

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

JUN 11 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Asia America Gateway Consortium)
) File No. SCL-LIC-20070824-00015
Application for a License to Construct, Land)
and Operate an Undersea Optical Cable)
System Linking Malaysia, Singapore,)
Thailand, Brunei Darussalam, Vietnam,)
Hong Kong SAR, Philippines, and the)
United States)
)
)
)
)

**PETITION TO ADOPT CONDITIONS TO
AUTHORIZATIONS AND LICENSES**

The Department of Homeland Security (“DHS”) and the Department of Justice (“DOJ”) (collectively, the “Agencies”), submit this Petition to Adopt Conditions to Authorizations and Licenses (“Petition”), pursuant to Section 1.41 of the Federal Communications Commission (“Commission”) rules.¹ Through this Petition, the Agencies advise the Commission that they have no objection to the Commission approving the authority sought in the above-referenced proceeding, provided that the Commission conditions its approval on the agreement of AT&T Corp. to abide by the commitments and undertakings set forth in the June 10, 2008 agreement (the “Agreement”), which is attached hereto.

In the above-referenced proceeding, the Asia American Gateway Consortium, which includes AT&T Corp., petitioned the Commission for authority under the Cable Landing License

¹ 47 C.F.R. § 1.41.

Act of 1921² and Executive Order 10530³ to construct, land and operate a private fiber-optic submarine cable system linking the United States, Malaysia, Singapore, Thailand, Brunei Darussalam, Vietnam, Hong Kong, and the Philippines.

The Commission has long recognized that law enforcement, national security, and public safety concerns are part of its public interest analysis, and has accorded deference to the views of other U.S. government agencies with expertise in those areas. *See In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, etc.*, 16 FCC Rcd. 21,661, 21707 ¶ 94 (2001).

After discussions with representatives of AT&T Corp. in connection with the above-referenced proceeding, the Agencies have concluded that the additional commitments set forth in the Agreement will help ensure that the Agencies and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed appropriately to satisfy those responsibilities. Accordingly, the Agencies advise the Commission that they have no objection to the Commission granting the application in the above-referenced proceeding, provided that the Commission conditions its consent on compliance by AT&T Corp. with the commitments set forth in the Agreement.

² Pub. Law No. 8, 67th Congress, 42 Stat. 8 (1921); 47 U.S.C. §§ 34-39.

³ Exec. Ord. No. 10530 § 5(a) (May 10, 1954), reprinted as amended in 3 U.S.C. § 301.

The Agencies are authorized to state that AT&T Corp. does not object to the grant of this

Petition.

Respectfully submitted,

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June 11, 2008

AGREEMENT

THIS AGREEMENT (the “**Agreement**”) is made as of the date of the last signature affixed hereto, by and between AT&T Corp., for itself, and for its Affiliates and Subsidiaries, as defined below (collectively and individually referred to hereafter as “**AT&T**”) on the one hand, and the United States Department of Homeland Security (“**DHS**”) on the other hand (referred to individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, U.S. communication systems are essential to the ability of the U.S. Government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. Government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the Nation and its citizens to maintain the viability, integrity, and security of the communications systems of the United States (see e.g., Executive Order 13231, Critical Infrastructure Protection in the Information Age, and Homeland Security Presidential Directive / HSPD-7, Critical Infrastructure Identification, Prioritization, and Protection);

WHEREAS, protection of Classified and Sensitive Information is also critical to U.S. national security;

WHEREAS, AT&T Corp. is a New York corporation that through its Affiliates provides telecommunications services to individuals, businesses, carriers, and government customers, and is a wholly-owned subsidiary of AT&T, Inc.;

WHEREAS, AT&T has certain obligations to protect from unauthorized disclosure the contents of wire and electronic communications under U.S. law;

WHEREAS, certain electronic communication services, including telephone services, which AT&T provides are subject to U.S. privacy and electronic surveillance laws;

WHEREAS, AT&T also has direct physical and electronic access to a variety of customer and end-user information that is subject to U.S. privacy and electronic surveillance laws;

WHEREAS, AT&T is a member of the Asia America Gateway (“**AAG**”) consortium (the “**AAG Consortium**”), a group of twenty (20) companies that intends to construct, land and operate a fiber-optic submarine cable system linking Brunei Darussalam, Hong Kong SAR, Malaysia, the Philippines, Singapore, Thailand, Vietnam, and the United States (the “**AAG Cable Network**”);

WHEREAS, in addition to AT&T, the initial members of the AAG Consortium with greater than five (5) percent ownership interest, individually or through their wholly-owned

Affiliates, are: Bharti Airtel Limited (“**Bharti Airtel**”); CAT Telecom Public Company Limited (“**CAT Telecom**”); Datastream Technology Sdn Bhd, Telekom Brunei Berhad, and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam represented by the Ministry of Communications (collectively, “**Datastream**”); Philippine Long Distance Telephone Company (“**Philippine LDTC**”); PT Telekomunikasi Indonesia, Tbk. (“**PTT**”); StarHub Ltd. (“**StarHub**”); Telekom Malaysia Berhad (“**Telecom Malaysia**”); Telstra Corporation Limited (“**Telstra**”); and Vietnam Posts and Telecommunications Group (“**Vietnam P&TG**”), all of whom are parties to a cable Construction and Maintenance Agreement (“**C&MA**”);

WHEREAS, the initial members of the AAG Consortium with less than five (5) percent ownership interest, individually or through their wholly-owned Affiliates, are: Bayan Telecommunications, Inc. (“**Bayan**”); Communications Global Network Services Ltd. (“**CGNS**”); Eastern Telecommunications Philippines, Inc. (“**Eastern**”); FPT Telecom (“**FPT**”); Pacific Communication Pte. Co., Ltd. (“**Pacific**”); Saigon Postel Corp. (“**Saigon Postel**”); Telcotech Limited (“**Telcotech**”); Telekom Malaysia Berhad (“**Telecom Malaysia**”); Telecom New Zealand Limited (“**Telecom New Zealand**”); and Viettel Corporation (“**Viettel**”), all of whom are also parties to the C&MA;

WHEREAS, each member of the AAG Consortium has a varying degree of voting rights and ownership in the cable corresponding to its level of investment in the AAG Cable Network, and whereas the C&MA generally requires that decisions regarding the AAG Cable Network be made by at least a simple majority, with no party having veto power;

WHEREAS, the AAG Cable Network is a linear transpacific cable (consisting of five primary segments) that will run from California to Malaysia, with intermediate landings in Hawaii, Guam, the Philippines, and Hong Kong, and the Hong Kong-to-Malaysia segment will have an additional four branching units that will extend the AAG Cable Network to landings in Vietnam, Brunei Darussalam, Singapore, and Thailand;

