tagging process to reserve space that competitive providers are compelled to follow. AT&T California just sends out crews to install cable in any available open space and documents the build upon completion.

AT&T California's anti-competitive and discriminatory policies are not consistent with the ICA. The ICA specifically contemplates that Webpass will install splices in AT&T's manholes or other elements of the conduit system (see, e.g., Structure Access Attachment, section 4.4.1.3, 4.6.1, and 4.14.1). Moreover, with respect to conduit access, the ICA provides that "[a]ssignment of space on Poles, in Conduit or Ducts and within ROW's will be made pursuant to licenses granted by [AT&T California] *on an equal basis* to [AT&T California], CLEC and other Telecommunications Providers. (Structure Access Attachment, section 3.9.1, emphasis added.) In addition, the ICA states, "Further, [AT&T California] shall not withhold or

³ While AT&T California admits that it overrides copper cable with its own fiber cable, it does not allow CLECs to do so because of the potential for damage to the copper pairs. However, the potential for damage to copper cable is very slight, because of the designed durability of such cables. Moreover, Webpass always uses qualified employees to install its facilities and in cases where work within a conduit in which AT&T California's copper facilities are installed could result in harm to those facilities, there is no reason why Webpass should not have the same right as AT&T California to install facilities. Webpass coordinates all work with AT&T California so that appropriate AT&T California personnel could be deployed very quickly, at Webpass' expense, in the unlikely event that copper cabling is damaged during the fiber installation and repairs are required, just as would be the case where AT&T California is doing such work. Further, the fact is that these runs are typically short easy pulls, and Webpass has overridden AT&T California cables in buildings that own their entrance facilities without any damage to existing AT&T California cables.

delay assignment of such Facilities to CLEC because of the potential or forecasted needs of itself or Third Parties.” (Structure Access Attachment, section 3.1.1.) Instead, AT&T California may withhold available space only if it is already assigned and will be used, whether by AT&T California or any other assigned entity, within twelve months of assignment. (Structure Access Attachment, section 2.4.) What is more, there is nothing in the ICA or the Commission’s rules that authorizes AT&T California to require Webpass to install innerducts for AT&T California’s use or that approves AT&T California’s discriminatory practice of refusing to allow Webpass to install fiber in conduit space that is partially occupied by AT&T California’s own cable.

AT&T California’s violations of its obligations under federal and state law, and the ICA, are not insignificant. AT&T California’s refusal to allow Webpass to install splice cases within the existing conduit system means that Webpass would be required to install a duplicate manhole or other underground structure at every point where a splice is required in order to serve customers’ premises along a fiber route. Webpass has invited bids from contractors and found that installing the least expensive type of splicing structure along the Main Street route depicted in Exhibit B, for example, would cost a minimum of \$18,000 per splice point. This price does not include street surface repair work, such as repaving, repairing sidewalks, and handicap ramps, the costs of which can be huge, particularly where a street has recently been repaved by the City. AT&T California’s limitation on access to individual conduits presents the potential for even higher, indeed enormous, costs that must be incurred by a competitor seeking to build out a network as it leaves no alternative but to install entirely new conduit structure. What is more, AT&T California’s policies would result in highly inefficient use of the public right-of-way, unnecessary inconvenience to the traveling public, abutting store

and other property owners, and others during the construction process, and duplicate, wasteful investment in unnecessary facilities.

As a new competitive service provider, Webpass simply cannot justify the investment needed to construct ubiquitous infrastructure capable of serving potential end user locations. Doing so would be tremendously expensive and there would be no guaranty, by any means, that Webpass could ever recover its cost of making such an investment. By contrast, AT&T California has built facilities that extend to virtually every home and building in San Francisco and other areas it serves; but it has taken decades for it to construct these facilities and, to a significant extent, they were likely funded at monopoly ratepayer expense. These options simply are not available to Webpass.

Even in cases where Webpass has facilities that are close to a service location, it may not be economically practical to construct additional infrastructure to provide a link between Webpass' facilities and the service location. For example, in order for Webpass to be able to extend facilities to end users in a multi-unit building from fiber cabling in the street, Webpass needs to have access to a pathway from the cabling into the building. This would require a manhole or other suitable means to access the cabling, trenching and installation of conduit between the manhole and the building, and an entry duct into the building. Unless there were a large number of end users in the building who were willing to commit to taking service from Webpass' wholesale customers for such period of time as would enable Webpass and its customers a reasonable opportunity to recover their costs, the risk of investing in the needed facilities might well be too high; and, this would likely be the case for any prospective competitive service provider, not just Webpass and its wholesale customers.

Thus, under AT&T California's policies, Webpass would be unable to go forward with its network buildout. It is likely that other potential competitors would find themselves to be in the same position and, as a result, be thwarted in their own efforts to bring innovative, advanced service choices to end users on a competitive basis.

Webpass requested, by letter sent on February 2, 2016, that AT&T California engage in executive-level negotiations pursuant to the dispute resolution provisions of D.98-10-058. (A copy of that request is attached as Exhibit D.) However, AT&T refused to do so, stating that Webpass first had to complete dispute resolution under the ICA. Webpass then attempted further discussions with AT&T California's assigned business contact; however, those efforts failed. As Webpass had already escalated the matter as far as it could, short of the requested executive-level review, there was nothing further for Webpass to do under the ICA dispute resolution process except wait for the expiration of the ICA's sixty-day informal dispute resolution period before once again exercising its rights under D.98-10-058. Once the waiting period passed, Webpass renewed its request for executive-level dispute resolution. (See Exhibit E.) However, AT&T California has offered no solution and no justification whatsoever for its discriminatory policies notwithstanding that, under D.98-10-058, the burden is on AT&T California to justify any refusal to permit access to its support structures.

AT&T's provision of structure access to Webpass is not elective; it is a requirement of the ICA and federal and state law⁴ and is fundamental to the achievement of state telecommunications policy. In this regard, the Commission recently observed that an "important goal of the State of California is the widespread deployment and use of broadband services. Like

⁴ The ICA provides at section 25.1, "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. The complete ICA is available at: https://clec.att.com/clec_cms/clec/docs/db3c60f8a20749288626ae9b1590d102.pdf

electricity a century ago, broadband is a foundation for improved education, new industries, economic growth, job creation, global competitiveness, and a better way of life.” (Order Instituting Rulemaking 14-05-001, May 1, 2014, at 20 [footnotes omitted].)

Webpass’ interest in seeking full access to conduits and other support structures owned by AT&T California is to enable it deploy its broadband infrastructure and services rapidly, efficiently, and economically, in furtherance of this key state policy. Webpass and other new competitors cannot feasibly do so in any other way. There are simply too many barriers to rapid ubiquitous buildout of new facilities by new carriers. Indeed, as the Commission observed in issuing D.98-10-058, “In order for broadly available facilities-based competition to succeed, CLCs need access to the poles, conduits, and ROW”(D.98-10-058, at 2.)

Consequently, because AT&T California has refused to allow Webpass access to AT&T California’s conduit system on a nondiscriminatory basis, as specifically contemplated by the ICA and applicable law, Webpass is forced to make this application for arbitration under the expedited dispute resolution process adopted by D.98-10-058.

Webpass seeks resolution of this dispute in accordance with the ICA, Public Utilities Code § 709, and state and federal policy promoting the development of broadband and other advanced telecommunications, including Section 706 of the Telecommunications Act of 1996 (codified at 47 U.S.C. § 1302), which provides, in pertinent part:

[E]ach State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including , in particular, elementary and secondary schools an classroom) by utilizing, in a manner consistent with the public interest, convenience and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.”

In support of this application, Webpass makes the following general showing in accordance with Article 2 of the Commission's Rules of Practice and Procedure, followed by the specific showing required under D.98-10-058.

II. COMPLIANCE WITH ARTICLE 2

A. Rule 2.1(A) – Information Regarding Applicant

Applicant's exact legal name is Webpass Telecommunications, LLC. Applicant's principal place of business is 267 8th Street, San Francisco, California, and its telephone number is 415-233-4100.

B. Rule 2.1(B) – Correspondence and Communications

WEBPASS: All communications, correspondence, and pleadings with respect to this application should be directed to:

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AT&T CALIFORNIA: Webpass is informed and believes that communications with AT&T California regarding the filing of this application should be directed to:

Contract Management
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Four AT&T Plaza
Dallas, TX 75202
Facsimile: (214) 464-2006
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AT&T Services, Inc.
2150 Webster Street, 8th Floor
Oakland, CA 94612
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Email: DavidJMiller@att.com

C. Rule 2.2 – Corporate Documents

A copy of Applicant's current articles of organization and certification of authorization to conduct business in California were filed as exhibits to Application 14-03-007 on March 10, 2014.

D. Rule 2.4 – CEQA Compliance

Applicant's Proponent's Environmental Assessment ("PEA") is attached as Exhibit F.

III. COMPLIANCE WITH DECISION 98-10-058

A. Statement Of All Unresolved Issues

As discussed above, there currently are two unresolved issues between Webpass and AT&T California:

(1) Is AT&T California entitled to require Webpass to install splice cases and similar equipment in Webpass-owned structures even when there is available space for such equipment in AT&T California's conduit system?

(2) Is AT&T California entitled to preclude or otherwise limit Webpass' right to install cable in available space within conduits in which AT&T California has already installed cable?

B. Description Of Parties' Positions On Unresolved Issues

(1) As discussed above, Webpass' position is that it has a right to nondiscriminatory access to available space in AT&T California's conduit system for the purpose of installing splice cases and similar equipment needed to operate Webpass' fiber cable system. AT&T California's position is Webpass may not install splice cases or other splicing equipment in AT&T California's conduit system.

(2) As discussed above, Webpass' position is that assignment of space within AT&T California's conduit system must be on a nondiscriminatory, first-come, first-served basis and, therefore, AT&T California can neither preclude Webpass from installing cable in accordance with the same practices and policies applicable to AT&T California nor reserve, indefinitely, available capacity for its own use. AT&T California's position is that it may apply discriminatory conduit occupation practices and policies to use of its conduit system by Webpass and that it may indefinitely reserve one complete vacant spare conduit for its own purposes.

C. Proposed Agreement

In Webpass' view, its existing ICA contains all necessary provisions and no further agreement is required, other than AT&T California's agreement to abide by the terms of the ICA and applicable law.

D. Direct Testimony

D.98-10-058 requires Webpass' submission of direct testimony supporting its position on the facts pertaining to the issues raised by this application. However, on May 24, 2016, Webpass was advised by e-mail communications from the Docket Office, that the Division of Administrative Law Judges has determined that the filing of such testimony is no longer permitted by the Commission's Rules of Practice and Procedure. Accordingly, this application does not include the testimony that otherwise would be required by D.98-10-058.

E. Compliance With Time Requirements

Webpass sought to negotiate with AT&T California through various avenues, but its efforts have been rebutted. As noted above, Webpass sought to escalate this matter to the executive level of AT&T California on February 2, 2016. (See, Exhibit D.) Webpass then sought executive-level escalation, again, on May 11, 2016, but AT&T California still has not come to terms with Webpass on the disputed issues. (See, Exhibit E.)

IV. SCOPING INFORMATION

Proposed Category: Applicant proposes that the Commission classify this proceeding as ratesetting. Although this Application does not affect rates, the definitions of “adjudicatory” or “quasi-legislative” do not clearly apply to this application. Under the Commission’s rules, when a proceeding does not clearly fit any of the categories, it should be conducted under the ratesetting procedures.

Need for hearing: The applicable expedited dispute resolution procedures provide for an arbitration conference and hearing before an appointed arbitrator.

Issues to be considered: The issues to be considered in this proceeding include:

- (1) Whether AT&T California is entitled to require Webpass to install splice cases and similar equipment in Webpass-owned structures even when there is available space for such equipment in AT&T California’s conduit system.
- (2) Whether AT&T California is entitled to preclude or otherwise limit Webpass’ right to install cable in available space within conduits in which AT&T California has already installed cable.

Proposed Schedule: Applicant proposes the following schedule:

15 days after application filed:	Due date for AT&T California response to application.
3 days after response:	Due date for joint filing of revised statement of unresolved issues
7 days after response:	Arbitration conference and hearing begins
7 days after hearing:	Due date for post-hearing brief
15 days after hearing:	Issuance of draft arbitrator’s report
10 days after issuance of draft	Due date for comments on draft

arbitrator's report:	arbitrator's report
15 days after filing of comments:	Issuance of final arbitrator's report
7 days after issuance of a final arbitrator's report:	Due date for filing arbitrated agreement
30 days after filing of arbitrated agreement:	Issuance of Commission decision

V. CONCLUSION

Webpass respectfully requests that the Commission grant its request for expedited resolution of the foregoing disputes and order AT&T California to:

- (1) Allow Webpass to install splice cases and similar equipment in available space locate within AT&T California's conduit system.
- (2) Allow Webpass to utilize any available duct capacity except for duct capacity that is properly assigned to AT&T California or another telecommunications provider for use commencing within a period of no longer than twelve months.

Respectfully submitted May 25, 2016 at San Francisco, California.

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By /s/ John L. Clark
John L. Clark

Attorneys for Applicant Webpass
Telecommunications, Inc.

VERIFICATION

I, Charles Barr, am the Managing Member of the Applicant herein and am authorized to make this verification on its behalf. The matters stated in the application and the exhibits thereto are true and correct to the best of my knowledge and belief.

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

Executed this 25th day of May 2016 at San Francisco, California.

A handwritten signature in black ink, appearing to read "Ch Barr", with a stylized flourish at the end.

Charles Barr

EXHIBIT A

STRUCTURE ACCESS ATTACHMENT

ATTACHMENT 03 - STRUCTURE ACCESS

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1.0 Introduction

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

2.0 Definitions

- 2.1 "Anchor" means a device, structure, or assembly which stabilizes a Pole and holds it in place. An Anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or guy wire, which, in turn, is attached to the Pole. The term Anchor does not include the guy strand which connects the Anchor to the Pole and includes only those Anchors which are owned by AT&T-22STATE, as distinguished from Anchors which are owned and controlled by other persons or entities.
- 2.2 "Anchor/Guy Strand" means supporting wires, typically stranded together, or other devices attached to a Pole and connecting that Pole to an Anchor or to another Pole for the purpose of increasing Pole stability. The term Anchor/Guy Strand includes, but is not limited to, strands sometimes referred to as Anchor strands, down guys, guy strands, and Pole-to-Pole guys.
- 2.3 "Application" means the process of requesting information related to records, Pole and/or Conduit availability, or make-ready requirements for AT&T-22STATE-owned or controlled Facilities. Each Application is limited in size to a maximum of 1) 100 consecutive Poles or 2) 10 consecutive Manhole sections or 5000 feet, whichever is greater. The Application includes (but is not limited to) request for records, records investigation and/or a field investigation, and Make-Ready Work.
- 2.4 "Assigned" when used with respect to Conduit or Duct space or Poles, means any space in such Conduit or Duct or on such Pole that is occupied by a Telecommunications Service provider or a municipal or other governmental authority. To ensure the judicious use of Poles and Conduits, space Assigned to a Telecommunications Service provider must be physically occupied by the service provider, be it AT&T-22STATE or a new entrant, within twelve (12) months of the space being Assigned.
- 2.5 "Attaching Party" means any Party wishing to make a physical Facility Attachment on or in any AT&T structure.
- 2.6 "Attachment" as used herein means the physical connection to AT&T-22STATE's ROW and all associated Structure Access connectivity.
- 2.7 "Available" when used with respect to Conduit or Duct space or Poles, means any usable space in such Conduit or Duct or on such Pole not assigned to a specific provider at the applicable time.
- 2.8 "Conduit" means a structure containing one or more Ducts, usually placed in the ground, in which cables or wires may be installed.
- 2.9 "Conduit Occupancy" means the presence of wire, cable, optical conductors, or other Facilities within any portion of AT&T-22STATE's Conduit System.
- 2.10 "Conduit System" means any combination of Ducts, Conduits, Manholes, and Handholes joined to form an integrated whole. In this Appendix, the term refers to Conduit Systems owned or controlled by AT&T-22STATE.
- 2.11 "Cost" means the charges made by AT&T-22STATE to CLEC for specific work performed, and shall be (a) the actual charges made by subcontractors to AT&T-22STATE for work and/or, (b) if the work was performed by AT&T-22STATE employees, it shall be calculated on an individual case basis, based on the estimated amount of work to be performed.
- 2.12 "Duct" means a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other Facilities. As used in this Appendix, the term Duct includes Inner-Ducts created by subdividing a Duct into smaller channels.
- 2.13 "Facilities" refer to any property or equipment used in the provision of Telecommunications Services.
- 2.14 "Handholes" means an enclosure, usually below ground level, used for the purpose of installing, operating, and maintaining facilities in a Conduit. A Handhole is too small to permit personnel to physically enter.

- 2.15 "Inner-Duct" means a pathway created by subdividing a Duct into smaller channels.
- 2.16 "Joint User" means a public utility (as a business organization, like an electric company, performing a public service and subject to special governmental regulation) which has entered into an Agreement with AT&T-22STATE providing reciprocal rights of attachment of Facilities owned by each Party to the Poles, Ducts, Conduits and ROW owned by the other Party.
- 2.17 "Joint Use Pole" means a pole not owned by AT&T-22STATE, but upon which AT&T-22STATE maintains its Facilities.
- 2.18 "Lashing" means an Attachment of a Sheath or Inner-Duct to a supporting strand.
- 2.19 "License" means any License issued pursuant to this Appendix and may, if the context requires, refer to Conduit Occupancy or Pole Attachment Licenses issued by AT&T-22STATE.
- 2.20 "Make-Ready Work" means all work performed or to be performed to prepare AT&T-22STATE's Conduit Systems, Poles or Anchors and related Facilities for the requested occupancy or attachment of 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-22STATE's business needs or convenience. Make-Ready Work may require "dig ups" of existing Facilities and may include the repair, enlargement or modification of AT&T-22STATE's Facilities (including, but not limited to, Conduits, Ducts, Handholes and Manholes) or the performance of other work required to make a Pole, Anchor, Conduit or Duct usable for the initial placement of CLEC's Facilities.
- 2.21 "Manhole" means an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete Manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining Facilities in a Conduit.
- 2.22 "Occupancy" means the physical presence of Telecommunication Facilities in a Duct, on a Pole, or within a ROW.
- 2.23 "Overlashing" involves an attacher tying communication conductors to existing, supportive strands of cable on poles, which enables attachers to replace deteriorated cables or expand the capacity of existing facilities while reducing construction disruption and associated expense.
- 2.24 "Pole" means both utility Poles and Anchors but only to those utility Poles and Anchors owned or controlled by AT&T-22STATE, and does not include utility Poles or Anchors with respect to which AT&T-22STATE has no legal authority to permit attachments by other persons or entities.
- 2.25 "Pole Attachment Act" and "Pole Attachment Act of 1978" means those provisions of the Act, as amended, now codified as 47 U.S.C. § 224.
- 2.26 "Pre-License Survey" means all work and activities performed or to be performed to determine whether there is adequate capacity on a Pole or in a Conduit or Conduit System (including Manholes and Handholes) to 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.
- 2.27 "Right(s) of Way (ROW)" means the right to use the land or other property of another party to place Poles, Conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. A ROW may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes, or other locations.
- 2.28 "Sheath" or "Sheathing" means an outer covering containing communications wires, fibers, or other communications media.
- 2.29 "Spare Capacity" means any Poles, Conduit, Duct or Inner-Duct not currently assigned or subject to a pending Application for Attachment/Occupancy. Spare Capacity does not include an Inner-Duct (not to exceed one Inner-Duct per party) reserved by AT&T-22STATE, CLEC, or a Third Party for maintenance, repair, or emergency restoration.

