

MORTGAGE RECORD 85

(c) State that the signers, either personally or through one or more competent assistants, have examined the specified Available Capital Additions; that the Available Capital Additions so specified are Capital Additions as defined in Section 11 of Article XVI hereof and do not consist in whole or in part of Capital Additions excluded from the definition of Available Capital Additions under the provisions of Section 11 of Article XVI hereof; and that such Available Capital Additions are desirable for use and are in use or are intended for use in the conduct of the business of the Corporation as a telephone company;

(d) State the Cost and the Fair Value determined as of a date within sixty (60) days prior to the date of the certificate, of such Available Capital Additions;

(e) State (i) whether any of such Available Capital Additions consist of property which prior to the date of acquisition thereof by the Corporation was used or operated by a person or persons other than the Corporation; - and if any such Available Capital Additions are stated to have been so used or operated; (ii) briefly described such Available Capital Additions; and (iii) state the Fair Value thereof; and in case such Fair Value is equal to or exceeds the greater of (a) Twenty-five thousand dollars (\$25,000) or (b) one per cent. (1%) of the aggregate principal amount of all bonds issued under this Indenture at the time outstanding, as stated in the accompanying Net Earnings Certificate provided for in Paragraph (4) of this subdivision (B), then (iv) describe all other property, if any, which, prior to the acquisition thereof by the Corporation, was used or operated by a person or persons other than the Corporation in a business similar to that in which such property has been or is to be used or operated by the Corporation and which has been subjected to the lien of this Indenture since the commencement of the current calendar year, and as to which an Independent Engineer's Certificate has not previously been furnished to the Trustee;

(f) State the Amount of Net Property Retirements, and show how such Amount has been calculated and to that end specify (i) all Retired Property which has been retired subsequent to March 31, 1941, to a date specified in the certificate, which date shall not be more than sixty (60) days preceding the authentication and delivery of bonds applied for in the accompanying application and which has not been specified as Retired Property in an Engineer's Certificate previously delivered to the Trustee for the purpose of determining an Amount of Available Capital Additions; (ii) the aggregate Cost of all Retired Property which has been retired subsequent to March 31, 1941, to the date specified under the foregoing clause (i) of this subparagraph (f) whether such Retired Property shall have been specified in such Engineer's Certificate or in previous Engineer's Certificates; (iii) the amounts credited against such Retired Property as provided in the definition of Amount of Net Property Retirements in Section 13 of Article XVI and the nature of such credits not stated in previous certificates; (iv) the Amount of Net Property Retirements deducted in Engineer's Certificates previously delivered to the Trustee for the purpose of determining an Amount of Available Capital Additions; and (v) the balance of the Amount of Net Property Retirements, if any, to be deducted in computing the Amount of Available Capital Additions for the purpose for which the certificate is delivered; and

(g) State (i) the Cost or Fair Value, whichever is less, of the Available Capital Additions specified pursuant to the foregoing subparagraph (d); (ii) the unapplied balance, if any, of the Amount of Available Capital Additions shown under the preceding subparagraph (a); and (iii) the aggregate of the amounts stated under clauses (i) and (ii) of this subparagraph (g) and state as the Amount of Available Capital Additions the balance remaining after deducting from such aggregate the balance of the Amount of Net Property Retirements, as stated in the Engineer's Certificate pursuant to the requirements of clause (v) of the preceding subparagraph (f).

(3) In case the Fair Value of any Available Capital Additions which have been used or operated by a person or persons other than the Corporation, as stated in the accompanying Engineer's Certificate pursuant to the requirements of clause (iii) of subparagraph (e) of Paragraph (2) of this subdivision (B), is equal to or exceeds the greater of (a) Twenty-five thousand dollars (\$25,000) or (b) one per cent. (1%) of the aggregate principal amount of all bonds issued under this Indenture at the time outstanding as stated in the accompanying Net Earnings Certificate provided for in Paragraph (4) of this subdivision (B), then an Independent Engineer's Certificate stating the Fair Value of such Available Capital Additions and also the Fair Value of all other property described pursuant to clause (iv) of said subparagraph (e) in said Engineer's Certificate.

(4) A Net Earnings Certificate (1) stating the amount of Earnings Applicable to Bond Interest for a period of twelve consecutive calendar months immediately preceding the delivery to the Trustee of the accompanying application for authentication and delivery of bonds; (ii) stating separately the aggregate principal amount of the bonds and indebtedness mentioned in clauses (a), (b) and (c) of the second paragraph of subdivision (A) of this Section 4; (iii) stating the interest requirements on such bonds and indebtedness for a period of one year; and (iv) stating the aggregate principal amount of bonds authenticated and delivered under the provisions of Section 1, 4, 5 and 6 of this Article II since the commencement of the current calendar year exclusive of bonds in connection with the authentication and delivery of which no Net Earnings Certificate was required and bonds in connection with the authentication and delivery of which an Independent Accountant's Certificate was previously delivered to the Trustee.

In the event that (1) the aggregate principal amount of (a) the bonds so stated to have been authenticated and delivered since the commencement of the current calendar year pursuant to the foregoing clause (iv) of this Paragraph (4) and (b) the bonds applied for, is equal to or exceeds ten per cent. (10%) of the aggregate principal amount of all bonds issued under this Indenture at the time outstanding, as stated in the Net Earnings Certificate, and (2) the twelve months' period in respect of which Earnings Applicable to Bond Interest are computed in the Net Earnings Certificate is a period with respect to which an annual report is required to be filed by the Corporation pursuant to the provisions of Section 23 of Article V hereof, then there shall also be delivered to the Trustee an Independent Accountant's Certificate confirming the facts stated in the Net Earnings Certificate.

(5) An Opinion of Counsel stating in the opinion of the signer:

(a) that the Corporation has title to the Available Capital Additions described in the accompanying Engineer's Certificate or that, upon the delivery of instruments of conveyance, assignment or transfer specified in the opinion, it will have title to such Available Capital Additions;

(b) that all of the Available Capital Additions of the Corporation so described are subject to the lien of this Indenture and that none of such Available Capital Additions is subject to any lien prior to or on a parity with the lien of this Indenture, except Permitted Liens, or, in the alternative, stating what if any documents should be delivered, recorded or filed so as to subject such property to the lien of this Indenture subject to no lien prior to or on a parity with the lien of this Indenture, except Permitted Liens; and

(c) that the Corporation has corporate authority and all necessary permission from governmental authorities to own and operate the Available Capital Additions so described. Such opinion may also state that the title to such Available Capital Additions or any specified part thereof, in addition to Permitted Liens referred to above, is subject to easements, restrictions or minor defects of title and the general nature thereof; and such easements, restrictions and minor defects of title shall not prevent the authentication and delivery of the bonds applied for if such opinion shall also state that in the opinion of the signer they do not affect the security afforded by this Indenture for the bonds issued hereunder or the right of the Corporation to use such property in the conduct of its business as a telephone company.

(6) The instruments of conveyance, assignment and transfer, if any, specified in such Opinion of Counsel, in accordance with clause (a) of the foregoing Paragraph (5) of this subdivision (B), or evidence satisfactory to the Trustee of the delivery thereof to the Corporation, and the documents, if any, stated in such Opinion of Counsel, in accordance with clause (b) of the foregoing Paragraph (5) of this subdivision (B), or evidence satisfactory to the Trustee of the Delivery or recording or filing thereof.