WHEREAS, the AAG Cable Network will be able to interconnect with existing submarine cables that serve the Asia-Pacific region, including Asia Pacific Cable Network (“**APCN**”), Asia Pacific Cable Network 2 (“**APCN2**”), East Asia Crossing (“**EAC**”), I2I (serving India and Singapore), City-To-City (“**C2C**”), South East Asia – Middle East – Western Europe (“**SMW3**”), and Tata Indicom Cable (“**TIC**”), and the AAG Cable Network also is designed to allow future interconnection with other international submarine cables;

WHEREAS, each member of the AAG Consortium will own circuits throughout the capacity of the AAG Cable Network; Telstra will also own a designated fiber pair (“**DFP**”) between Keawaula, Hawaii, and San Luis Obispo, California;

WHEREAS, the AAG Cable Network will have ten (10) landing stations, one (1) each in seven (7) foreign countries (Brunei Darussalam, Hong Kong, Malaysia, the Philippines, Singapore, Thailand, and Vietnam) and three (3) locations in the United States (California, Guam, and Hawaii);

WHEREAS, the landing stations in the United States will be at San Luis Obispo, California, Tanguission, Guam, and Keawaula, Hawaii (each, a “**U.S. Cable Landing**”), and are

owned and controlled by AT&T;

WHEREAS, the members of the AAG Consortium will jointly own the equipment in each landing station, including submarine line terminal equipment ("SLTE"), add/drop multiplexer ("ADM") equipment, and Optical Distribution Frames; and each landing party will own the building housing its respective landing station, its own equipment therein, and its share of the jointly-owned facilities;

WHEREAS, in conjunction with Telstra's purchase of a DFP, AT&T has signed an agreement with Telstra to provide operations support and space at both the Keawaula and San Luis Obispo cable landing stations; Telstra will be able to use this space to equip its DFP with Submarine Light Guide Terminal Equipment and other required Network Management Systems, Multiplexing, and protection equipment for the operation of the DFP;

WHEREAS, each member of the AAG Consortium will have the right to take collocation sites at or near each cable landing station, including the U.S. Cable Landings, and directly interconnect with the jointly-owned SLTE or ADM; these parties also have the right to use their collocation space to provide backhaul services to other owners and to use third-party backhaul services (all as permitted by local law and regulations);

WHEREAS, the AAG cable will terminate circuits at all U.S. Cable Landings and terminate the cable on the eastern end (the U.S. side) at the U.S. Cable Landing in California (the "U.S. Termination Point");

WHEREAS, physical security at the U.S. Cable Landings is managed by AT&T, and AT&T is ultimately responsible for physical and logical security for the Domestic AAG Infrastructure at these sites;

WHEREAS, two (2) Network Operation Centers will be established by the AAG Consortium (each, an "AAG NOC"): a primary NOC ("Primary AAG NOC") and a secondary NOC ("Secondary AAG NOC");

WHEREAS, the AAG NOCs will not be dually operational, and only one NOC will be active at a time;

WHEREAS, the active AAG NOC will have the capability to transfer control to the backup AAG NOC, and vice-versa;

WHEREAS, the Primary AAG NOC will generally have active operational control of the AAG Cable Network, and the Secondary AAG NOC will have active operational control only when the Primary AAG NOC assigns it operational control or in the event that the Primary AAG NOC is not operational;

WHEREAS, each member of the AAG Consortium that operates a landing station will be able to interrupt all traffic passing through their respective cable landing facilities;

WHEREAS, AT&T, from any of the U.S. Cable Landings, has the ability to act promptly to suspend traffic in, out, or through that cable landing; and, if AT&T isolates the U.S. Cable Landings from the rest of the AAG Cable Network, no other AAG Consortium member

will have the capability to disrupt or interfere with traffic in any of the U.S. Cable Landings;

WHEREAS, the demarcation point in the U.S. for network surveillance by the NOCs is the Optical Distribution Frame located at the U.S. Termination Point;

WHEREAS, on August 23, 2007, AT&T applied on behalf of the AAG Consortium to the Federal Communications Commission (“**FCC**”) for a submarine cable landing license under the Cable Landing License Act of 1921 and Executive Order No. 10530, FCC File No SCL-LIC-20070824-00015 (the “**Application**”);

WHEREAS, DHS will request that the FCC’s grant of the pending Application be made subject to resolution of issues relating to national security, law enforcement, and public safety as set forth herein, and whereas AT&T has agreed to enter into this Agreement with DHS to address issues raised by DHS, and to jointly petition that the FCC condition the requested authorization on compliance with this Agreement;

NOW THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement and public safety concerns.

ARTICLE 1: DEFINITION OF TERMS

As used in this Agreement:

1.1 “**Access**” or “**Accessible**” means the ability to physically or logically undertake any of the following actions: (a) read, divert, or otherwise obtain non-public information or technology from or about software, hardware, a system or a network; (b) add, edit or alter information or technology stored on or by software, hardware, a system or a network; and (c) alter the physical or logical state of software, hardware, a system or a network (e.g., turning it on or off, changing configuration, removing or adding components or connections).

1.2 “**Affiliate**” means any entity that AT&T owns or Controls that has any responsibility for the operation or support of the AAG Cable Network.

1.3 “**AAG Account Information**” means information, if any, exchanged between AT&T and a customer specifically relating to provision of service using AAG, including without limitation the customer’s identity, billing address, contact information, service type, service architecture, price, service performance, and the like associated with the customer’s contracted-for use of the AAG Cable Network.

1.4 “**AAG Cable Network**,” in addition to the meaning given in the Recitals, means all equipment, facilities and services: (a) pertaining to the Asia America Gateway cable network linking the continental United States and Asia and located between the ODF at each landing station, respectively, including but not limited to all optical cables; landing stations in Brunei Darussalam; Hong Kong; Malaysia; the Philippines; Singapore; Thailand; Vietnam; and the United States of America; and (b) all AAG NOCs.

1.5 “**AAG Network Management Information**” means the network management operations plans, processes and procedures implemented to monitor, manage, maintain, or otherwise operate the AAG Cable Network, including but not limited to network management operations plans,

processes and procedures; descriptions of the placement of NOC(s) and linkages (for service offload or administrative activities) to other domestic and international carriers, ISPs and other critical infrastructures; descriptions of networks and operations processes and procedures for management control and relation to the backbone infrastructure(s) including other service providers; description of any unique or proprietary control mechanisms as well as operating and administrative software; and network performance information.