3.0 General Provisions

3.1 Undertaking of AT&T-22STATE:

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

3.2 Attachments and Occupancies Authorized by this Appendix:

- 3.2.1 AT&T-22STATE shall issue one or more Licenses to CLEC authorizing CLEC to attach Facilities to AT&T-22STATE's owned or controlled Poles and to place Facilities within AT&T-22STATE's owned or controlled Conduits, Ducts or ROW under the terms and conditions set forth in this Appendix and the Act.
- 3.2.2 Unless otherwise provided herein, authority to attach Facilities to AT&T-22STATE's owned or controlled Poles, to place Facilities within AT&T-22STATE's owned or controlled Conduits, Ducts or ROW shall be granted only in individual Licenses granted under this Appendix and the placement or use of such Facilities shall be determined in accordance with such Licenses and procedures established in this Appendix.
- 3.2.3 CLEC agrees that its attachment of Facilities to AT&T-22STATE's owned or controlled Poles, occupancy of AT&T-22STATE's owned or controlled Conduits, Ducts or ROW shall take place pursuant to the licensing procedures set forth herein, and AT&T-22STATE agrees that it shall not unreasonably withhold or delay issuance of such Licenses.
- 3.2.4 CLEC may not sublease or otherwise authorize any Third Party to use any part of the AT&T-22STATE Facilities licensed to CLEC under this Appendix, except that CLEC may lease its own Facilities to Third Parties, or allow Affiliates to over lash cables to CLEC cables. Notwithstanding the above, upon Notice to AT&T-22STATE, CLEC may permit Third Parties who have an Agreement with AT&T-22STATE to over lash to existing CLEC attachments in accordance with the terms and conditions of such Third Party's Agreement with AT&T-22STATE.
- 3.2.5 Attaching Party warrants that any overlashing the Attaching Party conducts or permits (via a third party or contractor) shall meet the following requirements: (1) the overlashing complies with the NESC and any other industry standards; (2) the Attaching Party has computed the pole loading with the additional overlashed facility, and the pole will not be overloaded with the addition of the overlashed facility; (3) the Attaching Party has determined that no make ready is necessary to accommodate the overlashed facility, or will insure that any make-ready necessary will be conducted before the overlashing occurs. Attaching Party agrees to indemnify AT&T-22STATE should any of the warranties be breached.

3.3 Licenses:

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

3.4 Access and Use of ROW:

- 3.4.1 AT&T-22STATE acknowledges that it is required by the Act to afford CLEC access to and use of all associated ROW to any sites where AT&T-22STATE's owned or controlled Poles, Manholes, Conduits,

Ducts or other parts of AT&T-22STATE's owned or controlled Conduit Systems are located.

- 3.4.2 AT&T-22STATE shall provide CLEC with access to and use of such ROW to the same extent and for the same purposes that AT&T-22STATE may access or use such ROW, including but not limited to access for ingress, egress or other access and to construct, utilize, maintain, modify, and remove Facilities for which Pole attachment, Conduit Occupancy, or ROW use Licenses have been issued, provided that any Agreement with a Third Party under which AT&T-22STATE holds such rights expressly or impliedly grants AT&T-22STATE the right to provide such rights to others.
- 3.4.3 Where AT&T-22STATE notifies CLEC that AT&T-22STATE's Agreement with a Third Party does not expressly or impliedly grant AT&T-22STATE the ability to provide such access and use rights to others, upon CLEC's request, AT&T-22STATE will use its best efforts to obtain the owner's consent and to otherwise secure such rights for CLEC. CLEC agrees to reimburse AT&T-22STATE for the reasonable and demonstrable Costs incurred by AT&T-22STATE in obtaining such rights for CLEC.
- 3.4.4 In cases where a Third Party Agreement does not grant AT&T-22STATE the right to provide access and use rights to others as contemplated in Section 3.4.2 above and AT&T-22STATE, despite its best efforts, is unable to secure such access and use rights for CLEC in accordance with Section 3.4.3 above, or, in the case where CLEC elects not to invoke its rights under Section 3.4.2 above or Section 3.4.3 above, CLEC shall be responsible for obtaining such permission to access and use such ROW. AT&T-22STATE shall cooperate with CLEC in obtaining such permission and shall not prevent or delay any Third Party assignment of ROWs to CLEC.
- 3.4.5 Where AT&T-22STATE has any ownership or ROW to buildings or building complexes, or within buildings or building complexes, AT&T-22STATE shall offer to CLEC through a License or other attachment:
- 3.4.5.1 The right to use any available space owned or controlled by AT&T-22STATE in the building or building complex to install CLEC equipment and Facilities; and
- 3.4.5.2 Ingress and egress to such space.
- 3.4.6 Except to the extent necessary to meet the requirements of the Act, neither this Appendix nor any License granted hereunder shall constitute a conveyance or assignment of any of either Party's rights to use any public or private ROW, and nothing contained in this Appendix or in any License granted hereunder shall be construed as conferring on one Party any right to interfere with the other Party's access to any such public or private ROW.
- 3.5 No Effect on AT&T-22STATE's Right to Convey Property:
- 3.5.1 Nothing contained in this Appendix or in any License issued hereunder shall in any way affect the right of AT&T-22STATE to convey to any other person or entity any interest in real or personal property, including any Poles, Conduit or Ducts to or in which CLEC has attached or placed Facilities pursuant to Licenses issued under this Appendix provided however that AT&T-22STATE shall give CLEC reasonable advance written Notice of such intent to convey.
- 3.5.2 Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to CLEC. AT&T-22STATE shall have the right to grant, renew and extend rights and privileges to others not Parties to this Agreement, by contract or otherwise, to use any Pole, Anchor, or Conduit System covered by this Appendix and CLEC's rights hereunder.
- 3.6 No Effect on AT&T-22STATE's Rights to Manage its Own Facilities:
- 3.6.1 This Appendix shall not be construed as limiting or interfering with AT&T-22STATE's rights set forth below, except to the extent expressly provided by the provisions of this Appendix or Licenses issued hereunder or by the Act or other applicable laws, rules or regulations:
- 3.6.1.1 To locate, relocate, move, replace, modify, maintain, and operate AT&T-22STATE's own Facilities within AT&T-22STATE's Conduits, Ducts or ROW or any of AT&T-22STATE's Facilities attached to AT&T-22STATE's Poles at any time and in any reasonable manner which

AT&T-22STATE deems appropriate to serve its End Users, avail itself of new business opportunities, or otherwise meet its business needs; or

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

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

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

- 3.7.1.1 To locate, relocate, move, replace, modify, maintain, and operate its own Facilities within AT&T-22STATE's Conduits, Ducts or ROW or its Facilities attached to AT&T-22STATE's Poles at any time and in any reasonable manner which CLEC deems appropriate to serve its End Users, avail itself of new business opportunities, or otherwise meet its business needs; or
- 3.7.1.2 To enter into new agreements or arrangements with other persons or entities permitting CLEC to attach or place its Facilities to or in such other persons' or entities' Poles, Conduits or Ducts, or ROW; provided, however, that such relocations, moves, replacements, modifications, maintenance and operations or new Attachments or arrangements shall not conflict with CLEC's obligations under Licenses issued pursuant to this Appendix.

3.8 No Right to Interfere with Facilities of Others:

- 3.8.1 The provisions of this Appendix or any License issued hereunder shall not be construed as authorizing either Party to this Appendix to rearrange or interfere in any way with any of the other Party's Facilities, with the Facilities of other persons or entities, or with the use of or access to such Facilities by such other party or such other persons or entities, except to the extent expressly provided by the provisions of this Appendix or any License issued hereunder or by the Act or other applicable laws, rules or regulations.
- 3.8.2 CLEC acknowledges that the Facilities of persons or entities other than AT&T-22STATE and CLEC may be attached to or occupy AT&T-22STATE's Poles, Conduits, Ducts and ROW.
- 3.8.3 AT&T-22STATE shall not attach, or give permission to any Third Parties to attach Facilities to, existing CLEC Facilities without CLEC's prior written consent. If AT&T-22STATE becomes aware of any such unauthorized attachment to CLEC Facilities, AT&T-22STATE shall use its best efforts to rectify the situation as soon as practicable.
- 3.8.4 With respect to Facilities occupied by CLEC or the subject of an Application for attachment by CLEC, AT&T-22STATE will give to CLEC sixty (60) calendar days written Notice for Conduit extensions or reinforcements, sixty (60) calendar days written Notice for Pole line extensions, sixty (60) calendar days written Notice for Pole replacements, and sixty (60) calendar days written Notice of AT&T-22STATE's intention to construct, reconstruct, expand or place such Facilities or of AT&T-22STATE's intention not to maintain or use any existing Facility.
 - 3.8.4.1 Where AT&T-22STATE elects to abandon or remove AT&T-22STATE Facilities, the Facilities will be offered to existing occupants on a first-in, first-right to maintain basis. The first existing occupant electing to exercise this option will be required to execute the appropriate Agreement with AT&T-22STATE to transfer (purchase Attachment) ownership from AT&T-22STATE to that existing occupant, subject to then-existing licenses pertaining to such Facilities. If none of the existing occupants elect to maintain such Facilities, all occupants will be required to remove their existing Facilities within ninety (90) calendar days of written Notice from AT&T-22STATE.

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

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

3.9 Assignment of Space:

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

4.0 Requirements and Specifications

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

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

4.1.2 The National Electrical Code (NEC); and

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

4.2 Changes in Industry Recognized Standards:

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

4.3 Additional Electrical Design Specifications:

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

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

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

4.3.1.3 CLEC's Facilities carrying more than 50 volts AC rms (root mean square) to ground or 135 volts DC to ground shall be enclosed in an effectively grounded Sheath or shield.

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

4.3.1.5 CLEC's coaxial cable may carry continuous DC voltages up to 1800 volts to ground where the conductor current will not exceed one-half (1/2) amperes and where such cable has two (2)

separate grounded metal Sheaths or shields and a suitable insulating jacket over the outer Sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer Sheath shall not exceed 200 micro-amperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.

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

4.4 Additional Physical Design Specifications:

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

- 4.4.1.1 Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in AT&T-22STATE's Conduit or Ducts.
- 4.4.1.2 The integrity of AT&T-22STATE's Conduit System and overall safety of AT&T-22STATE's personnel and other personnel working in AT&T-22STATE's Conduit System requires that "dielectric cable" be placed when CLEC's cable Facility utilizes an alternative Duct or route that is shared in the same trench by any current carrying Facility of a power utility.
- 4.4.1.3 New construction splices in CLEC's fiber optic and twisted pair cables shall be located in Manholes, pull boxes or Handholes.

4.5 Additional Specifications Applicable to Connections:

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

- 4.5.1.1 CLEC will be permitted to connect its Conduit or Duct only at an AT&T-22STATE Manhole. No attachment will be made by entering or breaking into Conduit between Manholes. All necessary work to install CLEC Facilities will be performed by CLEC or its contractor at CLEC's expense. In no event shall CLEC or its contractor "core bore" or make any other modification to AT&T-22STATE Manhole(s) without the prior written approval of AT&T-22STATE, which approval will not be unreasonably delayed or withheld.
- 4.5.1.2 If CLEC constructs or utilizes a Duct connected to AT&T-22STATE's Manhole, the Duct and all connections between that Duct and AT&T-22STATE's Manhole shall be sealed, to the extent practicable, to prevent the entry of gases or liquids into AT&T-22STATE's Conduit System. If CLEC's Duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into AT&T-22STATE's Conduit System.

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

- 4.6.1 Duct clearing, rodding or modifications required to grant CLEC access to AT&T-22STATE's Conduit Systems may be performed by AT&T-22STATE at CLEC's expense at charges which represent AT&T-22STATE's actual Costs. Alternatively (at CLEC's option) such work may be performed by a contractor who demonstrates compliance with AT&T-22STATE certification requirements, which certification requirements shall be consistent with F.C.C. rules. The Parties acknowledge that CLEC, its contractors, and other persons acting on CLEC's behalf will perform work for CLEC (e.g., splicing CLEC's Facilities) within AT&T-22STATE's Conduit System. CLEC represents and warrants that neither CLEC nor any Person Acting on CLEC's behalf shall permit any person to climb or work on or in any of AT&T-22STATE's Poles or to enter AT&T-22STATE's Manholes or work within AT&T-22STATE's Conduit System unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to Pole or the Conduit Systems and to perform the work safely.
- 4.6.2 CLEC's Facilities within AT&T-22STATE's Conduit System shall be constructed, placed, rearranged, modified, and removed upon receipt of License specified in Section 6.1. However, no such License will be

required for the inspection, maintenance, repair or non-physical modifications of CLEC's Facilities.

- 4.6.3 Rodding or clearing of Ducts in AT&T-22STATE's Conduit System shall be done only when specific authorization for such work has been obtained in advance from AT&T-22STATE, which authorization shall not be unreasonably delayed or withheld by AT&T-22STATE. The Parties agree that such rodding or clearing shall be performed according to existing industry standards and practices. CLEC may contract with AT&T-22STATE for performance of such work or (at CLEC's option) with a contractor who demonstrates compliance with AT&T-22STATE certification requirements.
- 4.6.4 Personnel performing work on AT&T-22STATE's or CLEC's behalf in AT&T-22STATE's Conduit System shall not climb on, step on, or otherwise disturb the other Party's or any Third Party's cables, air pipes, equipment, or other Facilities located in any Manhole or other part of AT&T-22STATE's Conduit System.
- 4.6.5 Personnel performing work on AT&T-22STATE's or CLEC's behalf within AT&T-22STATE's Conduit System (including any Manhole) shall, upon completing their work, make reasonable efforts to remove all tools, unused materials, wire clippings, cable Sheathing and other materials brought by them to the work site.
- 4.6.6 All of CLEC's Facilities shall be firmly secured and supported in accordance with Telcordia and industry standards as referred to in Section 4.1 above.
- 4.6.7 Identification of Facilities in Conduit/Manholes:
- 4.6.7.1 CLEC's Facilities shall be plainly identified with CLEC's name in each Manhole with a firmly affixed permanent tag that meets standards set by AT&T-22STATE for its own Facilities.
- 4.6.8 Identification of Pole Attachments.
- 4.6.8.1 CLEC's Facilities attached to AT&T-22STATE Poles shall be plainly identified with CLEC's name firmly affixed at each Pole by a permanent tag that meets industry standards as referred to in Section 4.1 above.
- 4.6.9 Manhole pumping and purging required in order to allow CLEC's work operations to proceed shall be performed by a vendor approved by AT&T-22STATE in compliance with AT&T-22STATE Practice Sec. 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures", and any amendments, revisions or supplements thereto and in compliance with all regulations and standards established by the United States Environmental Protection Agency and by any applicable state or local environmental regulators.
- 4.6.10 Planks or other types of platforms shall not be installed using cables, pipes or other equipment as a means of support. Platforms shall be supported only by cable racks.
- 4.6.11 Any leak detection liquid or device used by CLEC or personnel performing work on CLEC's Facilities within AT&T-22STATE's Conduit System shall be of a type approved by AT&T-22STATE or Telcordia as referenced in Section 4.1 above.
- 4.6.12 When CLEC or personnel performing work on CLEC's behalf are working within or in the vicinity of any part of AT&T-22STATE's Poles or Conduit System which is located within, under, over, or adjacent to streets, highways, alleys or other traveled ROW, CLEC and all personnel performing work on CLEC's behalf shall follow procedures which CLEC deems appropriate for the protection of persons and property. CLEC shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. CLEC will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers and property from danger. AT&T-22STATE shall have no responsibility for the safety of personnel performing work on CLEC's behalf, for the safety of bystanders, and for insuring that all operations conform to current OSHA regulations and all other governmental rules, ordinances or statutes. AT&T-22STATE reserves the right to suspend CLEC's activities on, in or in the vicinity of AT&T-22STATE's Poles or Conduit System if, in AT&T-22STATE's reasonable judgment, any hazardous condition arises due to the activity (including both acts and omissions) of CLEC or any personnel

performing work on CLEC's behalf, which suspension shall cease when the condition has been rectified.

- 4.6.13 Except for protective screens, no temporary cover shall be placed by CLEC or personnel performing work on CLEC's behalf over an open Manhole unless it is at least four (4) feet above the surface level of the Manhole opening.
- 4.6.14 Smoking or the use of any open flame is prohibited in AT&T-22STATE's Manholes, in any other portion of AT&T-22STATE's Conduit System, or within ten (10) feet of any open Manhole entrance; provided that this provision will not prohibit the use of spark producing tools such as electric drills, fusion splicers, etc.
- 4.6.15 Artificial lighting, when required, will be provided by CLEC. Only explosion proof lighting fixtures shall be used.
- 4.6.16 Neither CLEC nor personnel performing work on CLEC's behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in AT&T-22STATE's Conduit System (including any Manhole) during work operations performed within or in the vicinity of AT&T-22STATE's Conduit System.
- 4.6.17 CLEC will abide by any laws, regulations or ordinances regarding the use of spark producing tools, equipment or devices in AT&T-22STATE's Manholes, in any other portions of AT&T-22STATE's Conduit System, or within ten (10) feet of any open Manhole opening. This includes, but is not limited to, such tools as electric drills and hammers, meggers, breakdown sets, induction sets, and the like.

