

MORTGAGE RECORD 85

Section 4. Return of Money in Maintenance Fund to Corporation under Certain Circumstances.

Unless a completed default of the character specified in Section 1 of Article IX of this Indenture has occurred and has not been rescinded and annulled as provided in Section 1 of Article IX hereof, or been otherwise cured or made good to the satisfaction of the Trustee, any moneys deposited by the Corporation with the Trustee in the Maintenance Fund may be withdrawn at any time within three (3) years after the deposit of such moneys therein by the Corporation to an amount equal to either

- (a) An Amount of Available Capital Additions; or
- (b) The Cost or Fair Value, whichever shall be less, of Available Capital Additions purchased, constructed or otherwise acquired by the Corporation subsequent to a date not more than thirty (30) days preceding the date of the deposit of the moneys so withdrawn and without deduction on account of the Amount of Net Property Retirement.

Such money shall from time to time be paid out by the Trustee upon delivery to the Trustee of a written request of the Corporation, accompanied by a Resolution authorizing such request and

- (1) In case the Corporation applies for the withdrawal of such moneys on the basis of an Amount of Available Capital Additions, such certificates, opinions, instruments and other documents with respect to such Amount of Available Capital Additions as would be necessary under the provisions of subdivision (B) of Section 4 of Article II hereof to entitle the Corporation to the authentication and delivery of bonds upon the basis thereof, except that for such purpose it shall not be necessary to deliver to the Trustee the Net Earnings Certificate or Independent Accountant's Certificate provided for in Paragraph (4) of subdivision (B) of Section 4 of Article II hereof, or any of the documents provided for in Section 3 of Article II hereof; and the documents to be delivered to the Trustee for such purpose shall conform to the applicable requirements of subdivision (B) of Section 4 of Article II hereof, but with such omissions or variations therefrom, or insertions therein, as may be appropriate in the light of the purpose for which they are used, omitting in particular from the Engineer's Certificate required by Paragraph (2) of such subdivision (B) the description of other property required by clause (iv) of subparagraph (e) of said Paragraph (2), and from the Independent Engineer's Certificate required by Paragraph (3) of such subdivision (B) the Fair Value of such other property; or

- (2) In case the Corporation applies for the withdrawal of such moneys on the basis of the Cost or Fair Value of Available Capital Additions, the following certificates, opinions, instruments and other documents:

A. An Engineer's Certificate dated not more than thirty (30) days preceding the date of the withdrawal of the moneys applied for

- 1. Specifying the Available Capital Additions proposed as a basis for the withdrawal of the moneys applied for, and stating that the Available Capital Additions so specified were purchased, constructed, or otherwise acquired by the Corporation subsequent to a date not more than thirty (30) days preceding the date of the deposit of the moneys the withdrawal of which is applied for, and between dates to be specified in the Certificate;

- 2. Describing the Available Capital Additions so specified in such manner and detail as to show conformity thereof with the definition of Capital Additions as set forth in Section 11 of Article XVI of this Indenture;

- 3. Stating that the signers, either personally or through one or more competent assistants, have examined the Available Capital Additions so specified; that such Available Capital Additions are Capital Additions as defined in Section 11 of Article XVI hereof, and were purchased, constructed or otherwise acquired between the dates specified in such certificate; that such Available Capital Additions 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;

- 4. Stating 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;

- 5. Stating (i) whether any of such Available Capital Additions consists of property which, prior to the date of acquisition 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 describing such Available Capital Additions, (iii) stating the Fair Value thereof and (iv) stating the aggregate principal amount of all bonds issued under the Indenture outstanding at the date of the Certificate.

- B. In case the Fair Value of any Available Capital Additions which prior to the date of acquisition by the Corporation were 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 5 of subparagraph A of Paragraph (2) of this Section 4 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 Engineer's Certificate, then an Independent Engineer's Certificate, dated not more than thirty (30) days preceding the date of the withdrawal of the moneys applied for, stating the Fair Value of such Available Capital Additions, determined as of a date within sixty (60) days prior to the date of the Certificate.

C. An Opinion of Counsel stating in the opinion of the signer:

- (i) 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;

- (ii) 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

- (iii) 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 withdrawal of the moneys 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.

- D. The instruments of conveyance, assignment and transfer, if any, specified in such Opinion of Counsel, in accordance with clause (i) of the foregoing subparagraph C, or evidence satisfactory to the Trustee of the delivery thereof to the Corporation, and the documents, if any, specified in such Opinion of Counsel, in accordance with clause (ii) of such subparagraph C, or evidence satisfactory to the Trustee of the delivery or recording or filing thereof.

Section 5. Application of Moneys not Withdrawn within Three Years.

Any moneys not withdrawn from the Maintenance Fund, pursuant to the provisions of Section 3 and 4 of this Article IV, within three (3) years after the deposit of such moneys therein, shall be applied by the Trustee to the purchase or redemption of bonds in the manner and on the conditions required by the provisions of Section 4 or Article VIII hereof; and the Corporation covenants that if bonds are so purchased it will pay to the Trustee the additional payment required by the last paragraph of Section 3 of Article VIII and if bonds are so redeemed it will deposit with the Trustee the additional cash required by the last paragraph of said Section 4 of Article VIII.