1.6 “AAG Subscriber Information” means all records or other information, if any, relating to customers or subscribers of AT&T contained in Domestic AAG Infrastructure of the type referred to and feasibly Accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

1.7 “AAG Transactional Data” means the following when part of, or derived from Call Detail Records or Circuit Facilities Orders pertaining to Domestic AAG Communication, but excludes the content (payload) of a Domestic AAG Communication:

- (a) “call identifying information,” as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator;
- (b) any information related to the sender or recipient of that Domestic AAG Communication, including, without limitation subscriber identification, called party number, calling party number, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, post-cut-through dialed digit extraction, in-band and out-of-band signaling, and party add, drop and hold;
- (c) any information relating specifically to the identity and physical address of a customer or subscriber, or account payer, or the end-user of such customer or subscriber, or account payer, or associated with such person relating to all telephone numbers, domain names, Internet Protocol (“IP”) addresses, Uniform Resource Locators (“URLs”), other identifying designators, types of services, length of service, fees, usage including billing records and connection logs, and the physical location of equipment, if known and if different from the location information provided under (e) below;
- (d) the time, date, size, or volume of data transfers, duration, domain names, Media Access Control (“MAC”) or IP addresses (including source and destination), URL’s, port numbers, packet sizes, protocols or services, special purpose flags, or other header information or identifying designators or characteristics, including electronic mail headers showing From: and To: addresses;
- (e) as to any mode of transmission (including mobile transmissions), and to the extent permitted by U.S. laws, any information indicating as closely as possible the physical location to or from which a Domestic AAG Communication is transmitted; and

- (f) For the purposes of interpreting the obligations relating to AAG Transactional Data in sections 3.3, 4.1-4.3, 4.11, 6.3 and 6.8, AAG Transactional Data shall include any or all of the above insofar as such data is identified as relating to Domestic AAG Communications.

1.8 “**AT&T**” means AT&T Corp., its Affiliates, and Subsidiaries.

1.9 “**Call Detail Records**” means call-by-call transactional records derived from information produced by AT&T's network switches in connection with calls transiting those switches, which contain switching and trunking information as well as information including the date and time of the call, its duration, the dialed number, and the originating number (if available).

1.10 “**Circuit Facilities Orders**” means records produced by the AAG Network Administrator and provided to AT&T in connection with orders for dedicated circuits on the AAG Cable Network that originate or terminate in the U.S. Cable Landings, and which include, among other things, information regarding the geographic origin and destination of the circuit, the owner of the circuit, and the cable stations through which a circuit is routed.

1.11 “**Classified Information**” shall have the meaning indicated in Executive Order 12958, as amended by Executive Order 13292, or any successor executive order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act of 1954.

1.12 “**Control**” and “**Controls**” means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding:

- (a) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
- (b) the dissolution of the entity;
- (c) the closing and/or relocation of the production or research and development facilities of the entity;
- (d) the termination or non-fulfillment of contracts of the entity;
- (e) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in Section 1.10(a) through (d); or
- (f) AT&T's obligations under this Agreement.

1.13 “**De facto**” and “**de jure**” control have the meanings provided in 47 C.F.R. § 1.2110.

1.14 “**Domestic AAG Communication**” means: (a) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location, if any; and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored

or not) that originates or terminates in the United States, if any, but in either case (a) or (b), solely for such period of time, if any, as such Wire Communication or Electronic Communication is in transit on or stored in Domestic AAG Infrastructure.

1.15 “**Domestic AAG Infrastructure**” means the U.S. Cable Landings and associated AAG equipment therein, including the AT&T AAG power feed equipment in the landing buildings.

1.16 “**Effective Date**” means the date this Agreement becomes effective, which is the date this Agreement is signed by the last Party to sign it (as indicated by the date stated opposite that Party’s signature).

1.17 “**Electronic Communication**” has the meaning given it in 18 U.S.C. § 2510(12).

1.18 “**Electronic Surveillance**,” for the purposes of this Agreement, includes the following, to the extent technically feasible: (a) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(1), (2), (4) and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (b) Access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (c) acquisition of dialing, routing, addressing, or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (d) acquisition of location-related information concerning a service subscriber or facility; (e) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (f) Access to, or acquisition, interception, or preservation of, wire, oral, or electronic communications or information as described in (a) through (e) above and comparable state laws.

1.19 “**Foreign**” where used in this Agreement, whether capitalized or lower case, means non-U.S.

1.20 “**Government**,” “**Government Authority**,” or “**Government Authorities**” means any government, or any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal, judicial or arbitral body.

1.21 “**Intercept**” or “**Intercepted**” has the meaning defined in 18 U.S.C. § 2510(4).

1.22 “**Lawful U.S. Process**” means lawful U.S. federal, state, or local Electronic Surveillance or other court orders, processes, or authorizations issued under U.S. federal, state, or local law for physical search or seizure, production of tangible things, or Access to or disclosure of Domestic AAG Communications, AAG Transactional Data, or AAG Subscriber Information.

1.23 “**Management of AT&T**” means the officers and members of the Board of Directors of AT&T Corp.

1.24 “**Network Operations Center**” or “**NOC**” means the locations and facilities designated as such by the members of the AAG Consortium for purposes of performing network management, monitoring, maintenance or other operational functions for the AAG Cable Network.

1.25 “**Offshore**” or “**Offshoring**” means performing functions covered by this Agreement which are normally performed by personnel of AT&T within the territorial limits of the United States through the use of personnel outside the territorial limits of the United States.

1.26 “**Optical Distribution Frame**” or “**ODF**” means a passive device containing connection modules for terminating optical cables located in each of the cable landing stations, including the U.S. Landing Stations, that serves as the demarcation point between AAG Cable Network in each country and the non-AAG networks and communications infrastructure in each country.

1.27 “**Outsource**” or “**Outsourcing**” means performing functions covered by this Agreement, which are normally performed by personnel of AT&T, through the use of contractors of AT&T.

1.28 “**Outsourcing Contract**” means a contract between AT&T and an individual or entity to perform functions covered by this Agreement which are normally performed by employees of companies in the business of providing those telecommunications services that AT&T provides. Outsourcing Contract also includes any contract to perform a specific activity that is required to be performed by AT&T under the express terms of this Agreement.

1.29 “**Pro forma assignments**” or “**pro forma transfers of control**” are transfers that do not involve a substantial change in ownership or control as provided by Section 63.24 of the FCC's Rules (47 C.F.R. § 63.24).