4.7 Opening of Manholes:

- 4.7.1 The following requirements apply to the opening of AT&T-22STATE's Manholes and the authority of AT&T-22STATE personnel present when work on CLEC's behalf is being performed within or in the vicinity of AT&T-22STATE's Conduit System.
 - 4.7.1.1 AT&T-22STATE's Manholes shall be opened only as permitted by AT&T-22STATE's authorized employees or agents, which permission shall not be unreasonably denied or delayed.
 - 4.7.1.2 CLEC shall notify AT&T-22STATE forty-eight (48) hours in advance of any routine work operation requiring entry into any of AT&T-22STATE's Manholes.
 - 4.7.1.3 CLEC shall be responsible for obtaining any necessary authorization from appropriate authorities to open Manholes for Conduit work operations therein.
 - 4.7.1.4 AT&T-22STATE's authorized employee or agent shall not direct or control the conduct of CLEC's work at the work site. The presence of AT&T-22STATE's authorized employee or agent at the work site shall not relieve CLEC or personnel performing work on CLEC's behalf of their responsibility to conduct all work operations within AT&T-22STATE's Conduit System in a safe and workmanlike manner.
 - 4.7.1.5 Although AT&T-22STATE's authorized employee or agent shall not direct or control the conduct of CLEC's work at the work site, AT&T-22STATE's employee or agent shall have the authority to suspend CLEC's work operations within AT&T-22STATE's Conduit System if, in the reasonable discretion of such AT&T-22STATE employee or agent, it appears that any hazardous conditions arise or any unsafe practices are being followed by CLEC or personnel performing work on CLEC's behalf.

4.8 Occupational Safety and Health Administration (OSHA) Compliance: Notice to AT&T-22STATE of Unsafe Conditions:

4.8.1 CLEC agrees that:

- 4.8.1.1 Its Facilities shall be constructed, placed, maintained, repaired, and removed in accordance with OSHA's rules and regulations promulgated thereunder.
- 4.8.1.2 All persons acting on CLEC's behalf, including but not limited to CLEC's employees, agents, contractors, and subcontractors shall, when working on or within AT&T-22STATE's Poles or

Conduit System, comply with OSHA and all rules and regulations thereunder.

4.8.1.3 CLEC shall establish appropriate procedures and controls to assure compliance with all requirements of this Section.

4.8.1.4 CLEC (and any Person Acting on CLEC's Behalf) may report unsafe conditions on, in or in the vicinity of AT&T-22STATE's Poles or Conduit System to AT&T-22STATE.

4.9 Compliance with Environmental Laws and Regulations:

4.9.1 CLEC acknowledges that, from time to time, environmental contaminants may enter AT&T-22STATE's Conduit System and accumulate in Manholes or other Conduit Facilities and that certain Conduits (Transite type) are constructed with asbestos-containing materials. If AT&T-22STATE has knowledge of the presence of such contaminants in a Conduit for which CLEC has applied for or holds a License, AT&T-22STATE will promptly notify CLEC of such fact.

4.10 Notwithstanding any of AT&T-22STATE's notification requirements in this Appendix, CLEC acknowledges that some of AT&T-22STATE's Conduit is fabricated from asbestos-containing materials. Such Conduit is generally marked with a designation of "C Fiber Cement Conduit", "Transite", or "Johns-Manville". Until proven otherwise, CLEC will presume that all Conduit not fabricated of plastic, tile, or wood is asbestos-containing and will handle it pursuant to all applicable regulations relating to worker safety and protection of the environment.

4.11 AT&T-22STATE makes no representations to CLEC or personnel performing work on CLEC's behalf that AT&T-22STATE's Conduit System or any specific portions thereof will be free from environmental contaminants at any particular time. CLEC agrees to comply with the following provisions relating to compliance with environmental laws and regulations:

4.11.1 CLEC's Facilities shall be constructed, placed, maintained, repaired, and removed in accordance with all applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws, including but not limited to the Resource Conservation and Recovery Act (42 U.S.C. §§ 9601 et. seq.), the Toxic Substance Control Act (15 U.S.C. §§ 2601 2629), the Clean Water Act (33 U.S.C. §§ 1251 et. seq.), and the Safe Drinking Water Act (42 U.S.C. §§ 300f 300j).

4.11.2 All persons acting on CLEC's behalf, including but not limited to CLEC's employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of AT&T-22STATE's Poles or Conduit System, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.

4.11.3 CLEC shall establish appropriate procedures and controls to assure compliance with all requirements of this section. AT&T-22STATE will be afforded a reasonable opportunity to review such procedures and controls and provide comments that will be reasonably considered in advance of their implementation. Review and comment by AT&T-22STATE pursuant to this section will be provided in a timely manner.

4.11.4 CLEC and all personnel performing work on CLEC's behalf shall comply with such standards and practices as AT&T-22STATE and CLEC may from time to time mutually agree to adopt to comply with environmental laws and regulations including, without limitation, AT&T-22STATE Practice Sec. 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures". Pursuant to this practice, neither CLEC nor AT&T-22STATE nor personnel performing work on either Party's behalf shall discharge water or any other substance from any AT&T-22STATE Manhole or other Conduit Facility onto public or private property, including any storm water drainage system, without first testing such water or substance for contaminants in accordance with mutually agreed standards and practices and determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person. No such waste material shall be deposited on AT&T-22STATE premises for storage or disposal.

4.12 Compliance with Other Governmental Requirements:

4.12.1 CLEC agrees that its Facilities attached to AT&T-22STATE's Facilities shall be constructed, placed,

maintained, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter. CLEC shall comply with all statutes, ordinances, rules, regulations and other laws requiring the marking and lighting of aerial wires, cables and other structures to ensure that such wires, cables and structures are not a hazard to aeronautical navigation. CLEC shall establish appropriate procedures and controls to assure such compliance by all persons acting on CLEC's behalf, including but not limited to, CLEC's employees, agents, contractors, and subcontractors.

4.13 Differences in Standards or Specifications:

4.13.1 To the extent that there may be differences in any applicable standards or specifications referred to in Section 4.0 above, the most stringent standard or specification shall apply.

4.14 CLEC Solely Responsible for the Condition of Its Facilities:

4.14.1 CLEC shall be responsible at all times for the condition of its Facilities and its compliance with the requirements, specifications, rules, regulations, ordinances, and laws specified above. In this regard, AT&T-22STATE shall have no duty to CLEC to inspect or monitor the condition of CLEC's Facilities (including but not limited to splices and other Facilities connections) located within AT&T-22STATE's Conduit and Ducts or any attachment of CLEC's Facilities to AT&T-22STATE's Poles, Anchors, Anchor/Guy Strands or other Pole Facilities. AT&T-22STATE may, however, conduct such inspections and audits of its Poles and Conduit System as AT&T-22STATE determines reasonable or necessary. Such inspection and audits shall be conducted at AT&T-22STATE's expense with the exception of (1) follow-up inspection to confirm remedial action after an observed CLEC violation of the requirements of this Appendix; and (2) inspection of CLEC Facilities in compliance with a specific mandate of appropriate governmental authority for which inspections the Cost shall be borne by CLEC.

4.14.2 Either Party may audit the other Party's compliance with the terms of this Section.

4.14.3 Observed safety hazards or imminent Facility failure conditions of another Party shall be reported to the affected Party where such Party can be readily identified.

4.15 Efficient use of Conduit:

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

5.0 Additional CLEC Responsibilities

5.1 Third Party Property Owners:

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

5.1.1.1 CLEC agrees that neither CLEC nor any persons acting on CLEC's behalf, including but not limited to CLEC's employees, agents, contractors, and subcontractors, shall engage in any conduct which damages public or private property in the vicinity of AT&T-22STATE's Poles or Conduit System, interferes in any way with the use or enjoyment of public or private property except as expressly permitted by the owner of such property, or creates a hazard or nuisance on such property (including, but not limited to, a hazard or nuisance resulting from any abandonment or failure to remove CLEC's Facilities or any construction debris from the property, failure to erect warning signs or barricades as may be necessary to give notice to others of unsafe conditions on the premises while work performed on CLEC's behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).

5.2 Required Permits, Certificates and Licenses:

- 5.2.1 CLEC shall be responsible for obtaining any building permits or certificates from governmental authorities necessary to construct, operate, maintain and remove its Facilities on public or private property.
- 5.2.2 CLEC shall not attach or place its Facilities to or in AT&T-22STATE's Poles, Conduit or Duct located on any property for which it or AT&T-22STATE has not first obtained all required authorizations.
- 5.2.3 AT&T-22STATE shall have the right to request evidence that all appropriate authorizations have been obtained. However, such request shall not delay AT&T-22STATE's Pre-License Survey work.

5.3 Lawful Purposes:

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

6.0 Facilities and Licenses

6.1 Licenses Required:

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

6.2 Provision of Records and Information to CLEC:

- 6.2.1 In order to obtain information regarding Facilities, CLEC shall make a written request to AT&T-22STATE, identifying with reasonable specificity the geographic area for which Facilities are required, the types and quantities of the required Facilities and the required in-service date. In response to such request, AT&T-22STATE shall provide CLEC with information regarding the types, quantity and location (which may be provided by provision of route maps) and availability of AT&T-22STATE Poles, Conduit and ROW located within the geographic area specified by CLEC. Provision of information under the terms of this section shall include the right of CLEC employees or agents to obtain copies of engineering records or drawings which pertain to those Facilities within the geographic area identified in CLEC's request. Such copies of records shall be provided to CLEC via courier at the expense of CLEC or otherwise available at the records location center. For AT&T-22STATE requests, the contact information can be found on the AT&T CLEC Online website under Structure Access. The Costs of producing and mailing copies of records, which are to be paid by CLEC, are on an individual case basis. The components which make up the total Costs are the sum of:

- 6.2.1.1 AT&T-22STATE employee Costs based on the time spent researching, reviewing and copying records
- 6.2.1.2 Copying costs
- 6.2.1.3 Shipping costs

6.3 No Warranty of Record Information:

- 6.3.1 CLEC acknowledges that records and information provided by AT&T-22STATE pursuant to Section 6.2 above may not reflect field conditions and that physical inspection is necessary to verify presence and condition of outside plant Facilities and ROW. In providing such records and information, AT&T-22STATE assumes no liability to CLEC or any Third Party for errors/omissions contained therein.

6.4 Determination of Availability:

- 6.4.1 AT&T-22STATE shall provide Pole, Conduit and ROW availability information in response to a request from

CLEC which identifies with reasonable specificity the Facilities for which such information is desired. If such request includes Joint Use Pole(s), AT&T-22STATE shall respond with respect to such Joint Use Pole(s) as to what Make-Ready Work is required for AT&T-22STATE's Facilities only. Notwithstanding any other provision, AT&T-22STATE shall not determine space availability upon any Joint Use Pole(s). CLEC may elect to be present at any field based survey of Facilities identified pursuant to this paragraph and AT&T-22STATE 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-22STATE Manholes and inspect such structures to confirm usability and/or evaluate condition of the structure(s) with at least forty-eight (48) hours notice to AT&T-22STATE, with a AT&T-22STATE representative present and at CLEC's expense.

6.5 Assignment of Conduit, Duct and Pole Space:

6.5.1 AT&T-22STATE shall not unreasonably deny or delay issuance of any License and, in any event, AT&T-22STATE shall issue such License as follows: (a) after the determination has been made that Make-Ready Work is not required, or (b) completion of Make-Ready Work.

6.5.1.1 No Make-Ready Work Required:

6.5.1.1.1 If AT&T-22STATE determines that no Make-Ready Work is required, AT&T-22STATE shall approve Applications for Pole attachment and Conduit Occupancy Licenses and issue such Licenses within twenty (20) Business Days after the determination has been made that no Make-Ready Work is required, but in no event later than forty-five (45) calendar days after AT&T-22STATE receives CLEC's Application, which period shall exclude any time AT&T-22STATE is awaiting a response from CLEC.

6.5.1.2 Make-Ready Work Required:

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

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

7.0 Make-Ready Work

7.1 Work Performed by AT&T-22STATE:

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

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

7.2 All charges for Make-Ready Work, including work on Joint Use Pole(s), performed by AT&T-22STATE are payable in

advance, with the amount of any such advance payment to be due within sixty (60) calendar days after receipt of an invoice from AT&T-22STATE. AT&T-22STATE will begin Make-Ready Work required to accommodate CLEC after receipt of CLEC's Make-Ready Work payment. After receipt of payment, AT&T-22STATE will schedule the work for completion.

7.3 Work Performed by Certified Contractor:

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

7.4 Completion of Make-Ready Work:

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

8.0 Application Form and Fees

8.1 Application Process:

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

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

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

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

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

8.3.1 CLEC may include multiple cables in a single License Application and multiple services (e.g., CATV and non CATV services) may be provided by CLEC in the same cable Sheath. CLEC's Lashing additional cable to existing Facilities and placing additional cables in Conduits or Ducts already occupied by CLEC's Facilities shall be permitted, and no additional fees will be applied; provided, however, that if CLEC desires to lash

additional cable to existing Facilities of a Third Party, CLEC shall provide AT&T-22STATE with reasonable Notice, and shall obtain written permission from the owner of the existing Facilities. If AT&T-22STATE determines that the requested Lashing would violate safety or engineering requirements, AT&T-22STATE shall provide written Notice to CLEC within a reasonable time specifying in detail AT&T-22STATE's findings. If CLEC desires to place additional cables in Conduits or Ducts which are already occupied, or to replace existing Facilities with new Facilities substantially different from those described in Licenses in effect, CLEC must apply for and acquire a new License specifically describing the physical size, weight and jacket material of the cable to be placed in AT&T-22STATE's Conduits and Ducts or the physical size, weight, and jacket type of cables and the size and weight of apparatus enclosures and other Facilities to be attached to AT&T-22STATE Poles.

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

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

9.1 CLEC's Priorities:

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

9.2 Pre-License Survey:

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

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

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

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

warranting to CLEC that CLEC's proposed use of AT&T-22STATE's Facilities will be in compliance with applicable requirements, specifications, rules, regulations, ordinances, and laws.

9.3 Administrative Processing:

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

10.0 Issuance of Licenses

10.1 Obligation to Issue Licenses:

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

10.2 Multiple Applications:

10.2.1 CLEC acknowledges the following:

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

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

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

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

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

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

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

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

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

10.5 License:

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

11.0 Construction of CLEC's Facilities

11.1 Construction Schedule:

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

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

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

11.3 Responsibility for Constructing or Placing Facilities:

- 11.3.1 AT&T-22STATE shall have no obligation to construct any Facilities for CLEC or to attach CLEC's Facilities to, or place CLEC's Facilities in, AT&T-22STATE's Poles or Conduit System, except as may be necessary to facilitate the interconnection of unbundled network elements or except to the extent expressly provided in this Section, any License issued hereunder, or by the Telecommunications Act or any other applicable law.

11.4 CLEC Responsible for Constructing, Attaching and Placing Facilities:

- 11.4.1 Except where otherwise mutually agreed by CLEC and AT&T-22STATE, CLEC shall be responsible for

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

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

- 11.5.1 CLEC shall construct its Facilities in accordance with the provisions of this section and all Licenses issued hereunder.
- 11.5.2 CLEC shall construct, attach and place its Facilities in compliance with all Requirements and Specifications set forth above in this Appendix.
- 11.5.3 CLEC shall satisfy all Legal Requirements set forth above in the Appendix.
- 11.5.4 CLEC shall not permit any person acting on CLEC's behalf to perform any work on AT&T-22STATE's Poles or within AT&T-22STATE's Conduit System without first verifying, to the extent practicable, on each date when such work is to be performed, that the condition of the Pole or Conduit System is suitable for the work to be performed. If CLEC or any person working on CLEC's behalf determines that the condition of the Pole or Conduit System is not suitable for the work to be performed, CLEC shall notify AT&T-22STATE of the condition of the Pole or Conduit System in question and shall not proceed with construction activities until CLEC is satisfied that the work can be safely performed.

11.6 Construction Notices:

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

11.7 Points for Attachment:

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

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

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

11.10 CLEC shall hold AT&T-22STATE harmless and indemnify AT&T-22STATE for damages to itself or Third Parties in accordance with the General Terms and Conditions of this Agreement, that result from the operation or maintenance of CLEC's attachments, including but not limited to power supplies, antennas, cabinets and wireless equipment.

11.11 Manhole and Conduit Break-Outs:

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

11.12 Completion of CLEC Construction:

- 11.12.1 For each CLEC Attachment to or occupancy within AT&T-22STATE Facilities, CLEC will provide to AT&T-

22STATE's single-point of contact (within twenty (20) calendar days of CLEC construction-complete date) a complete set of actual placement drawings for posting to AT&T-22STATE records.

12.0 Use and Routine Maintenance of CLEC's Facilities

12.1 Use of CLEC's Facilities:

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

12.2 Routine Maintenance of CLEC's Facilities:

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

12.3 CLEC Responsible for Maintenance of CLEC's Facilities:

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

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

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

12.5 Information Concerning the Maintenance of CLEC's Facilities:

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

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

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

13.0 Modification and Replacement of CLEC's Facilities

13.1 Notification of Planned Modification or Replacement of Facilities:

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

13.2 New or Amended License Required:

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

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

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

14.0 **Rearrangement of Facilities at the Request of Another**

14.1 Make-Ready Work:

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

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

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

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

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

14.1.4 CLEC shall be solely responsible for negotiating with persons or entities other than AT&T-22STATE for the rearrangement of such persons' or entities' Facilities or structures and, except where such rearrangement is for the benefit of AT&T-22STATE and/or other CLECs as well as CLEC, shall be solely responsible for paying all charges attributable to the rearrangement of such Facilities; provided, however, that if Facilities rearrangements require new Licenses from AT&T-22STATE, AT&T-22STATE shall issue such Licenses in conjunction with the issuance of the applied-for License to CLEC.

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

14.2.1 CLEC acknowledges that, from time to time, it may be necessary or desirable for AT&T-22STATE to change out Poles, relocate, reconstruct, or modify portions of its Conduit System or rearrange Facilities

contained therein or connected thereto and that such changes may be necessitated by AT&T-22STATE's business needs or authorized Application of another entity seeking access to AT&T-22STATE's Poles or Conduit Systems. CLEC agrees that CLEC will, upon AT&T-22STATE's request, and at AT&T-22STATE's expense, but at no Cost to CLEC, participate with AT&T-22STATE (and other CLECs) in the relocation, reconstruction, or modification of AT&T-22STATE's Conduit System or Facilities rearrangement. CLEC acknowledges that, from time to time, it may be necessary or desirable for AT&T-22STATE to change out Poles, relocate, reconstruct, or modify portions of its Conduit System or rearrange Facilities contained therein or connected thereto as a result of an order by a municipality or other governmental authority. CLEC shall, upon AT&T-22STATE's request, participate with AT&T-22STATE (and other CLECs) in the relocation, reconstruction, or modification of AT&T-22STATE's Conduit System or Facilities rearrangement and pay its proportionate share of any costs of such relocation, reconstruction, or modification that are not reimbursed by such municipality or governmental authority.