1.30 “**Sensitive Information**” means information that is not Classified Information regarding: (a) the persons or facilities that are the subjects of Lawful U.S. Process; (b) the identity of the Government Authority or Government Authorities serving such Lawful U.S. Process; (c) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance; (d) the means of carrying out Electronic Surveillance; or (e) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process; as well as all other information that is not Classified Information but is: (i) designated in writing by an authorized official of a federal, state or local law enforcement agency or a U.S. intelligence agency as “Sensitive Information” of some type recognized by the agency involved; and (ii) provided by such authorized official to AT&T Security Personnel. AT&T may dispute pursuant to Article 5 whether information is Sensitive Information under this subparagraph. Such information shall be treated as Sensitive Information unless and until the dispute is resolved in AT&T's favor.

1.31 “**Security Personnel**” means the points of contact designated pursuant to Section 4.6.

1.32 “**Subsidiaries**” means subsidiaries of AT&T that have any responsibility for the operation or support of the AAG Cable Network.

1.33 “**United States**” or “**U.S.**” means the United States of America, including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.

1.34 “**Wire Communication**” has the meaning given it in 18 U.S.C. § 2510(1).

1.35 **Other Definitional Provisions.** Other capitalized terms used in this Agreement and not defined in this Article shall have the meanings assigned them elsewhere in this Agreement. The

definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Whenever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

ARTICLE 2: REQUIREMENTS REGARDING THE AAG CABLE NETWORK

2.1 Requirements. With respect to the operation of the AAG Cable Network, AT&T agrees as follows:

- (a) Barring a change of control in compliance with sections 6.1 and 6.2 of this Agreement and any other applicable legal requirements, AT&T shall maintain freedom to act independently without foreign ownership, control or influence in all matters relating to the AAG Cable Network. AT&T's compliance with the terms of the C&MA and related arrangements for AAG shall not be deemed a violation of this provision;
- (b) subject to the requirements of Article 4 below, AT&T will provide DHS upon request with copies of its security policies and procedures governing AAG-related activities at the U.S. Cable Landings; AT&T shall reasonably address any concerns DHS may raise with respect to such security policies and procedures;
- (c) AT&T shall have the ability to promptly and effectively interrupt in whole or in part traffic to and from the United States on the AAG Cable Network by disabling or disconnecting circuits at the U.S. Cable Landings;
- (d) AT&T shall have the ability to isolate the U.S. landing stations and the connecting cable segments from the rest of the AAG Cable Network and to restore and continue service on those segments, separate from the rest of AAG Cable Network;
- (e) The AAG Cable Network shall be configured so that AT&T will be able to view the status of the AAG Cable Network and individual AAG cable segments; and
- (f) AT&T shall configure Domestic AAG Infrastructure so that the AAG NOC located outside the United States will be unable to observe any portion of AT&T's network beyond the Optical Distribution Frame in the U.S. Cable Landings.

ARTICLE 3: FACILITIES, INFORMATION STORAGE AND ACCESS

3.1 Domestic AAG Infrastructure. Except to the extent and under conditions concurred in by DHS in writing:

- (a) except as required for the operation of the AAG Cable Network or as otherwise provided in this Agreement, all Domestic AAG Infrastructure shall be directed, controlled, supervised and managed by AT&T or (subject to Section 6.3) its contractors; and

- (b) AT&T shall provide technical or other assistance, but only in accordance with applicable law and to the extent technically feasible, to facilitate Electronic Surveillance of Domestic AAG Communications.

3.2 Compliance with Lawful U.S. Process. AT&T shall take all steps required by applicable law and to the extent technically feasible, to configure the Domestic AAG Infrastructure to be capable of complying, and AT&T employees in the United States will have authority unconstrained by any other AAG Consortium member to comply, with:

- (a) Lawful U.S. Process;
- (b) the orders of the President of the United States in the exercise of his/her authority under § 706 of the Communications Act of 1934, as amended, (47 U.S.C. § 606), and under § 302(e) of the Aviation Act of 1958 (49 U.S.C. § 40107(b)) and Executive Order 11161 (as amended by Executive Order 11382); and
- (c) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*).

3.3 Information Storage and Access. Unless otherwise agreed to by the Parties, AT&T shall store exclusively in the United States the following:

- (a) Domestic AAG Communications, if such communications are stored by or on behalf of AT&T for any reason;
- (b) AAG Transactional Data, if such data are stored by or on behalf of AT&T for any reason; or
- (c) AAG Subscriber Information, if such information is stored by or on behalf of AT&T for any reason;
- (d) Billing records (if any) of domestic AAG customers or AAG subscribers for use of the AAG Cable Network, if such information is stored by or on behalf of AT&T for any reason; and
- (e) AAG Network Management Information.

For the avoidance of doubt, this Section shall not be interpreted to require AT&T to generate such records or information, nor to require AT&T to store such records or information, but shall apply only to the extent such records or information are generated and stored. Notwithstanding the foregoing, nothing in this Section imposes any restriction on the storage of: (i) AAG Account Information to the extent necessary to administer and maintain AT&T's relationship with customers (if any) who have contracted specifically for use of the AAG Cable Network; and (ii) AAG Network Management Information to the extent necessary to administer and maintain AT&T's relationships with other AAG Consortium members in connection with the AAG Cable Network. Further, nothing in this Section excludes the use of AAG Transactional Data for business or network management purposes in the normal course of business if said data is subject to security and Access controls. The phrase "on behalf of" as used in this Section does not

include entities with which AT&T contracts in the ordinary course of business for peering, interconnection, roaming, collocation, long distance, or other similar commercial arrangements on which the Parties have agreed.

3.4 Storage Pursuant to 18 U.S.C. § 2703(f). Upon a request made pursuant to 18 U.S.C. § 2703(f) by a Government Authority within the United States to preserve any information in the United States relating to a Domestic AAG Communication that is in the possession, custody, or control of AT&T, including any information that is listed in Section 3.3 above, AT&T shall store such preserved records or other evidence in the United States.

3.5 Compliance with Applicable Law. Nothing in this Agreement shall excuse any Party from any obligation it may have to comply with applicable legal requirements for the retention, preservation, or production of information, records or data as well as for Electronic Surveillance. A presumption exists that information listed in Section 3.3 and stored in accordance with Section 3.3 will be exempt from the extraterritorial reach of foreign law.

3.6 Storage of Protected Information. AT&T shall store all Classified Information and Sensitive Information in accordance with applicable law and this Agreement.

ARTICLE 4: SECURITY

4.1 Measures to Prevent Improper Use or Access. AT&T shall take all reasonable measures to prevent the use of or Access to the Domestic AAG Infrastructure: (a) to conduct Electronic Surveillance; or (b) to Access, obtain or disclose Domestic AAG Communications, AAG Transactional Data, AAG Subscriber Information, Classified Information or Sensitive Information, in each case in violation of any U.S. federal, state, or local laws or the terms of this Agreement. These measures shall include maintaining and/or creating and complying with written AT&T policies and procedures related to a comprehensive security strategy for AAG-related activities at the U.S. Cable Landings. Upon written request of DHS, AT&T shall make available to the requesting Party or Parties all current policies and procedures, and agrees to meet and confer with the DHS and reasonably address any concerns they may raise as part of the procedure described herein.

4.2 Access by Foreign Government Authorities. AT&T shall not, directly or indirectly, disclose or permit disclosure of, or provide Access to Domestic AAG Communications, AAG Transactional Data, or AAG Subscriber Information, stored by or on behalf of AT&T to any person if the known purpose of such Access is to respond to the legal process or the request of or on behalf of a Foreign Government, identified representative, component or subdivision thereof, without first satisfying all applicable U.S. federal, state and local legal requirements, and without, to the maximum extent possible, having first provided notice to DHS as soon as possible and in no event later than **ten (10) business days** after such request for Access is received by or known to AT&T. AT&T shall take reasonable measures to ensure that it will promptly learn of all such requests for Access. Because of the AAG Consortium membership the Parties note that this provision is not intended to interfere with the exchange of AAG Transactional Data or routine signaling information necessary to facilitate the provision of international telecommunications on or in connection with the AAG Cable Network.

4.3 Disclosure to Foreign Government Authorities. AT&T shall not, directly or indirectly, knowingly disclose or permit disclosure of, or provide Access to:

- (a) Classified or Sensitive Information;
- (b) AAG Transactional Data, AAG Subscriber Information, or a copy of any Wire or Electronic Communications, which have been intercepted or acquired pursuant to Lawful U.S. Process; or
- (c) the existence of Lawful U.S. Process that is not already a matter of public record;

stored by or on behalf of AT&T to any Foreign Government, identified representative, component or subdivision thereof, without satisfying all applicable U.S. federal, state and local legal requirements, and without to the maximum extent possible, having first provided notice to DHS as soon as possible and in no event later than **ten (10) business days** after such request or legal process is received by or becomes known to AT&T personnel responsible for responding to such request or legal process. AT&T shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process.

4.4 Notification of Access or Disclosure Requests from Foreign Non-Governmental Entities. Within **ten (10) business days** after AT&T personnel responsible for responding to such request or legal process receive or become aware of legal process or requests from Foreign non-governmental entities for Access to or disclosure of Domestic AAG Communications stored by or on behalf of AT&T in the United States, AT&T shall notify DHS in writing of such legal process or requests, unless such disclosure would violate applicable law.

4.5 Security of Lawful U.S. Process. AT&T shall protect the designated confidentiality and security of all Lawful U.S. Process served upon it and the designated confidentiality and security of Classified and Sensitive Information in accordance with applicable U.S. federal and state law or regulation and this Agreement.

4.6 Points of Contact. Within **ten (10) business days** after the **AAG Cable Network becomes operational**, AT&T shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing the carrying out of various types of Lawful U.S. Process, in connection with the Domestic AAG Infrastructure. The points of contact shall be in the United States, shall be available **twenty-four (24) hours per day, seven (7) days per week** and shall be responsible for accepting service on AT&T of specified Lawful U.S. Process in connection with the Domestic AAG Infrastructure. Promptly after designating such points of contact, AT&T shall notify DHS in writing of the points of contact and the type of Lawful U.S. Process each is designated and cleared to receive, and thereafter shall promptly notify DHS of any change in such designation. The points of contact shall be resident U.S. citizens. AT&T shall cooperate with any request by a Government Authority within the United States that a background check, security clearance process or both be completed for a designated point of contact.

4.7 Information Security Plan. AT&T shall:

- (a) take appropriate measures to prevent unauthorized Access to or disclosure of Classified or Sensitive Information and to address proper handling and storage of such information;
- (b) assign only Screened Personnel to positions that regularly deal with or are responsible for maintaining the confidentiality of Sensitive Information;
- (c) upon request from DHS, provide the name, date of birth, and other relevant requested identifier information of each person who regularly handles or deals with Sensitive Information;
- (d) require that personnel handling Classified Information shall have been granted appropriate security clearances pursuant to Executive Order 12968;
- (e) provide that the points of contact described in Section 4.6 of this Agreement shall have sufficient authority over any of AT&T's employees who may handle Classified or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement; and
- (f) maintain appropriately secure facilities (e.g., offices) for the handling and storage of any Classified or Sensitive Information.

4.8 Nondisclosure of Protected Data. AT&T shall not directly or indirectly disclose information concerning Lawful U.S. Process, Classified Information, or Sensitive Information to any third party, or to any officer, director, shareholder, employee, agent, or contractor of AT&T, including those who serve in a supervisory, managerial or executive role with respect to the employees working with the information, unless disclosure has been approved by prior written consent obtained from DHS, or there is a need for disclosure of the information in order to seek legal advice or fulfill an obligation consistent with the purpose for which the information is collected or maintained.

4.9 Notice of Obligations. AT&T shall instruct appropriate officials, employees, contractors, and agents as to AT&T's obligations under this Agreement, including the individuals' duty to report any violation of this Agreement and the reporting requirements in Sections 6.2, 6.3, 6.5, and 6.8 of this Agreement, and shall issue periodic reminders to them of such obligations.

4.10 Access to Classified or Sensitive Information. Nothing contained in this Agreement shall limit or affect the authority of a U.S. Government Authority to deny, limit or revoke whatever Access AT&T might have to Classified or Sensitive Information under that Government Authority's jurisdiction.

4.11 Screening of Personnel. AT&T shall implement a screening process to ensure compliance with all personnel screening requirements agreed to by AT&T and the USG Parties in this Agreement, which includes screening for any existing or newly hired AT&T personnel (such personnel, upon satisfactory completion of screening procedures, to be considered "Screened Personnel"):

- (a) whose position involves Access to the Domestic AAG Infrastructure that enables those persons to monitor the content of Domestic AAG Communications;
- (b) whose position allows Access to AAG Transactional Data other than data that would constitute AAG Account Information;
- (c) all persons who have Access to Sensitive Information; and
- (d) all Security Personnel.