- 14.2.2 CLEC shall make all rearrangements of its Facilities within such period of time as is jointly deemed reasonable by the parties based on the amount of rearrangements necessary and a desire to minimize chances for service interruption or Facility-based service denial to a CLEC End User.
- 14.2.3 If CLEC fails to make the required rearrangements within the time prescribed or within such extended periods of time as may be granted by AT&T-22STATE in writing, AT&T-22STATE may perform such rearrangements with written Notice to CLEC, and CLEC shall reimburse AT&T-22STATE for actual costs and expenses incurred by AT&T-22STATE in connection with the rearrangement of CLEC's Facilities; provided, however, that nothing contained in this Section or any License issued hereunder shall be construed as requiring CLEC to bear any expenses which, under the Act or other applicable federal or state laws or regulations, are to be allocated to persons or entities other than CLEC; and provided further, however, that CLEC shall have no responsibility for rearrangement costs and expenses relating to rearrangements performed for the purpose of meeting AT&T-22STATE's business needs.

15.0 Emergency Repairs and Pole Replacements

15.1 Responsibility for Emergency Repairs; Access to Maintenance Duct:

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

15.2 Designation of Emergency Repair Coordinators and Other Information:

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

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

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

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

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

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

15.4 Emergency Pole Replacements

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

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

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

15.5 Expenses Associated with Emergency Repairs:

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

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

15.5.3 Attaching Party shall reimburse AT&T-22STATE for the Costs incurred by AT&T-22STATE for work performed by AT&T-22STATE on Attaching Party's behalf in accordance with the provisions of this article.

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

16.1 AT&T-22STATE may monitor, at CLEC's expense, the entrance and exit of CLEC's Facilities into AT&T-22STATE's Manholes and the placement of CLEC's Facilities in AT&T-22STATE's Manholes.

16.2 Post-Construction Inspections:

16.2.1 AT&T-22STATE will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of Facilities to AT&T-22STATE's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. AT&T-22STATE will provide the Attaching Party advance written Notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany AT&T-22STATE on the post-construction inspection.

16.3 Periodic or Spot Inspections:

16.3.1 AT&T-22STATE shall have the right, but not the obligation, to make Periodic or Spot Inspections of all Facilities attached to AT&T-22STATE's Structure. Periodic Inspections will not be made more often than once every two (2) years, unless in AT&T-22STATE's judgment, such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Appendix.

16.3.2 AT&T-22STATE will give CLEC advance written Notice 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.

16.3.3 Such inspections shall be conducted at AT&T-22STATE's expense; provided, however, that CLEC shall bear the Costs of inspections as delineated in Sections 16.1 above and 16.2.1 above.

16.3.4 If Attaching Party's Facilities are in compliance with this Appendix, there will be no charges incurred by the Attaching Party for the periodic or spot inspection. If Attaching Party's Facilities are not in compliance with this Appendix, AT&T-22STATE may charge Attaching Party for the inspection. The Costs of Periodic Inspections will be paid by those Attaching Parties with 2% or greater of their Attachments in violation. The amount paid by the Attaching Party shall be the percentage that their violations bear to the total violations of all Attaching Parties found during the inspection.

16.3.5 If the inspection reflects that Attaching Party's Facilities are not in compliance with the terms of this Appendix, Attaching Party shall bring its Facilities into compliance within thirty (30) calendar days after being notified of such noncompliance. If any make ready or modification work to AT&T-22STATE's Structures is required to bring Attaching Party's Facilities into compliance, the Attaching Party shall provide Notice to AT&T-22STATE and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment. If the violation creates a hazardous condition, Facilities must be brought into compliance upon notification.

16.4 Neither the act of inspection by AT&T-22STATE of CLEC's Facilities nor any failure to inspect such Facilities shall operate to impose on AT&T-22STATE any liability of any kind whatsoever or to relieve CLEC of any responsibility, obligations or liability under this Section or otherwise existing.

16.5 Notice of Noncompliance:

16.5.1 If, at any time, AT&T-22STATE determines that Attaching Party's Facilities or any part thereof have not been placed or maintained or are not being used in accordance with the requirements of this Appendix, AT&T-22STATE may send written Notice to Attaching Party specifying the alleged noncompliance. Attaching Party agrees to acknowledge receipt of the Notice as soon as practicable. If Attaching Party does not dispute AT&T-22STATE's assertion that such Facilities are not in compliance, Attaching Party agrees to provide AT&T-22STATE with a schedule for bringing such Facilities into compliance, to bring the Facilities into compliance within a reasonable time, and to notify AT&T-22STATE in writing when the Facilities have been brought into compliance.

16.6 Disputes over Alleged Noncompliance:

16.6.1 If Attaching Party disputes AT&T-22STATE's assertion that Attaching Party's Facilities are not in compliance, Attaching Party shall notify AT&T-22STATE in writing of the basis for Attaching Party's assertion that its Facilities are in compliance.

16.7 Failure to Bring Facilities into Compliance:

16.7.1 If Attaching Party has not brought the Facilities into compliance within a reasonable time or provided AT&T-22STATE with proof sufficient to persuade AT&T-22STATE that AT&T-22STATE erred in asserting that the Facilities were not in compliance, and if AT&T-22STATE determines in good faith that the alleged noncompliance causes or is likely to cause material damage to AT&T-22STATE's Facilities or those of other users, AT&T-22STATE may, at its option and Attaching Party's expense, take such non-service affecting steps as may be required to bring Attaching Party's Facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this Appendix.

16.8 Correction of Conditions by AT&T-22STATE:

16.8.1 If AT&T-22STATE elects to bring Attaching Party's Facilities into compliance, the provisions of this section shall apply.

16.8.2 AT&T-22STATE will, whenever practicable, notify CLEC in writing before performing such work. The written Notice shall describe the nature of the work to be performed and AT&T-22STATE's schedule for performing the work.

16.8.3 If Attaching Party's Facilities have become detached or partially detached from supporting racks or wall supports located within an AT&T-22STATE Manhole, AT&T-22STATE may, at Attaching Party's expense, reattach them but shall not be obligated to do so. If AT&T-22STATE does not reattach Attaching Party's Facilities, AT&T-22STATE shall endeavor to arrange with Attaching Party for the reattachment of any Facilities affected.

16.8.4 AT&T-22STATE shall, as soon as practicable after performing the work, advise Attaching Party in writing of the work performed or action taken. Upon receiving such Notice, Attaching Party shall inspect the Facilities and take such steps as Attaching Party may deem necessary to insure that the Facilities meet Attaching Party's performance requirements.

16.8.5 Attaching Party to Bear Expenses:

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

17.0 Notice of Noncompliance

17.1 Disputes over Alleged Noncompliance:

17.1.1 If CLEC disputes AT&T-22STATE's assertion that CLEC's Facilities are not in compliance, CLEC shall notify AT&T-22STATE in writing of the basis for CLEC's assertion that its Facilities are in compliance.

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

18.1 Tagging of Facilities and Unauthorized Attachments:

18.1.1 Facilities to Be Marked:

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

18.1.2 Removal of Untagged Facilities:

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

18.2 Notice to Attaching Party:

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

18.3 Approval of Request and Retroactive Charges:

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

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

18.4 Removal of Unauthorized Attachments:

18.4.1 If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized Facilities within the specified period of time, AT&T-22STATE shall by written Notice advise Attaching Party to remove its unauthorized Facilities not less than thirty (30) calendar days from the date of Notice and Attaching Party shall remove the Facilities within the time specified in the Notice. If the Facilities have not been removed within the time specified in the Notice, AT&T-22STATE may, at AT&T-22STATE's option, remove Attaching Party's Facilities at Attaching Party's expense.

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

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

unauthorized Facilities.

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

18.6 Prompt Payment of Applicable Fees and Charges:

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

18.7 No Implied Waiver or Ratification of Unauthorized Use:

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

19.0 Removal of CLEC's Facilities

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

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

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

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

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

19.3 Removal Following Termination of Occupancy Permit:

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

19.4 Removal Following Replacement of Facilities:

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

19.5 Removal to Avoid Forfeiture:

19.5.1 If the presence of Attaching Party's Facilities on or in AT&T-22STATE's Structure would cause a forfeiture of the rights of AT&T-22STATE to occupy the property where such Structure is located, AT&T-22STATE will promptly notify Attaching Party in writing and Attaching Party shall not, without due cause and justification, refuse to remove its Facilities within such time as may be required to prevent such forfeiture. AT&T-22STATE will give Attaching Party not less than thirty (30) calendar days from the date of Notice to remove Attaching Party's Facilities unless prior removal is required to prevent the forfeiture of AT&T-

22STATE's rights. At Attaching Party's request, the Parties will engage in good faith negotiations with each other, with Other Users, and with Third Party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of Attaching Party's Facilities.

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

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

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

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

20.0 Rates, Fees, Charges and Billing

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

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

20.2 Changes to Rates, Charges and Fees:

20.2.1 Subject to applicable federal and state laws, rules, regulations and orders, AT&T-22STATE shall have the right to change the rates, charges and fees outlined in this Appendix. AT&T-22STATE will provide the Attaching Party sixty (60) calendar days written Notice, advising the Attaching Party of the specific changes being made and the effective date of the change. If the changes outlined in the Notice are not acceptable to the Attaching Party, Attaching Party may either

(1) seek renegotiation of this Appendix,

(2) terminate this Appendix, or

(3) seek relief through the Dispute Resolution Process in the General Terms and Conditions of this Agreement.

20.3 Notice of Rate and Computation of Charges:

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

20.4 Rate "True-Up":

20.4.1 The Parties agree that the fees reflected as interim herein shall be "trued-up" (up or down) based on final fees either determined by further agreement or by an effective order, in a proceeding involving AT&T-22STATE before the Commission, in the state which CLEC has either attached to or occupied AT&T-22STATE structures (ROW, Conduits, Ducts, and/or Poles).

20.4.2 Under the "True-Up" process, the interim fees for each structure shall be multiplied by the volume of that structure either attached to or occupied by CLEC to arrive at the total interim amount paid ("Total Interim

Price"). The final fees for that structure shall be multiplied by the volume of that structure either attached to or occupied by CLEC to arrive at the total final amount due ("Total Final Price"). The Total Interim Price shall be compared with the Total Final Price. If the Total Final Price is more than the Total Interim Price, CLEC shall pay the difference to AT&T-22STATE. If the Total Final Price is less than the Total Interim Price, AT&T-22STATE shall pay the difference to CLEC.

- 20.4.3 Each Party shall keep its own records upon which a "True-Up" can be based and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such "True-Up," the Parties agree to follow the Dispute Resolution Process in the General Terms & Conditions to this Agreement.

21.0 Advance Payment

- 21.1 Attachment and Occupancy Fees:

- 21.2 Fees for Pole Attachment and Conduit Occupancy shall be based on the Facilities for which Licenses have been issued as of the date of billing by AT&T-22STATE and shall be computed as set forth herein.

21.2.1 Charges associated with newly Licensed Attachments or Occupancies and other Attachments or Occupancies of less than the entire annual billing period shall be prorated.

21.2.2 Charges shall be prorated retroactively in the event of the removal of CLEC's Facilities.

21.2.3 The amount of any advance payment required shall be due within sixty (60) calendar days after receipt of an invoice from AT&T-22STATE.

22.0 Indemnification

- 22.1 In addition to the Indemnification clauses in the General Terms & Conditions to this Agreement, the following shall apply to this Attachment:

22.1.1 AT&T-22STATE shall exercise precaution to avoid damaging the Facilities of CLEC and shall make an immediate report to CLEC of the occurrence of any such damage caused by its employees, agents or contractors. AT&T-22STATE agrees to reimburse CLEC for all reasonable Costs incurred by CLEC for the physical repair of such Facilities damaged by the negligence of AT&T-22STATE, its employees, agents, contractors, subcontractors or invitees. However, AT&T-22STATE shall not be liable to CLEC for any interruption of CLEC's service or for interference with the operation of CLEC's Facilities, or for any special, indirect, or consequential damages arising in any manner, including AT&T-22STATE's negligence, out of the use of Pole(s), Anchor(s), or Conduit Systems or AT&T-22STATE's actions or omissions in regard thereto and CLEC shall indemnify and save harmless AT&T-22STATE from and against any and all claims, demands, causes of action, costs and reasonable attorneys' fees with respect to such special, indirect or consequential damages.

22.1.2 CLEC shall exercise precaution to avoid damaging the Facilities of AT&T-22STATE and of others attached to Pole(s), Anchor(s), or occupying a Conduit System and shall make an immediate report to the Owner of the occurrence of any such damage caused by CLEC's employees, agents or contractors. CLEC agrees to reimburse AT&T-22STATE for all reasonable Costs incurred by AT&T-22STATE for the physical repair of such Facilities damaged by the negligence of CLEC.

22.1.3 CLEC shall indemnify, protect and save harmless AT&T-22STATE, its directors, officers, employees and agents, AT&T-22STATE's other CLECs, and Joint User(s) from and against any and all claims, demands, causes of action, damages and Costs, including reasonable attorney's fees through appeals incurred by AT&T-22STATE, AT&T-22STATE's other CLECs and Joint User(s) as a result of acts by the CLEC, its employees, agents or contractors, including but not limited to the Costs of relocating Pole(s), Anchor(s), Guy(s), or Conduit System resulting from a loss of ROW or property owner consents and/or the Costs of defending those rights and/or consents.

- 22.1.4 The CLEC shall indemnify, protect and save harmless AT&T-22STATE, its directors, officers, employees and agents, AT&T-22STATE's other CLECs, and Joint User(s) from and against any and all claims, demands, causes of actions and Costs, including reasonable attorney's fees, through appeals for damages to property and injury or death to persons, including but not limited to payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, caused by, arising from, incident to, connected with or growing out of the erection, rearrangement, maintenance, presence, use or removal of CLEC's Facilities, or by their proximity to the Facilities of all parties attached to a Pole, Anchor and/or Guy, or placed in a Conduit System, or by any act or omission of the CLEC's employees, agents or contractors in the vicinity of AT&T-22STATE's Pole(s), Anchor(s), Guy(s), or Conduit System.
- 22.1.5 The CLEC shall indemnify, protect and save harmless AT&T-22STATE, its directors, officers, employees, and agents, AT&T-22STATE's other CLECs, and Joint User(s) from any and all claims, demands, causes of action and Costs, including attorneys' fees through appeals, which arise directly or indirectly from the construction and operation of CLEC's Facilities, including but not limited to taxes, special charges by others, claims and demands for damages or loss from infringement of copyrights, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from and against all claims, demands and Costs, including attorney's fees through appeals for infringement of patents with respect to the construction, maintenance, use and operation of CLEC's Facilities in combination with Pole(s), Anchor(s), Conduit Systems or otherwise.
- 22.1.6 CLEC shall promptly advise AT&T-22STATE of all claims relating to damage of property or injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, by the erection, maintenance, repair, replacement, presence, use or removal of the CLEC's Facilities. CLEC shall promptly notify AT&T-22STATE in writing of any suits or causes of action which may involve AT&T-22STATE and, upon the request of AT&T-22STATE copies of all relevant accident reports and statements made to CLEC's insurer by CLEC or others shall be furnished promptly to AT&T-22STATE.

EXHIBIT B

Sample of Mapping and Drawings Submitted to AT&T California

WebPass Scope of Work JOB#A008MNZ

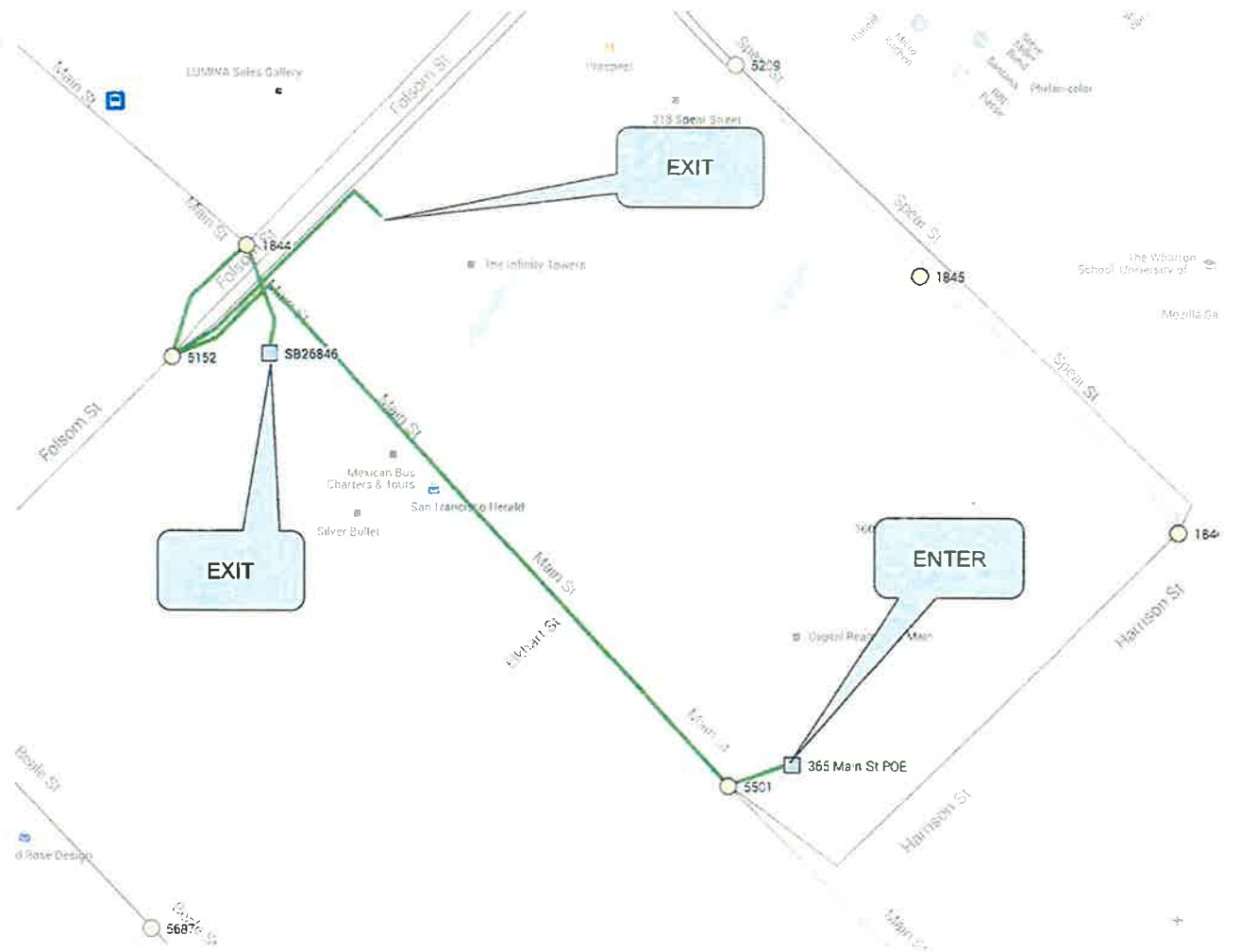
WebPass request permission to Install no less than 1,2 and or 3 1" innerducts within AT&T vacant Conduits as highlighted in GREEN. WebPass will Occupy 1 of these innerducts with a fiber optic cable. the fiber will start at our Colocation facility within the Digital Realty data center at 365 Main street. this first cable will terminate in the Webpass Customer MPOE at 301 Main st. The fiber optic cable will pass through MH 5501, MH 5152, MH 1844 and SB 26846. from this same MPOE at 301 Main St. WebPass will then override its own cable within its own innerduct, passing back out SB 26846, MH 1844, MH 5152 and then into the WebPass Customer MPOE at 201 Folsom.