4.12 Screening Process Requirements. The screening process undertaken pursuant to this Section shall specifically include a background and financial investigation, in addition to a public criminal records check. In addition:

- (a) AT&T shall consult with DHS regarding the screening procedures to be utilized. AT&T shall reasonably address any concerns DHS may raise with respect to such screening procedures. AT&T shall utilize the criteria identified pursuant to Section 4.11 of this Agreement to identify the personnel to be screened.
- (b) AT&T shall cooperate with reasonable lawful requests by DHS or any U.S. Government Authority desiring to conduct any further background checks.
- (c) Individuals who are rejected pursuant to such further background checks by DHS shall not be permitted to perform functions that would require screening under this Section. AT&T shall notify DHS of the job modification of any individual rejected because of the screening conducted pursuant to this Agreement within **ten (10) business** days of such job modification, and shall provide DHS upon request with the name, date of birth and any other requested identifier information of such individual.
- (d) AT&T shall provide training programs to instruct Screened Personnel as to their obligations under the Agreement. AT&T shall monitor on a regular basis the status of Screened Personnel, and shall remove personnel who no longer meet the Screened Personnel requirements.
- (e) AT&T shall maintain records relating to the status of Screened Personnel, and shall provide these records, upon request, to DHS.
- (f) Any records or other Information relating to individual persons provided to or obtained by DHS in connection with this Agreement shall be maintained in a secure and confidential manner strictly in accordance with applicable law.

ARTICLE 5: DISPUTES

5.1 Informal Resolution. The Parties shall use reasonable efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. The Parties shall meet in person or by phone within **five (5) calendar days** of identification of a dispute, or at such other time as they shall mutually agree. Any disagreement that has not been resolved at the staff

level within **ten (10) calendar days** of such meeting may be submitted by any Party to the Assistant Secretary Policy of DHS and the General Counsel of AT&T (or such individual's designee), unless DHS believes that important national interests can be protected, or AT&T believes that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 5.2. The Parties shall meet by person or by phone within **ten (10) calendar days**, or at such later date as they may mutually agree, after notification of the dispute and inability to resolve it at the staff level. If, after meeting with higher authorized officials, any of the Parties determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 5.2. If resolution of a disagreement requires Access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances for the purpose of resolving that disagreement. A Party resorting to measures set forth in Section 5.2 shall give prior written notice of its intent to do so to each other Party.

5.2 Enforcement of Agreement. Subject to Section 5.1 of this Agreement, if any of the Parties believes that any other Party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government Authority to:

- (a) Require that the Party or Parties believed to have breached, or about to breach, this Agreement cure such breach within **thirty (30) days**, or whatever shorter time period is appropriate under the circumstances, upon receiving written notice of such breach;
- (b) request that the FCC modify, condition, revoke, cancel, or render null and void any license, permit, or other authorization granted or given by the FCC to AT&T in connection with the Application, request that the FCC take other action, or request that the FCC impose any other appropriate sanction, including but not limited to a forfeiture or other monetary penalty, against AT&T;
- (c) seek civil sanctions for any violation by AT&T of any U.S. law or regulation or term of this Agreement;
- (d) pursue criminal sanctions against AT&T, or any officer, director, employee, contractor, or agent of AT&T, or against any other person or entity, for violations of the criminal laws of the United States; or
- (d) seek suspension or debarment of AT&T from eligibility for contracting with the U.S. Government in accordance with applicable law and regulation.

5.3 Irreparable Injury. AT&T agrees that the United States would suffer irreparable injury if for any reason AT&T failed to perform any of its obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, AT&T agrees that, in seeking to enforce this Agreement, DHS shall be entitled, in addition to any other remedy available at law or equity, to seek specific performance and injunctive or other equitable relief.

5.4 Waiver. The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that

Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.

5.5 Waiver of Immunity. AT&T agrees that, to the extent that it or any of its property (including FCC licenses and authorizations and intangible property) is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of a “**Foreign State**” (as defined in 18 U.S.C. § 1603) from any legal action, suit or proceeding or from setoff or counterclaim relating to this Agreement, from the jurisdiction of any competent court or the FCC, from service of process, from attachment prior to judgment, from attachment in aid of execution of a judgment, from execution pursuant to a judgment or arbitral award, or from any other legal process in any jurisdiction, it, for itself and its property expressly, irrevocably and unconditionally waives, and agrees not to plead or claim, any such immunity with respect to matters arising with respect to this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by a U.S. federal, state, or local Government Authority. AT&T agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.* The foregoing waiver shall constitute a present waiver of immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of a Foreign State at any time any action is initiated by a U.S. federal, state, or local Government Authority against AT&T with respect to compliance with this Agreement.

5.6 Forum Selection. It is agreed by and between the Parties that a civil action among the Parties for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

ARTICLE 6: REPORTING AND NOTICE

6.1 Filings Concerning *de jure* or *de facto* Control of AT&T. If AT&T makes any filing with the FCC or any other Government Authority relating to the *de facto* or *de jure* control of AT&T Corp. or the AAG Cable Network, except for filings with the FCC for assignments or transfers of control that are *pro forma*, AT&T shall promptly provide to DHS written notice and copies of such filing.

6.2 Change in Control. If any member of the Management of AT&T acquires any information that reasonably indicates that any single foreign entity or individual, other than those already identified in connection with the Application, has or will likely obtain an ownership interest (direct or indirect) in AT&T or the AAG Cable Network above ten (10) percent, as determined in accordance with 47 C.F.R. § 63.09, or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or likely will otherwise gain either: (i) Control; or (ii) *de facto* or *de jure* control of AT&T, then such officer or director shall cause AT&T to notify DHS in writing within **ten (10) business days**. Notice under this Section shall, at a minimum:

- (a) Identify the entity or individual(s) acquiring Control (specifying the name, addresses, and telephone numbers of the entity);
- (b) Identify the beneficial owners of the increased or prospective increased interest in AT&T by the entity or individual(s) (specifying the name, addresses, and telephone numbers of each beneficial owner); and
- (c) Quantify the amount of ownership interest that the entity or individual(s) has or will likely obtain in AT&T and, if applicable, the basis for their prospective Control of AT&T.

6.3 Outsourcing Contracts. AT&T shall not enter into an Outsourcing Contract that affords the contractor Access to Sensitive Information, Classified Information, AAG Transactional Data, and AAG Subscriber Information other than in accordance with applicable law. In any Outsourcing Contract pertaining to control or operation of the Domestic AAG Infrastructure as defined herein, AT&T shall take reasonable steps to ensure that the contractor complies with the applicable terms of this Agreement. Such steps shall include the following:

- (a) AT&T shall include written provisions in the Outsourcing Contract that require the contractor to comply with all applicable terms of this Agreement or shall take other reasonable, good-faith measures to ensure that the contractor is aware of, agrees to, and is bound to comply with all such terms;
- (b) if the contractor may perform any of the contracted-for services outside the United States, or is identified after reasonable inquiry by AT&T as either Controlled by one or more foreign persons or combination of foreign persons under common Control, or as having ten (10) percent or more of its voting equity held, directly or indirectly, by one or more foreign persons or combination of foreign persons under common Control, then:
 - (i) no later than **thirty (30) days** before the Outsourcing Contract becomes effective, AT&T shall notify DHS in writing, identifying the name of the entity, describing the functions covered by this Agreement, and attaching a complete copy of the Outsourcing Contract; and
 - (ii) DHS shall have **thirty (30) days** from receipt of the notice to review and provide AT&T with any objection to the Outsourcing Contract, which objection shall be based on national security, law enforcement, or public safety grounds. If DHS objects in accordance with this Section, AT&T shall meet with the objecting Party and confer regarding such concerns.
- (c) AT&T shall not induce the contractor either to violate its obligations to AT&T related to this Agreement or to take any action that, if taken by AT&T, would violate this Agreement;
- (d) if AT&T discovers any information that reasonably indicates that the contractor or any of its employees or agents has taken an action that, had it been taken by AT&T, would violate a provision of this Agreement, or has violated its

obligations to AT&T related to this Agreement, AT&T: (i) shall notify DHS within **ten (10) business days**; and (ii) in consultation and cooperation with DHS, shall take all reasonable steps necessary to rectify promptly the situation, including, if appropriate, terminating the Outsourcing Contract (with or without notice and opportunity for cure) or initiating and pursuing litigation or other remedies at law and equity; and

- (e) neither an Outsourcing Contract nor any provision of this Section does nor shall it be construed to relieve AT&T of any of its obligations under this Agreement.

6.4 Offshoring. AT&T shall comply with all aspects of this Agreement with respect to any personnel it may have offshore.

6.5 Notice of Foreign Influence. If any member of the Management of AT&T discovers any information that reasonably indicates that any Foreign Government, any Foreign Government-controlled entity, or any foreign entity plans to participate or has participated in any aspect of the day-to-day management of AT&T or the AAG Cable Network in such a way that:

- (a) materially interferes with or impedes the performance by AT&T of its duties and obligations under the terms of this Agreement;
- (b) materially interferes with or impedes the exercise by AT&T of its rights under the Agreement; or
- (c) raises a material concern with respect to the successful fulfillment by AT&T of its obligations under this Agreement;

then such officer or director shall within **ten (10) business days** notify DHS in writing of the timing and the nature of the Foreign Government's or entity's plans or actions.

6.6 Procedure and Process on Reporting. Within **forty-five (45) days after the AAG Cable Network becomes operational**, AT&T shall adopt and distribute to the Management of AT&T, a written procedure or process for the reporting by the Management of AT&T of any noncompliance with this Agreement. This written procedure or process shall also provide for the reporting by employees, agents and contractors to the Management of AT&T of information that must be reported to DHS under Sections 6.2, 6.3, 6.5, and 6.8 of this Agreement. Any violation by AT&T of any material term of such corporate policy shall constitute a breach of this Agreement. By a written statement, AT&T shall notify all relevant employees, contractors and agents that the general categories of information identified in Sections 6.2, 6.3, 6.5, and 6.8 of this Agreement should be disclosed to the Management of AT&T and shall set forth in a clear and prominent manner the contact information for a senior manager to whom such information may be reported. The written statement informing all relevant employees, contractors, and agents of the need to report this information shall also state that AT&T shall not discriminate against, or otherwise take adverse action against, anyone who reports such information to the Management of AT&T or the United States Government.

6.7 Non-retaliation. AT&T shall continue and maintain its official corporate policy that strictly prohibits AT&T from discriminating or taking any adverse action against any officer,

director, employee, contractor, or agent because he or she has in good faith initiated or attempted to initiate a notice or report under Sections 6.2, 6.3, 6.5 or 6.8 of this Agreement, or has notified or attempted to notify the Management of AT&T to report information that he or she believes in good faith is required to be reported to DHS under either Sections 6.2, 6.3, 6.5 or 6.8 of this Agreement or under AT&T's written notice to employees on the reporting of any such information. Any violation by AT&T of any material term of such corporate policy shall constitute a breach of this Agreement.

6.8 Reporting of Incidents. AT&T shall report to DHS if it learns of any information that reasonably indicates:

- (a) a material breach of this Agreement;
- (b) Access to or disclosure of Domestic AAG Communications, or the conduct of Electronic Surveillance on Domestic AAG Infrastructure, in violation of federal, state, or local law or regulation;
- (c) Access to or disclosure of AAG Transactional Data in violation of federal, state, or local law or regulation (except for violations of FCC regulations relating to improper commercial use of AAG Transactional Data or breach of customer proprietary network information); or
- (d) improper Access to or disclosure of Classified or Sensitive Information.

This report shall be promptly made in writing by an appropriate officer of AT&T to DHS no later than **ten (10) business days** after AT&T learns of any information that reasonably indicates a matter described in this Section. AT&T shall lawfully cooperate in investigating the matters described in this Section. AT&T need not report information where disclosure of such information would be in violation of applicable law

6.9 Access to Information and Facilities. DHS may visit, at any time upon reasonable request, any part of AT&T's Domestic AAG Infrastructure or relevant security offices to conduct on-site reviews concerning the implementation of the terms of this Agreement and may at any time require copies or review of information concerning technical, physical, management, or other security measures reasonably required by DHS to verify compliance with the terms of this Agreement.

6.10 Access to Personnel. Upon reasonable notice from DHS, AT&T shall make available for interview any and all knowledgeable personnel who are in a position to provide information to verify compliance with the terms of this Agreement.

6.11 Annual Report. On or before the last day of January of each year, an appropriate officer of AT&T Corp. shall submit to DHS a report assessing AT&T's compliance with the terms of this Agreement for the preceding calendar year. The report shall include:

- (a) a copy of the then current policies and procedures adopted to comply with this Agreement;

- (b) a summary of the changes, if any, to the policies or procedures, and the reasons for those changes; and
- (c) a summary of any known acts of material noncompliance with the terms of this Agreement not otherwise reported under Section 6.8, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future.

6.12 Notices. Following the Effective Date, all notices and other communications relating to this Agreement, such as a proposed modification, shall be in writing and shall be deemed given as of the date of receipt and shall be sent by electronic mail (if an email is specified below or in a subsequent notice) and one of the following methods: (a) delivered personally; (b) sent by facsimile; (c) sent by documented overnight courier service; or (d) sent by registered or certified mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such addresses as the Parties may designate in accordance with this Section:

Department of Homeland Security
Assistant Secretary for Policy
Washington, DC 20528
ip-fcc@dhs.gov

AT&T Corp.
Keith J. Epstein
Vice President and General Counsel
AT&T Corp.
One AT&T Way
Bedminster, NJ 07921
908-234-5688 (t)
832-213-0179(f)
ke1671@att.com

James J. Talbot
General Attorney
1120 20th St. NW
Suite 1000
Washington, DC 20036
1-202-457-3048 (t)
1-202-457-3073 (f)
jtalbot@att.com

With a copy to:

Lynn R. Charytan
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Ave. NW
Washington, DC 20006
1-202-663-6455 (t)

1-202-663-6363 (f)
lynn.charytan@wilmerhale.com
Its Counsel

Notices shall be deemed received as of the date of personal delivery; the date of confirmed delivery printed on a facsimile confirmation; or the day following transmission by overnight courier or registered, certified mail. A Party may change its addresses for notice under this section by providing notice of such change to each other Party in accordance with this section.