GREEN REPRESENT VERIFIED AND TAGGED PATHWAY

Please see attached Manhole details

RIGHT OF ENTRY

ROE agreements for each building are attached to the back of this package



WP NAME	PHASE 1.1	TITLE	PLAN OVERVIEW
AT&T REFERENCE	A008MNZ		
AT&T WIRE CENTER	2ND & FOLSOM		
		Page	01 of 06



RECEIVED 11/11/11

ONE FULL VACANT SPARE MUST EXIST BETWEEN MH 5501 & MH 5152 OR PATH WILL BE DENIED BY INSPECTOR. OVERRIDE OF 1 FIBER IN INNERDUCT ALLOWED IF 1 SPARE CONDUIT EXISTS.
1/26/16 SV

WEBPASS REQUEST TO INSTALL 2X1" HDPE FROM MH 5501 to MH5152 TO INSTALL 1 FIBER IN 1X1" HDPE

A TO: N / MH-5152



WEBPASS REQUEST TO INSTALL 4X1" HDPE TO CUSTOMER BOX & TO INSTALL 1 FIBER IN 1X1" HDPE



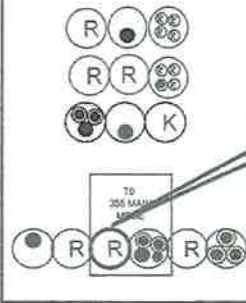
D TO:

MH 5501

B TO:



WEBPASS REQUEST TO INSTALL 4X1" HDPE TO CUSTOMER BOX & TO INSTALL 1 FIBER IN 1X1" HDPE



WEBPASS REQUEST TO INSTALL 2X1" HDPE FROM MH 5501 to MH5152 TO INSTALL 1 FIBER IN 1X1" HDPE

PLACE EITHER 3-1" INDU (IF 3 1/3" DUCT) OR 3-1 1/4" INDU (IF 4" DUCT) NEEDS

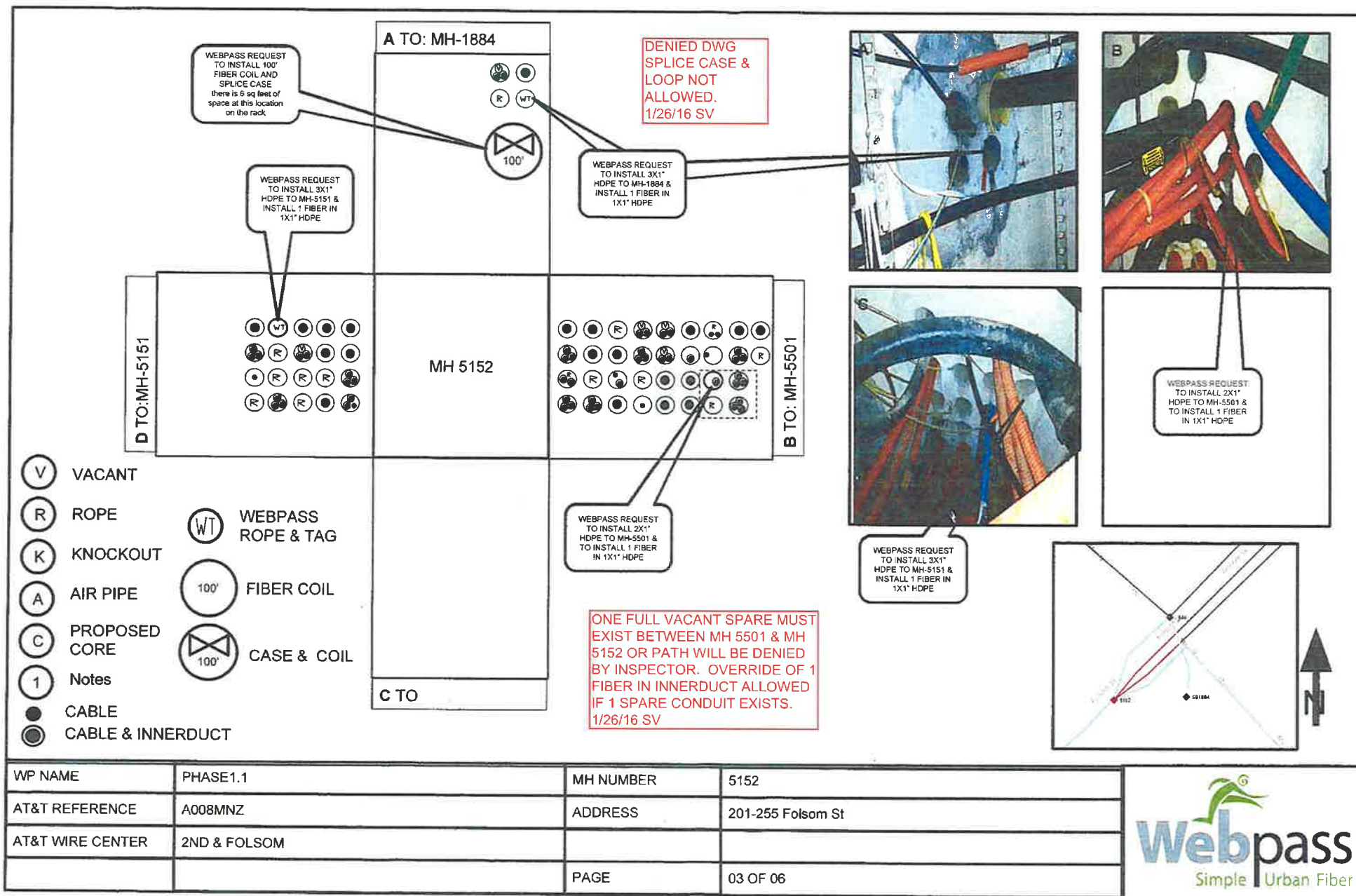


- (V) VACANT
- (R) ROPE
- (K) KNOCKOUT
- (A) AIR PIPE
- (C) PROPOSED CORE
- (1) Notes
- (●) CABLE
- (●) CABLE & INNERDUCT
- (WT) WEBPASS ROPE & TAG
- (100') FIBER COIL
- (100') CASE & COIL

WP NAME	PHASE1.1	MH NUMBER	5152
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AT&T WIRE CENTER	2ND & FOLSOM		
		PAGE	02 OF 06



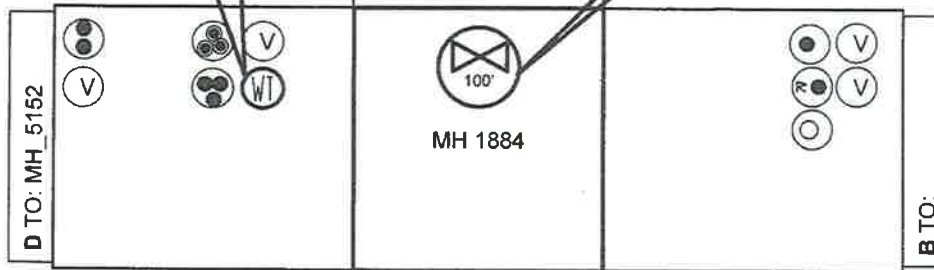
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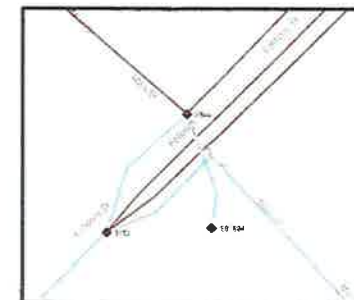
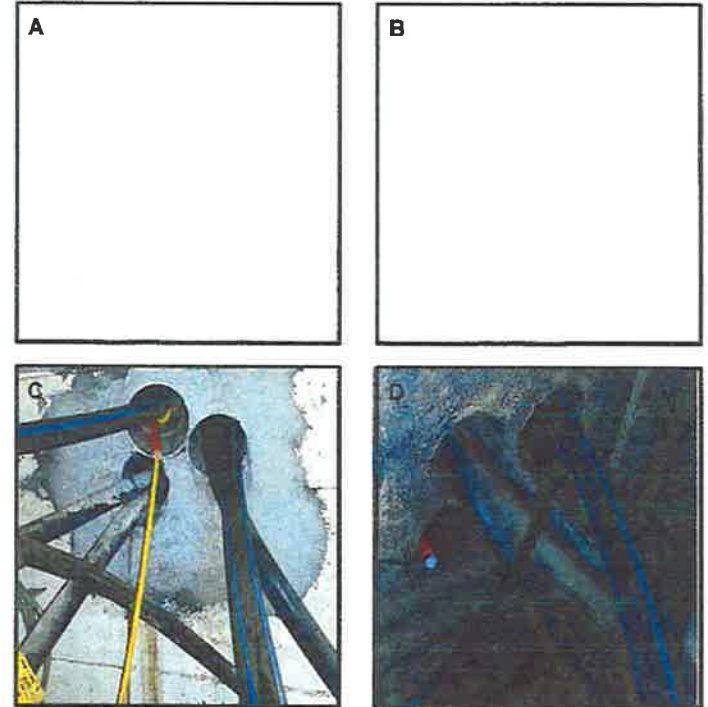
DENIED DWG
SPLICE CASE &
LOOP NOT
ALLOWED.
1/26/16 SV

WEBPASS REQUEST
TO INSTALL 3X1"
HDPE FROM 1c
MH5152 & TO
INSTALL 1 FIBER IN
1X1" HDPE

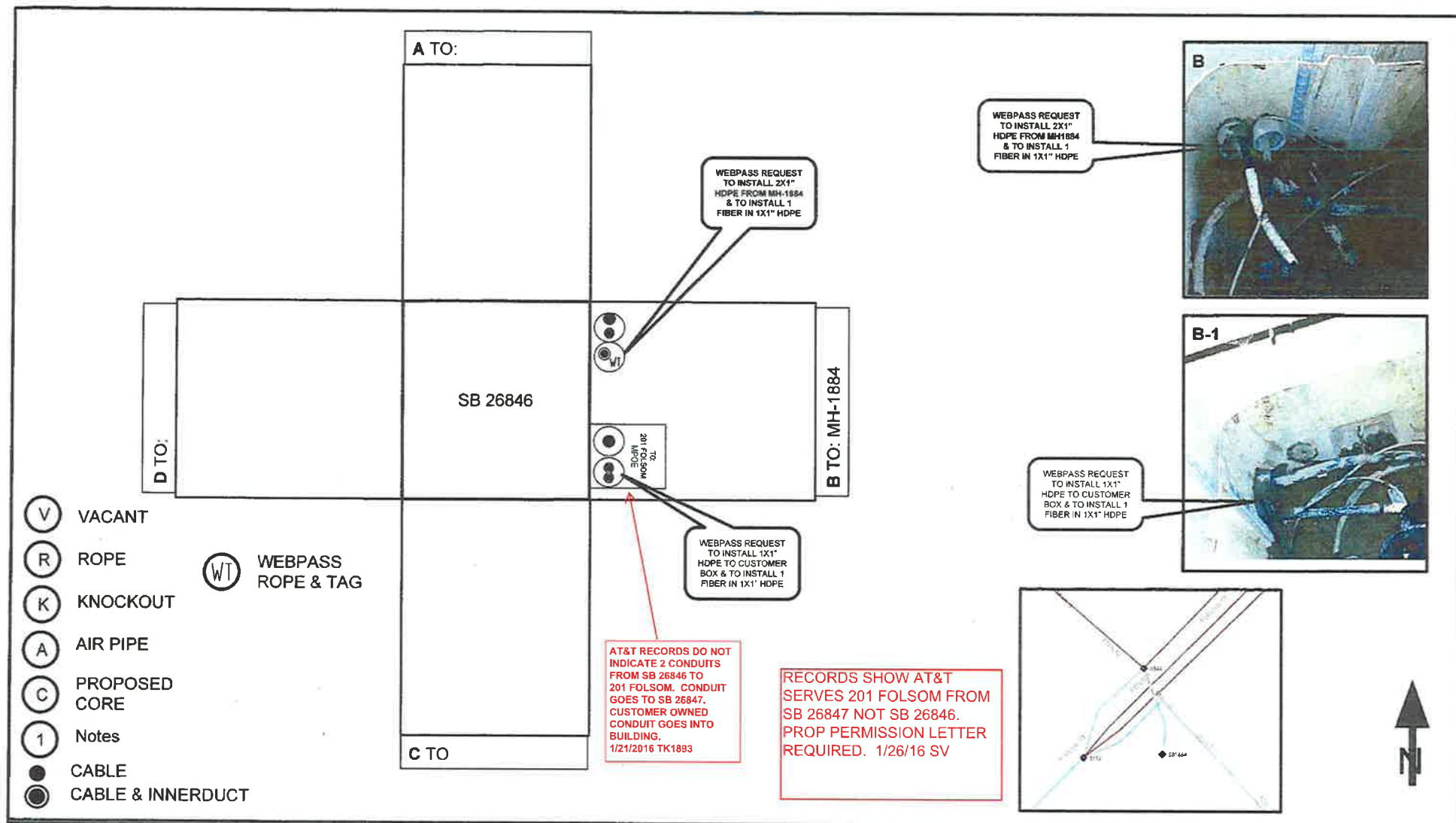
WEBPASS REQUEST
TO INSTALL 100'
FIBER COIL AND
SPLICE CASE
NO OTHER CASES
ARE PRESENT
WITHIN THIS MH



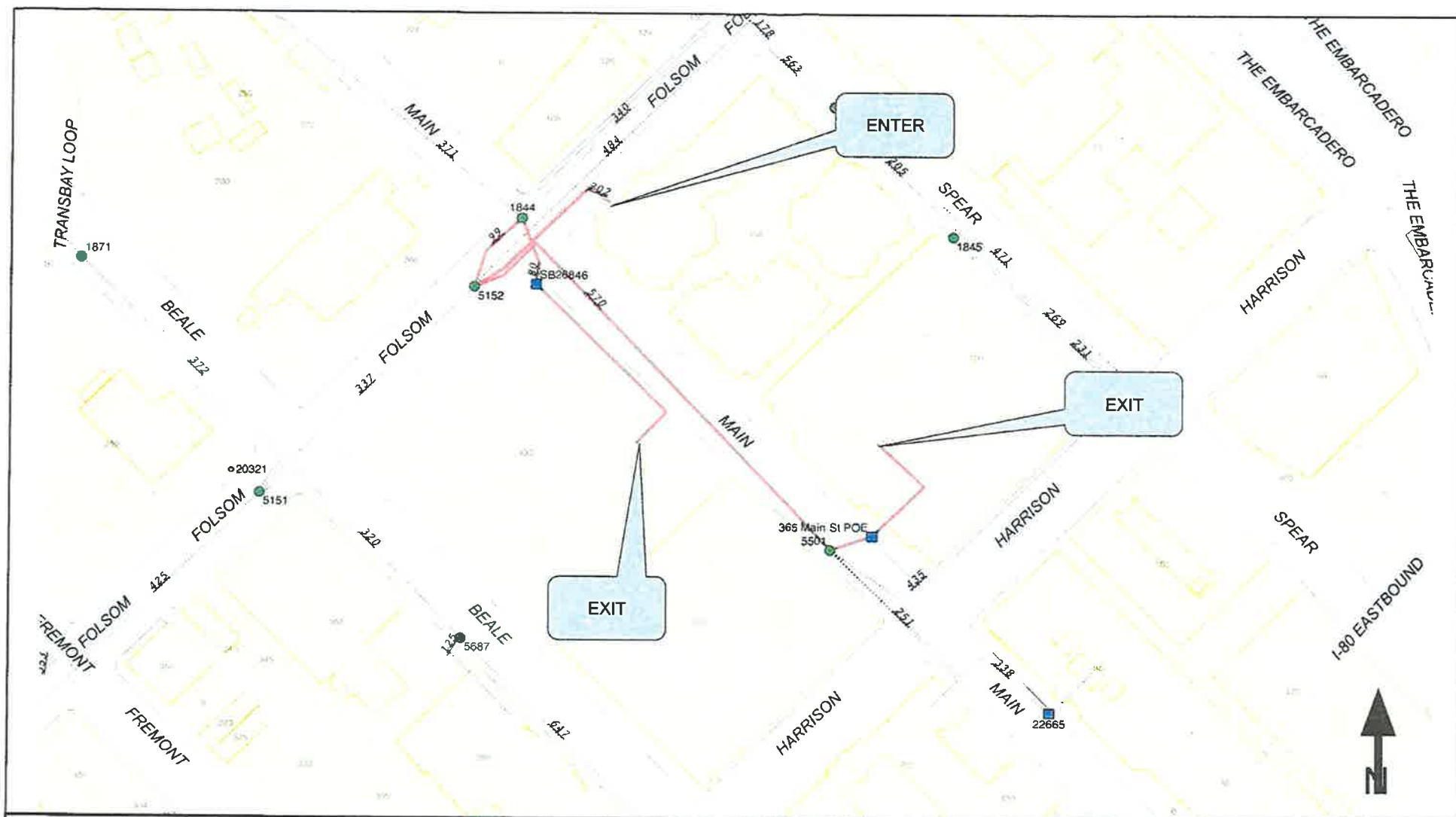
- (V) VACANT
- (R) ROPE
- (K) KNOCKOUT
- (A) AIR PIPE
- (C) PROPOSED CORE
- (1) Notes
- CABLE
- CABLE & INNERDUCT
- (WT) WEBPASS ROPE & TAG
- (100') FIBER COIL
- (100') CASE & COIL