ARTICLE 7: FREEDOM OF INFORMATION ACT

7.1 Protection from Disclosure. DHS shall take all reasonable measures to protect from public disclosure all information submitted by AT&T (or other entities in accordance with the terms of this Agreement) to DHS in connection with this Agreement and clearly marked with the legend "Business Confidential; subject to protection under 5 U.S.C. § 552(b); not to be released without notice to the filing party" or similar designation. Such markings shall signify that it is AT&T's position that the information so marked constitutes "trade secrets" and/or "commercial or financial information obtained from a person and privileged or confidential," or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4). For the purposes of 5 U.S.C. § 552(b)(4), the Parties agree that information so marked is voluntarily submitted and is exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552) under Exemption (b)(4). If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, DHS shall notify AT&T of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If AT&T objects to the notifying Party with respect to the intended disclosure and AT&T's objections are not sustained, DHS shall notify AT&T of its intention to release (as provided by Section 5 of E.O. 12600) not later than **ten (10) business days** prior to disclosure of the challenged information.

7.2 Use of Information for U.S. Government Purposes. Nothing in this Agreement shall prevent DHS from lawfully disseminating information as appropriate to seek enforcement of this Agreement, or from lawfully sharing information as appropriate with other federal, state, or local Government Authorities to protect public safety, law enforcement, or national security interests, provided that DHS takes all reasonable measures to protect from public disclosure the information marked as described in Section 7.1. Further, nothing in this Agreement shall limit the ability of DHS to disclose this Agreement or any information related to this Agreement to enforce or comply with any federal law or regulation.

ARTICLE 8: FCC CONDITION

8.1 FCC Approval. Upon the execution of this Agreement by all the Parties, DHS shall, on its own motion, at an appropriate time or at the request of AT&T, notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto (the "**Condition to FCC Authorization**"), DHS has no objection to the FCC's grant of the Application. This Section is effective upon the Effective Date, provided however that in the case of a material modification or withdrawal of the Application after the execution of this Agreement

the effectiveness of this Section may be suspended by DHS, and any such FCC filing is subject to the right to object reserved in Section 8.2.

8.2 Right to Object to Future FCC Filings. AT&T agrees that in any application or petition by AT&T to the FCC for licensing or other authority filed with or granted by the FCC after the execution of this Agreement in connection with the AAG Cable Network, except with respect to *pro forma* assignments or *pro forma* transfers of control, AT&T shall request that the FCC condition the grant of such licensing or other authority on compliance with the terms of this Agreement. Notwithstanding Section 9.9, DHS reserves the right to object, formally or informally, to the grant of any other FCC application or petition of AT&T for a license or other authorization under Titles II and III of the Communications Act of 1934, as amended, and to seek additional or different terms that would, consistent with the public interest, address any threat to the ability of the United States to enforce the laws, preserve the national security and protect the public safety raised by the services and transactions underlying any such application or petition.

ARTICLE 9: OTHER

9.1 Right to Make and Perform Agreement. AT&T hereby represents that it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of AT&T enforceable in accordance with its terms.

9.2 Headings. The Article and Section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement.

9.3 Other Laws. Nothing in this Agreement is intended to limit or constitute a waiver of: (a) any obligation imposed by any U.S. federal, state, or local laws on AT&T; (b) any enforcement authority available under any U.S. or state laws; (c) the sovereign immunity of the United States; or (d) any authority the U.S. Government may possess over the activities or facilities of AT&T located within or outside the United States (including authority pursuant to the International Emergency Economic Powers Act). Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable law.

9.4 Statutory References. All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.

9.5 Non-Parties. Nothing in this Agreement is intended to confer or does confer any rights on any person other than the Parties.

9.6 Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties with respect to the subject matter. This Agreement may only be modified by written agreement signed by all of the Parties. DHS agrees to consider promptly and in good faith possible modifications to this Agreement if AT&T believes that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service

providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within **thirty (30) days** after approval in writing by the Parties.

9.7 Severability. The provisions of this Agreement shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction, it shall not affect any other provision of this Agreement or the application of any provision thereof.

9.8 Changes in Circumstances for AT&T. DHS agrees to negotiate in good faith and promptly with respect to any request by AT&T for relief from application of specific provisions of this Agreement if there is a change in circumstances such that those provisions become unduly burdensome or have a demonstrably adverse effect on AT&T's competitive position.

9.9 Changes in Circumstances for DHS. If after the date that all the Parties have executed this Agreement, DHS finds that the terms of this Agreement are inadequate to address national security, law enforcement, or public safety concerns, then AT&T shall negotiate in good faith to modify this Agreement to address those concerns.

9.10 Counterparts. This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.

9.11 Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns. This Agreement shall also be binding on all subsidiaries, divisions, departments, branches, and other components or agents of AT&T Corp., and on all Affiliates of AT&T Corp.

9.12 Effectiveness of Agreement. Except as otherwise specifically provided in the provisions of this Agreement, the obligations imposed and rights conferred by this Agreement shall take effect upon the Effective Date.

9.13 Notice of Material Change in AAG Cable Network. AT&T shall provide a minimum of **thirty (30) days** advanced notice to DHS in the event that AT&T or any Affiliate changes or intends to materially change the technical or operation plans set forth in the Recitals to this Agreement such that the material representations made therein are no longer fully accurate, true and complete.

[Signature Pages Follow]

This Agreement is executed on behalf of the Parties:

AT&T Corp.

Date: June 6, 2008


By: 

Printed Name: Keith J. Epstein

Title: Vice President and General Counsel

United States Department of Homeland Security

Date: June 10, 2008

By: 

Printed Name: Stewart A. Baker

Title: Assistant Secretary for Policy

EXHIBIT A
CONDITION TO FCC AUTHORIZATION

IT IS FURTHER ORDERED, that this authorization and any licenses granted thereunder are subject to compliance with the provisions of the agreement (the "**Agreement**") between AT&T Corp. on the one hand, and the Department of Homeland Security ("**DHS**") on the other, dated June 10, 2008, which Agreement is designed to address national security, law enforcement, and public safety concerns of DHS regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligation imposed by federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.