WP NAME	PHASE1.1	MH/SB NUMBER	1884
AT&T REFERENCE	A008MNZ	ADDRESS	168-198 Folsom St
AT&T WIRE CENTER	2ND & FOLSOM		
		PAGE	04 OF 06



WP NAME	PHASE1.1	SB NUMBER	26846
AT&T REFERENCE	A008MNZ	ADDRESS	201 FOLSOM
AT&T WIRE CENTER	2ND & FOLSOM		
		PAGE	05 OF 06



WP NAME	PHASE 1.1	TITLE	GIS PLAN
AT&T REFERENCE	A008MNZ		
AT&T WIRE CENTER	2ND & FOLSOM		
		Page	06 of 06

EXHIBIT C

Splice Cases in AT&T California Manhole

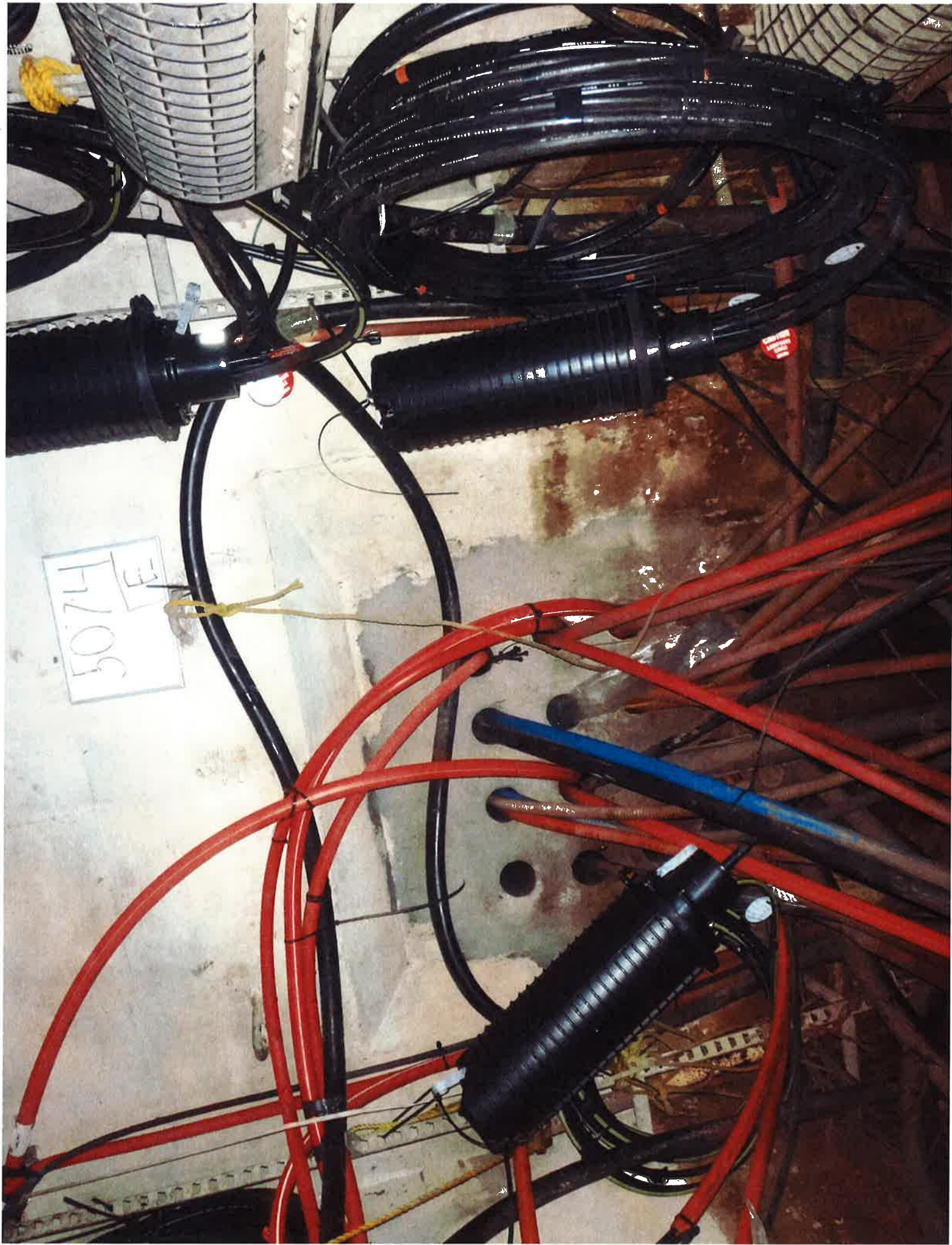


EXHIBIT D

FEBRUARY 2, 2016, ESCALATION LETTER

February 2, 2016

Contract Management
Attn: Notices Manager
311 S. Akard St., 9th Fl.
Four AT&T Plaza
Dallas, TX 75202

Re: Access to Conduit and Duct Space

We represent Webpass Telecommunications, LLC ("Webpass"). Webpass is a competitive local exchange carrier ("CLEC") operating in California and has the right under its interconnection agreement with Pacific Bell Telephone Company ("Pacific Bell") and pursuant to California Public Utilities Commission ("CPUC") Decision 98-10-058 to access Pacific Bell's ducts and conduit.

Webpass has made requests to access Pacific Bell ducts and to place splice cases within available space in AT&T manholes. However, Webpass's requests have been denied, based on an alleged AT&T policy prohibiting CLECs from placing splice cases in AT&T manholes. Webpass has unsuccessfully escalated this dispute to AT&T's California state manager for structure access, Josh Mathisen.

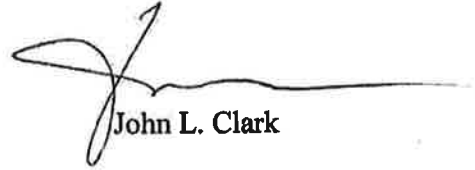
Consequently, Webpass has no choice, now, but to resort to the CPUC's expedited dispute resolution procedure. Accordingly, we request that Pacific Bell please identify an individual at the executive level who will be responsible for addressing this dispute on its behalf. Webpass's contact will be its President, Charles Barr, who may be contacted, initially, by email at charles@webpass.net, with a copy to me.

We have included with this letter, Webpass's engineering drawings, as marked up by AT&T with its notes indicated denial of splice case placement. AT&T's refusal to allow splice cases to be placed in available space in manholes violates the CPUC's access rules. In addition, we also observe that AT&T's notes indicate that AT&T will deny occupancy of available space in a conduit in which fiber has already been installed, unless there is a "full vacant spare." This, too, is a violation of the CPUC's rules.

Thank you for your assistance and cooperation toward reaching an expeditious resolution of this matter.

Contract Management
February 2, 2016
Page 2

Very truly yours,



John L. Clark

Enc.

cc: Eric Batongbacal (AT&T); David Miller (AT&T); Lucia Mihalikova (AT&T)

3545/001/X179222.v1

WebPass Scope of Work JOB#A008MNZ

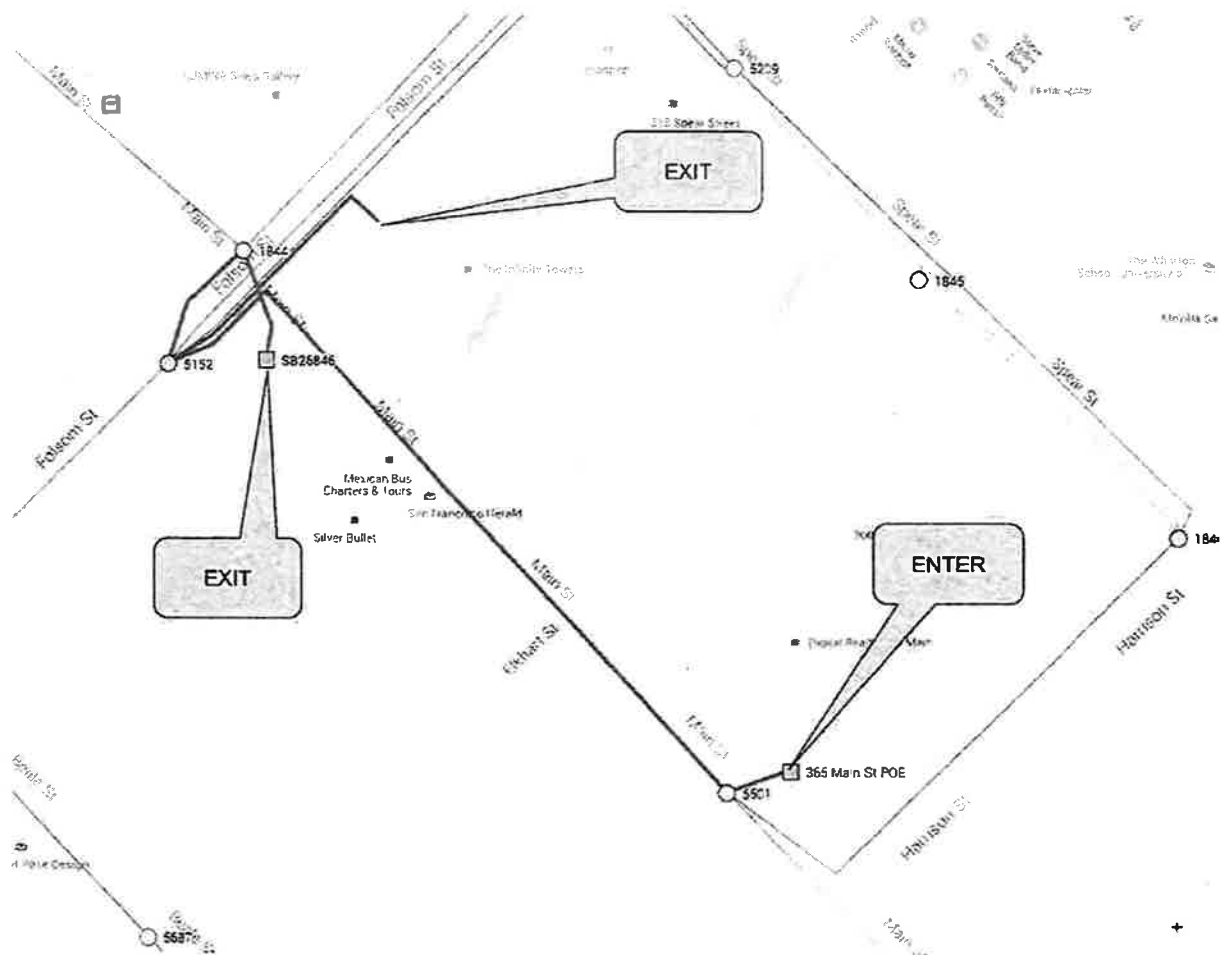
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GREEN REPRESENT VERIFIED AND TAGGED PATHWAY

Please see attached Manhole details

RIGHT OF ENTRY

ROE agreements for each building are attached to the back of this package



WP NAME	PHASE 1.1	TITLE	PLAN OVERVIEW
AT&T REFERENCE	A008MNZ		
AT&T WIRE CENTER	2ND & FOLSOM		
		Page	01 of 06

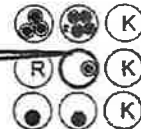


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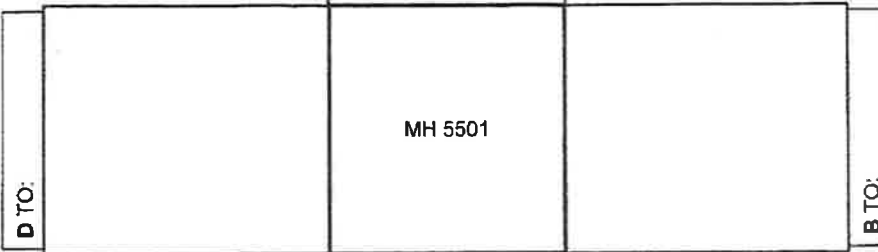
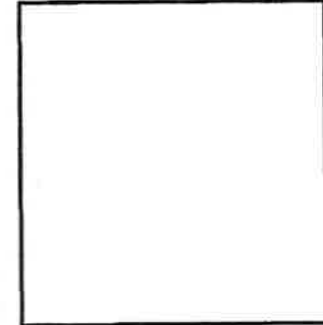
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1/26/16 SV

A TO: N / MH-5152

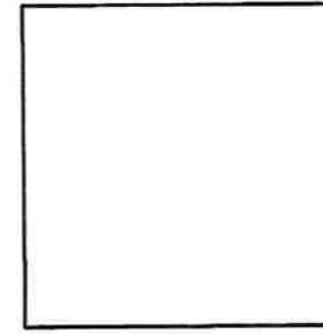
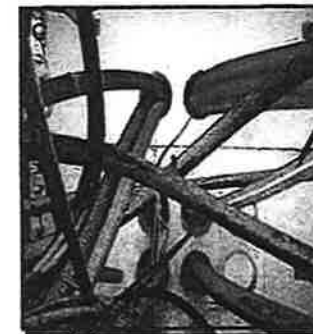
WEBPASS REQUEST TO INSTALL 2X1" HDPE FROM MH 5501 to MH-5152 TO INSTALL 1 FIBER IN 1X1" HDPE



WEBPASS REQUEST TO INSTALL 4X1" HDPE TO CUSTOMER BOX & TO INSTALL 1 FIBER IN 1X1" HDPE

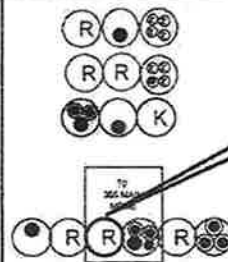


MH 5501



- (V) VACANT
- (R) ROPE
- (K) KNOCKOUT
- (A) AIR PIPE
- (C) PROPOSED CORE
- (1) Notes
- (●) CABLE
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- (100') CASE & COIL

WEBPASS REQUEST TO INSTALL 4X1" HDPE TO CUSTOMER BOX & TO INSTALL 1 FIBER IN 1X1" HDPE



PLACE EITHER 3-1" INDU (IF 3 1/3" DUCT) OR 3-1 1/4" INDU (IF 4" DUCT) NEEDS

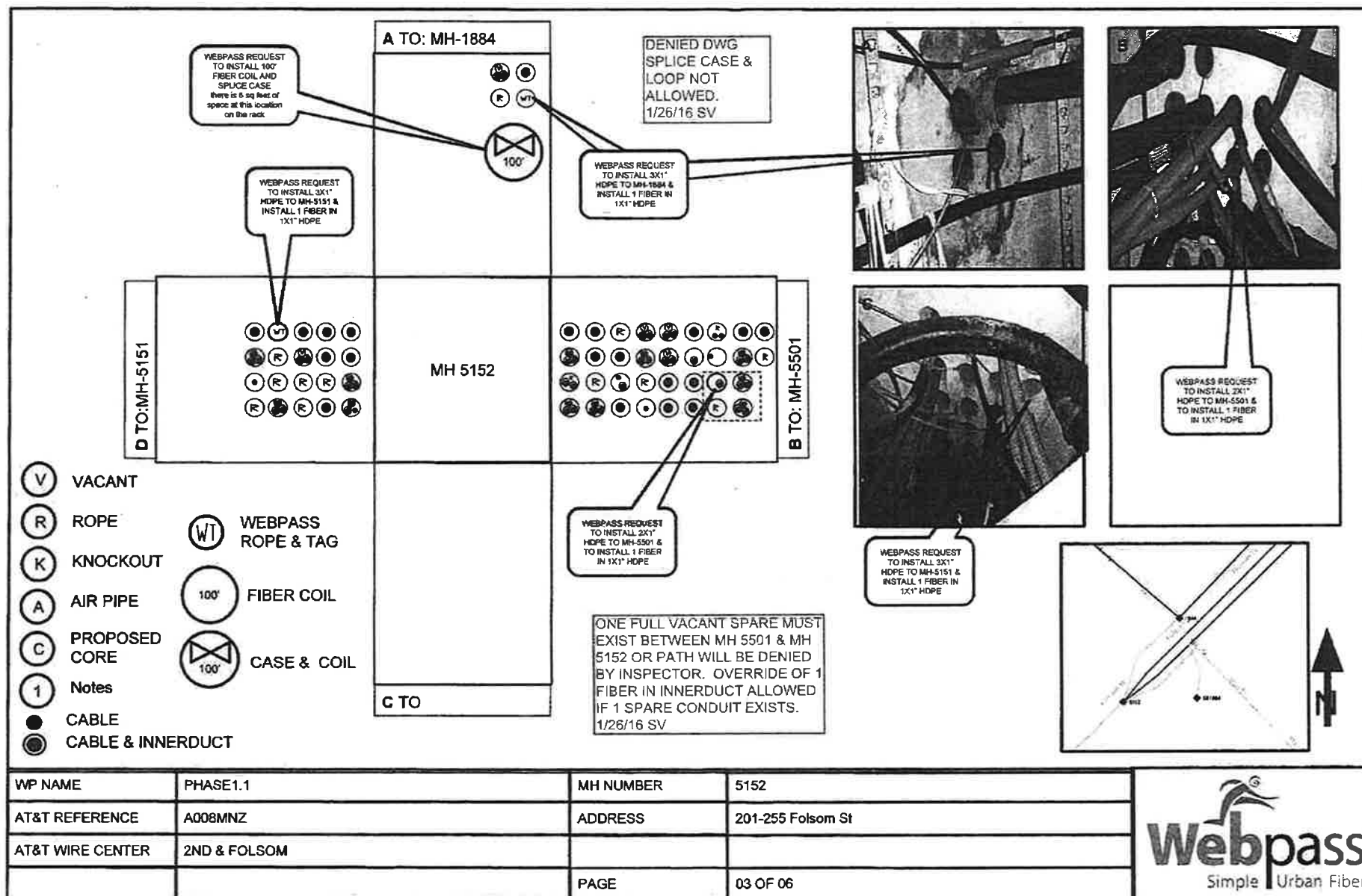
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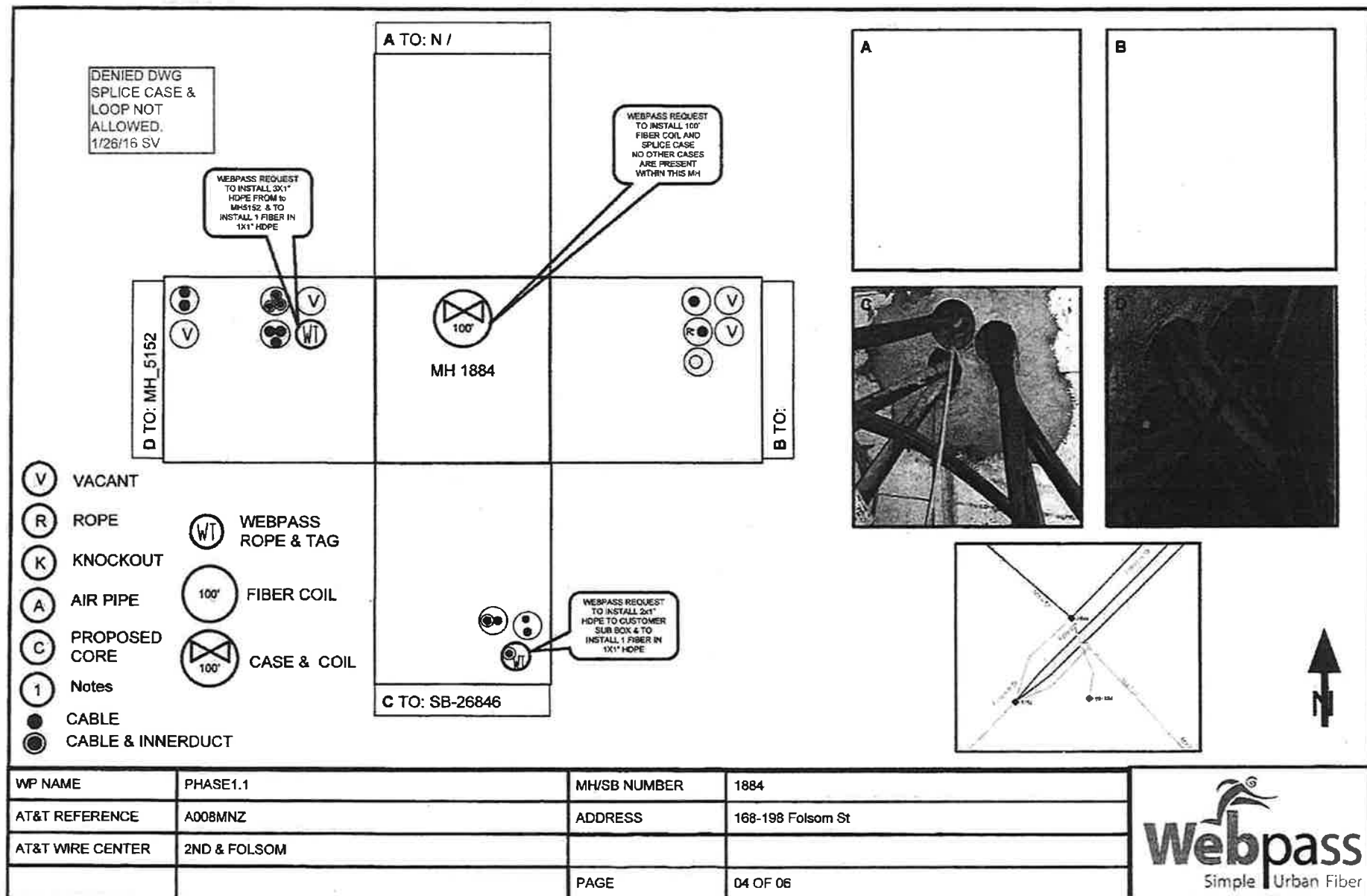


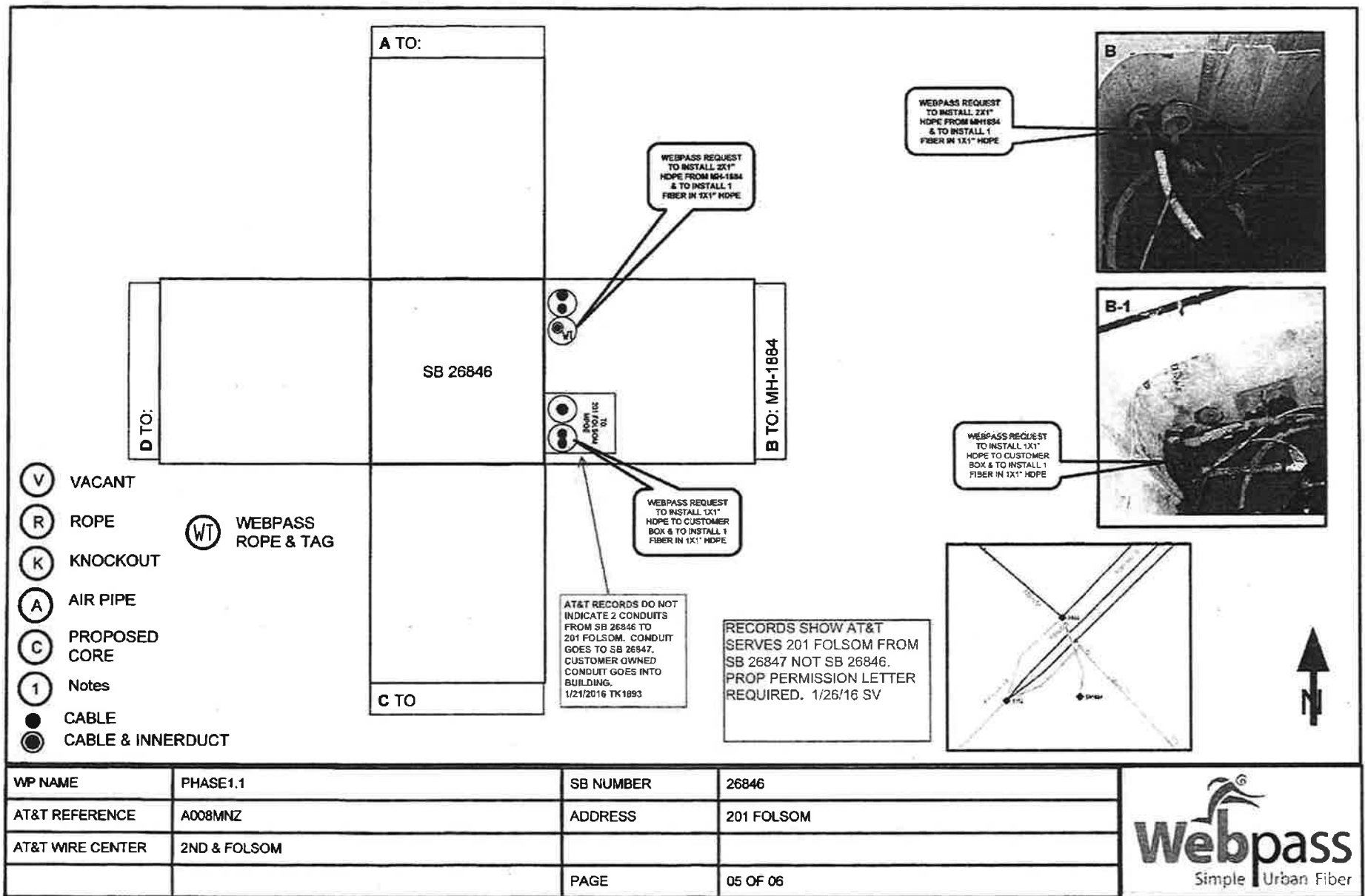
WP NAME	PHASE1.1	MH NUMBER	5152
AT&T REFERENCE	A008MNZ	ADDRESS	365 MAIN St. San Francisco
AT&T WIRE CENTER	2ND & FOLSOM		
		PAGE	02 OF 06

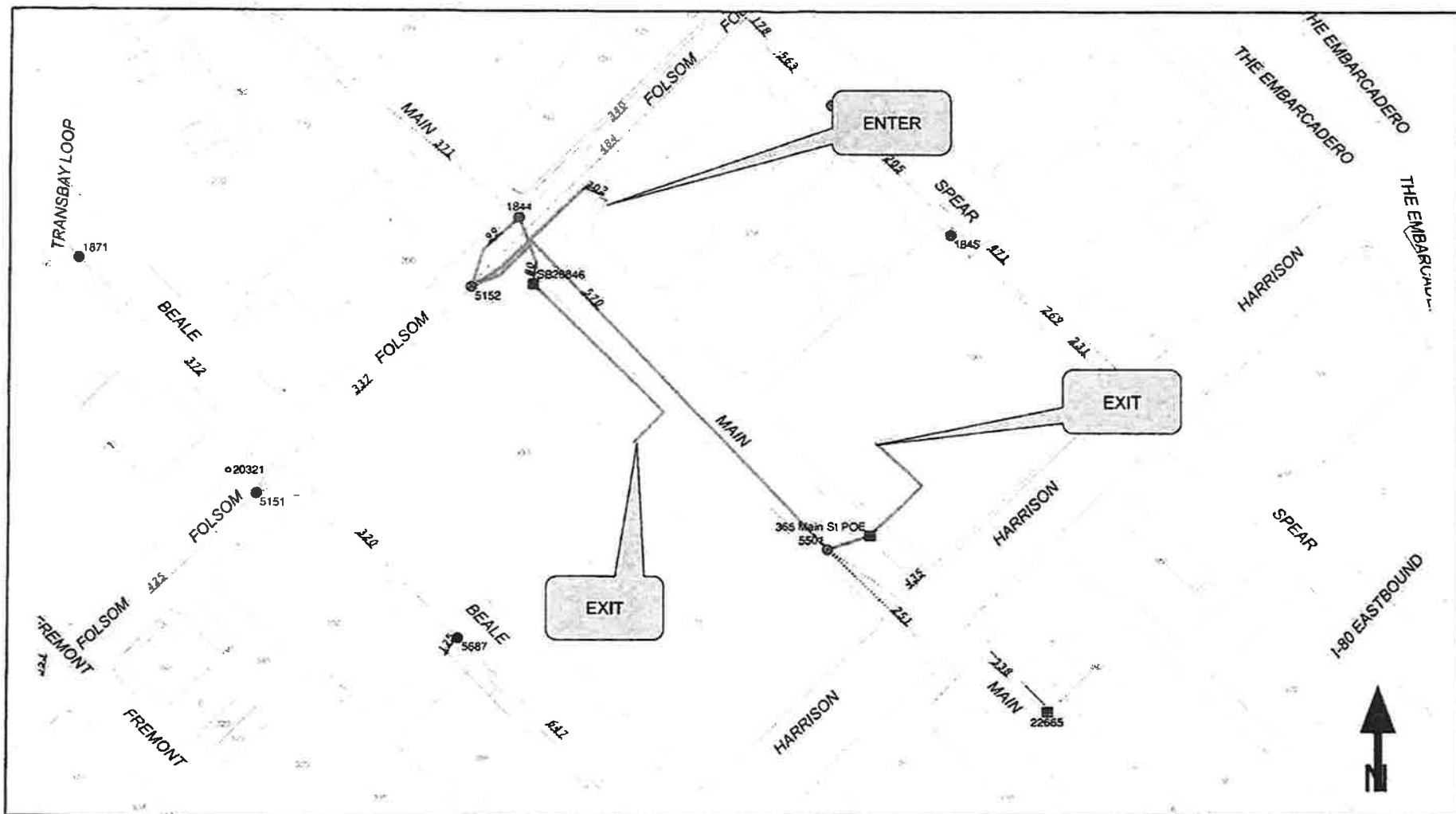


RECEIVED JAN 02 2017









WP NAME	PHASE 1.1	TITLE	GIS PLAN
AT&T REFERENCE	A008MNZ		
AT&T WIRE CENTER	2ND & FOLSOM		
		Page	06 of 06



RECEIVED 11/11/11 11:11 AM

EXHIBIT E

May 11, 2016, ESCALATION LETTER

May 11, 2016

Contract Management
Attn: Notices Manager
311 S. Akard St., 9th Fl.
Four AT&T Plaza
Dallas, TX 75202

Re: Access to Conduit and Duct Space

We represent Webpass Telecommunications, LLC ("Webpass"). Webpass is a competitive local exchange carrier ("CLEC") operating in California and has the right under its interconnection agreement with Pacific Bell Telephone Company ("AT&T California") and pursuant to California Public Utilities Commission ("CPUC") Decision 98-10-058 to access AT&T California's ducts and conduit.

Webpass has made requests to access AT&T California ducts and to place splice cases within available space in AT&T California manholes. However, Webpass' requests have been denied, based on an alleged AT&T California policy prohibiting CLECs from placing splice cases in AT&T California manholes. Webpass has unsuccessfully sought to resolve this dispute in accordance with the dispute resolution process under the parties' interconnection agreement ("ICA").

Consequently, Webpass has no choice, now, but to resort to the CPUC's expedited dispute resolution procedure. Accordingly, we request that AT&T California please identify an individual at the executive level who will be responsible for addressing this dispute on its behalf. Webpass's contact will be its President, Charles Barr, who may be contacted, initially, by email at charles@webpass.net, with a copy to me.

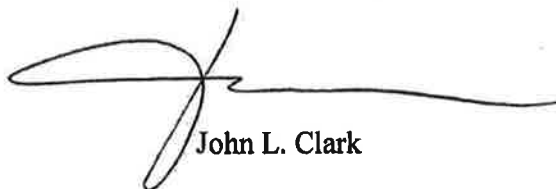
We have included with this letter, Webpass's engineering drawings, as marked up by AT&T California with its notes indicated denial of splice case placement. AT&T California's refusal to allow splice cases to be placed in available space in manholes violates the ICA and applicable law. In addition, we also observe that AT&T California's notes indicate that AT&T California will deny occupancy of available space in a conduit in which fiber as already been installed, unless there is a "full vacant spare." This, too, is a violation of the ICA and applicable law.

Contract Management
May 11, 2016
Page 2

In addition, we have attached a copy of Webpass' application for dispute resolution under Decision 98-10-058, which we plan to file, along with referenced testimony, early next week.

Thank you for your assistance and cooperation toward reaching an expeditious resolution of this matter.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

John L. Clark

Enc.

cc: Eric Batongbacal (AT&T); David Miller (AT&T); Lucia Mihalikova (AT&T); Mark Peters (AT&T)

3545/001/X181784.v1

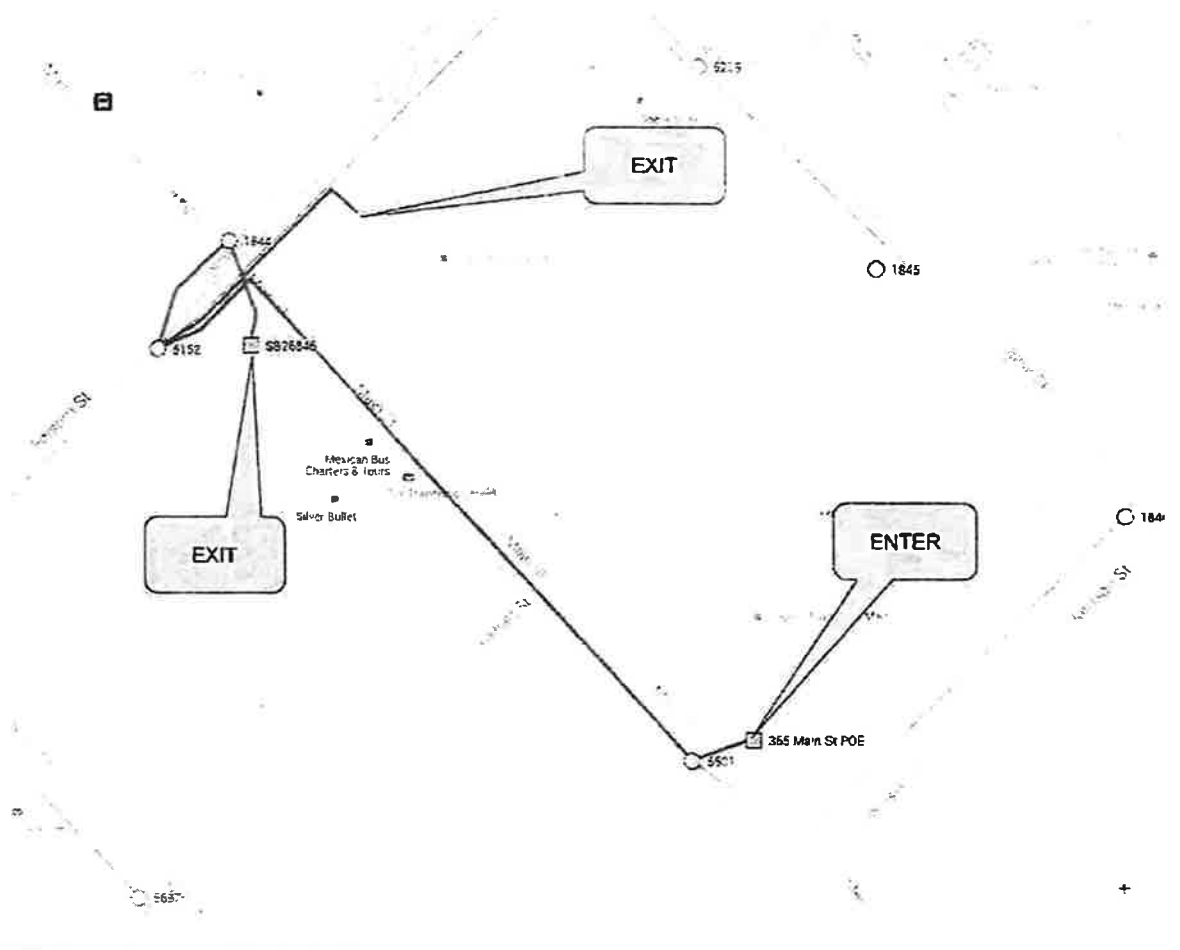
WebPass Scope of Work JOB#A008MNZ

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GREEN REPRESENT VERIFIED AND TAGGED PATHWAY

Please see attached Manhole details

RIGHT OF ENTRY
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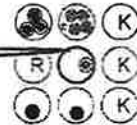
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AT&T REFERENCE	A008MNZ		
AT&T WIRE CENTER	2ND & FOLSOM		
		Page	01 of 06



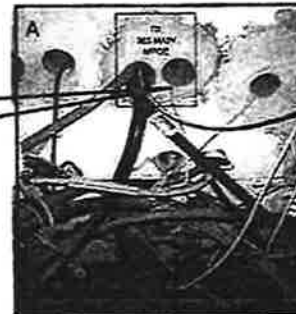
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1/26/16 SV

WEBPASS REQUEST TO INSTALL 2X1" HDPE FROM MH 5501 to MH5152 TO INSTALL 1 FIBER IN 1X1" HDPE

A TO: N / MH-5152



WEBPASS REQUEST TO INSTALL 4X1" HDPE TO CUSTOMER BOX & TO INSTALL 1 FIBER IN 1X1" HDPE

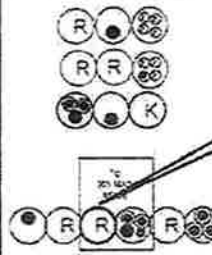


D TO:

MH 5501

B TO:

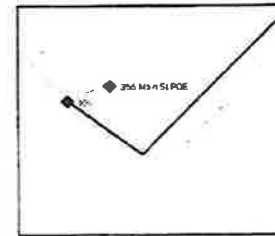
- (V) VACANT
- (R) ROPE
- (K) KNOCKOUT
- (A) AIR PIPE
- (C) PROPOSED CORE
- (1) Notes
- (●) CABLE
- (●) CABLE & INNERDUCT
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- (100) CASE & COIL



WEBPASS REQUEST TO INSTALL 4X1" HDPE TO CUSTOMER BOX & TO INSTALL 1 FIBER IN 1X1" HDPE

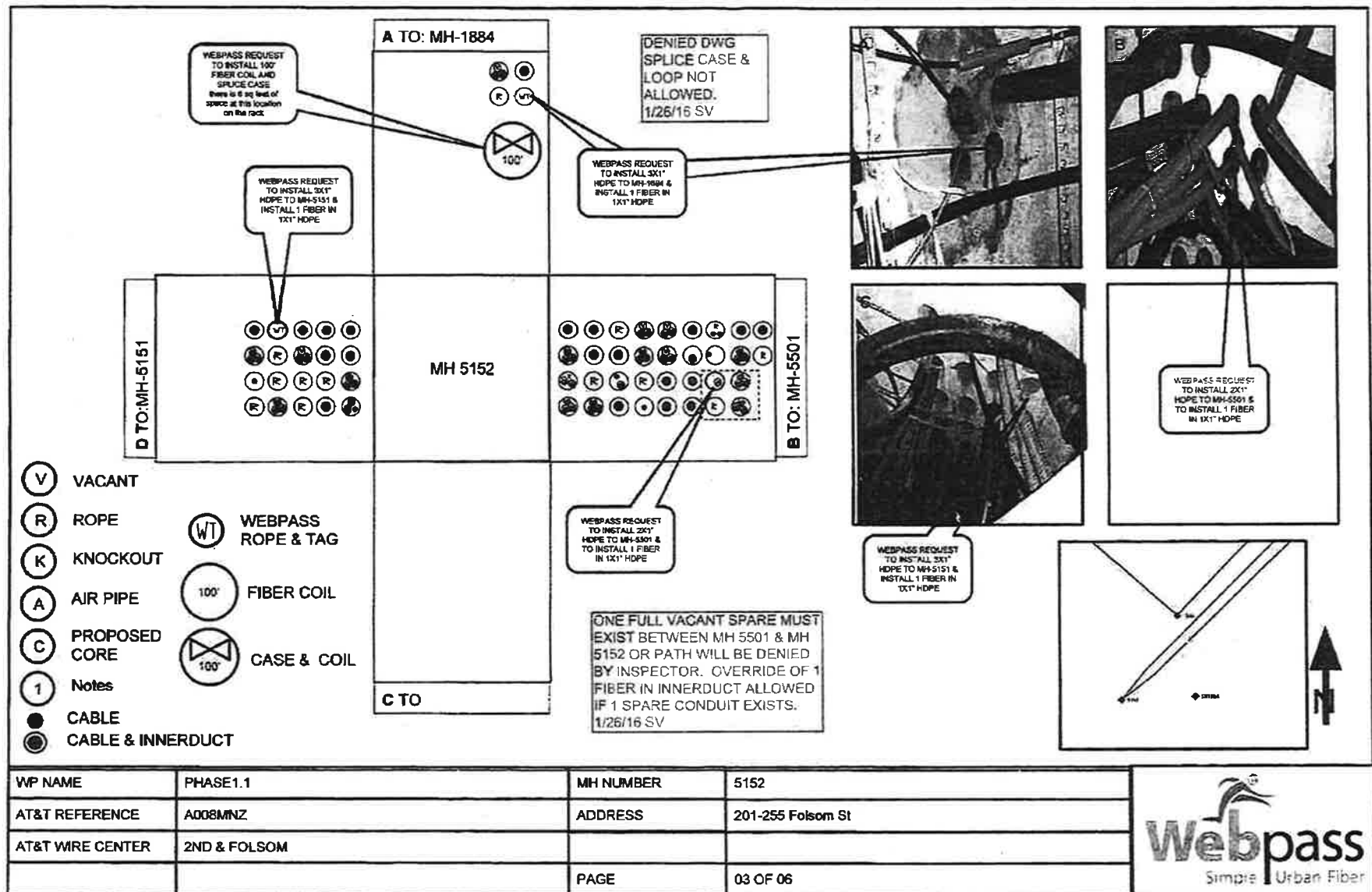
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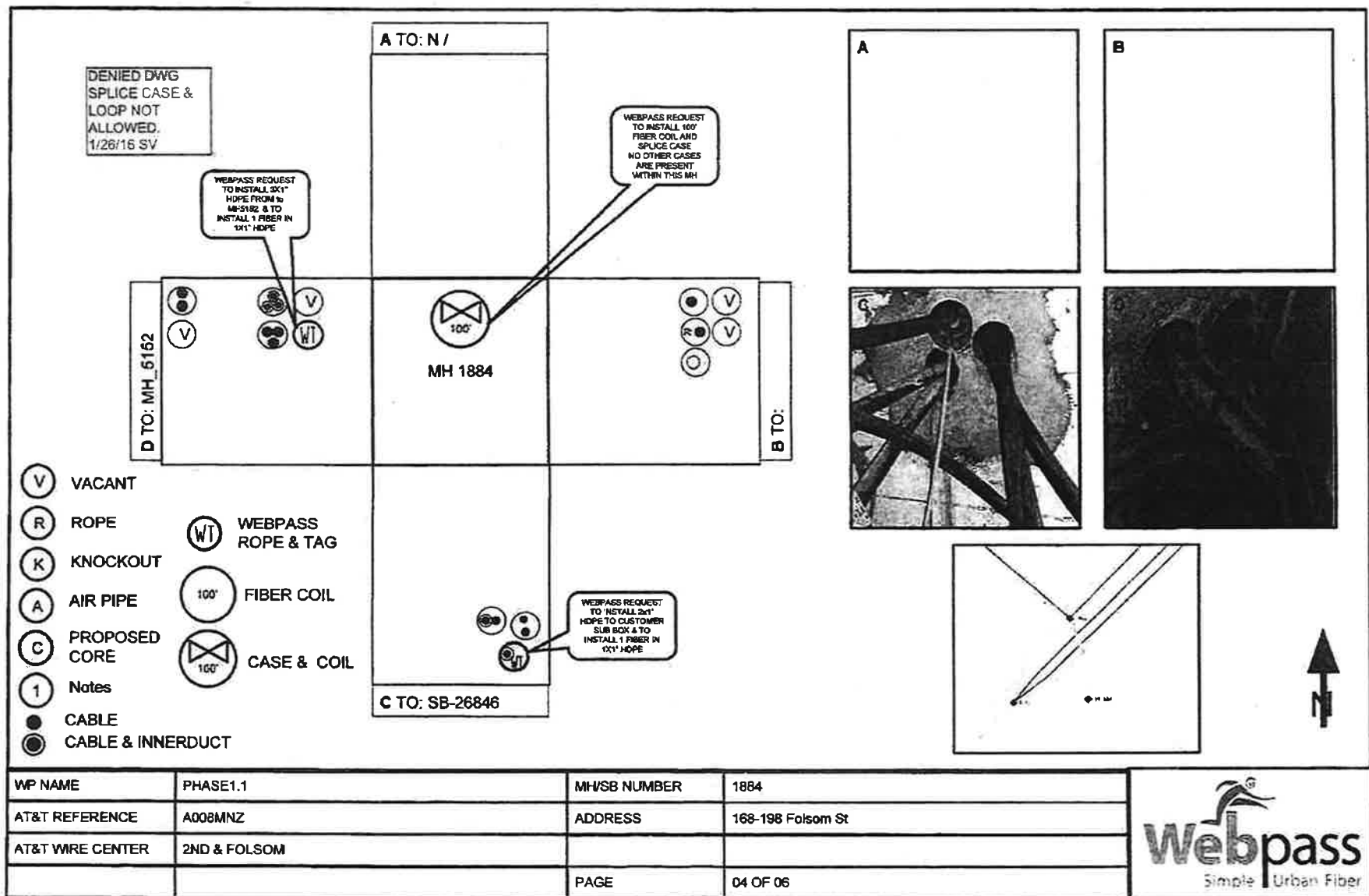
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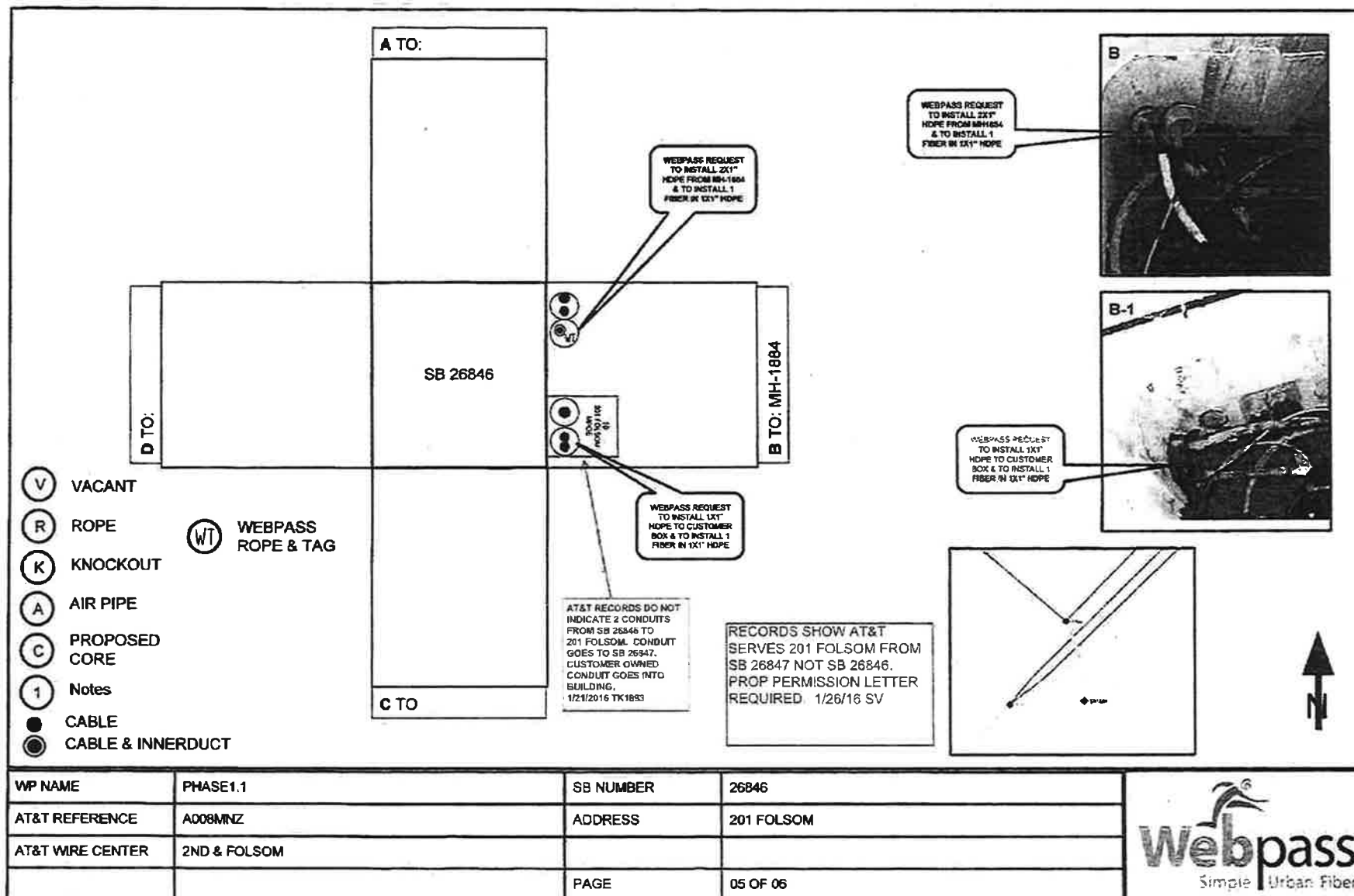


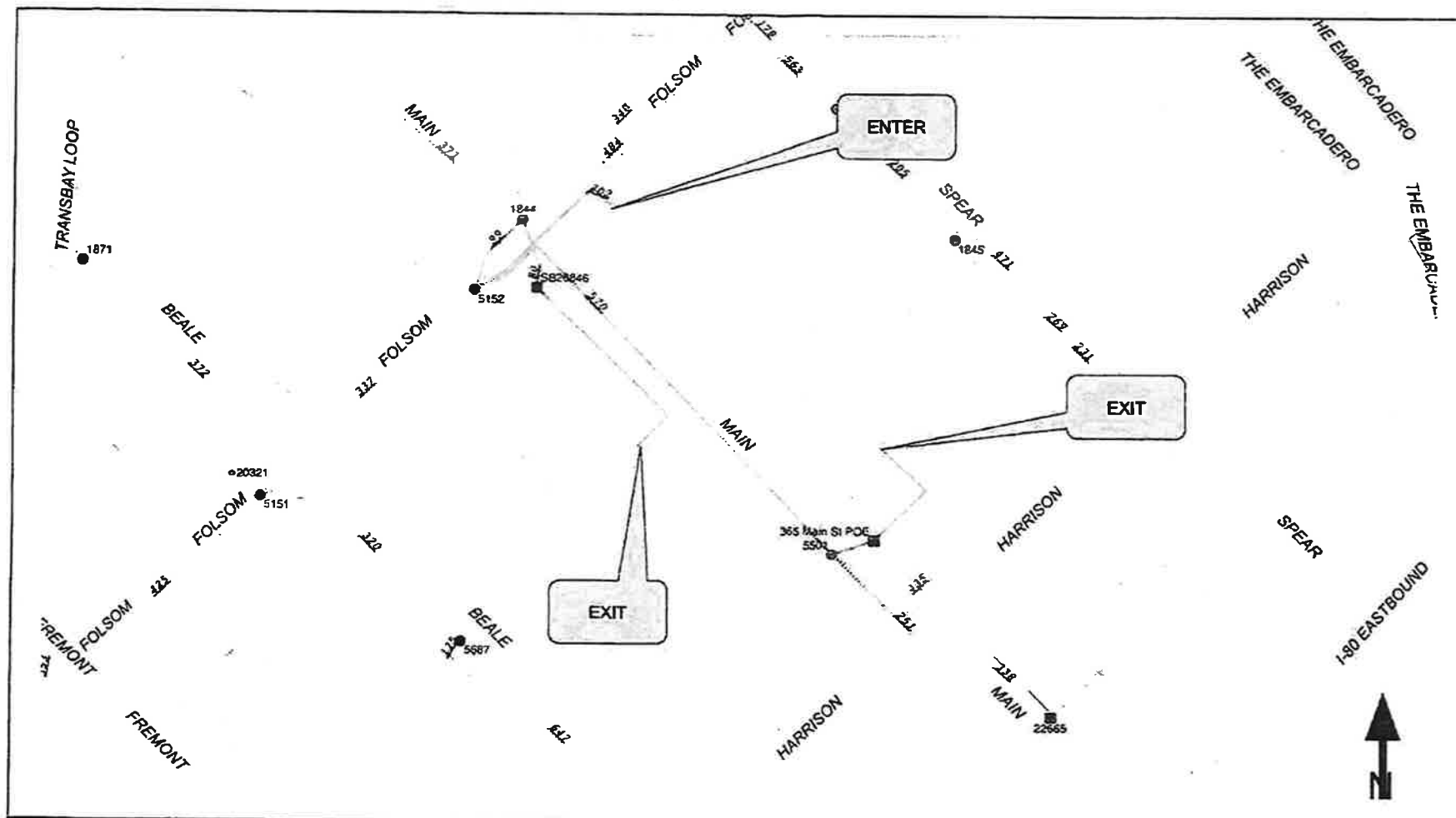
WP NAME	PHASE1.1	MH NUMBER	5152
AT&T REFERENCE	A006MNZ	ADDRESS	365 MAIN St. San Francisco
AT&T WIRE CENTER	2ND & FOLSOM		
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WP NAME	PHASE 1.1	TITLE	GIS PLAN
AT&T REFERENCE	A008MNZ		
AT&T WIRE CENTER	2ND & FOLSOM		
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EXHIBIT F

PROPONENT'S ENVIRONMENTAL ASSESSMENT

Applicant is authorized by Decision (D.) 15-04-011 to carry out all work to which this application relates. Specifically, Applicant may install its facilities, such as fiber optic cable and related equipment, in existing conduits and other existing buildings and infrastructure. Consistent with the Commission's determination in D.99-10-025, D.15-04-011 concludes that no material adverse environmental impacts will result from such activities because no external construction will be involved. *See*, Decision No. 99-10-025, mimeo., at p. 7.

D.15-04-011 also allows Applicant to undertake CEQA-exempt outside plant construction activities, subject to compliance with an expedited 21-day environmental review process that is designed to confirm the existence of CEQA exemption. While the instant application does not contemplate such activities, if Applicant is required to engage in any construction in order to gain access to AT&T California structures, it will do so pursuant to the authorization granted by D.15-04-011, subject to confirmation of claimed exemptions.

Applicant submits that the foregoing assures that it can be seen with certainty that there is no possibility that grant of the instant application may have a significant adverse effect on the environment.