

MORTGAGE RECORD 85

Section 5. The terms "the mortgaged and pledged property" and "the mortgaged property" and "the mortgaged premises" and "the trust estate" shall mean the property, rights and franchises described in the granting clauses of this Indenture (including specifically, but without limitation, the after-acquired property clauses included among such granting clauses).

Section 6. The term "Resolution" shall mean a resolution or a copy thereof, certified by the Secretary or by an Assistant Secretary of the Corporation to have been duly adopted by the Board of Directors of the Corporation.

Section 7. The term "Engineer" shall mean an individual, or a partnership, or a corporation, engaged in an engineering profession or business, and the term "Engineer's Certificate" shall mean a certificate signed and verified by the President, or by a Vice-President of the Corporation, and by an Engineer appointed by the Corporation, conforming to the requirements of Section 25 of this Article, in addition to the other applicable requirements of this Indenture. The Engineer who makes a certificate of the sort termed an "Engineer's Certificate" may be an employee of the Corporation itself, or may be an affiliated corporation, or may be an employee of an affiliated corporation. The term "Independent Engineer" shall mean an Engineer as above defined who shall not be an employee of or under regular retainer from the Corporation or be an affiliated corporation or be an employee of an affiliated corporation and who shall be appointed by the Board of Directors of the Corporation and selected or approved by the Trustee in the exercise of reasonable care. The term "Independent Engineer's Certificate" shall mean a certificate signed and sworn to by an Independent Engineer, likewise conforming to the requirements of Section 25 of this Article, in addition to other applicable requirements under this Indenture.

Section 8. The term "Opinion of Counsel" shall mean an Opinion in writing signed by legal counsel (who may be of counsel to the Corporation) appointed by the Board of Directors of the Corporation and approved by the Trustee in the exercise of reasonable care, and conforming to the requirements of Section 25 of this Article, in addition to other applicable requirements of this Indenture. Any Opinion of Counsel given as to title to property may be based, in whole or in part, upon any guaranty, or title policy, certified abstract, certificate or opinion issued or rendered by any person, partnership, or corporation while engaged in the business of insuring or guaranteeing titles to property, or may be based upon the opinion of other counsel; provided that in each such case such Opinion of Counsel shall state that the signer of that Opinion believes that the person, partnership, corporation, or other counsel who has issued, rendered, or given such guaranty or title policy, such certified abstract, such certificate, or such opinion is reputable and one upon whom he may properly rely.

Section 9. The term "Treasurer's Certificate" shall mean a certificate signed and verified by the President, or a Vice-President, and by the Treasurer, or an Assistant Treasurer of the Corporation, and conforming to the requirements of Section 25 of this Article, in addition to other applicable requirements of this Indenture.

Section 10. The term "Independent Accountant's Certificate" shall mean a certificate signed by an independent public accountant (who shall not be an employee of the Corporation, or be an affiliated corporation, or be an employee of an affiliated corporation) appointed by the Board of Directors of the Corporation and selected or approved by the Trustee, in the exercise of reasonable care. Such certificate shall likewise conform to the requirements of Section 25 of this Article, in addition to other applicable requirements of this Indenture.

Section 11. The term "Capital Additions" shall mean and include all new or additional property of the character described in the granting clauses of this Indenture (including separate and distinct plants, systems and properties, and including property replacing other property which has been retired), and all permanent improvements, extensions, additions and betterments (including equipment) to or about the plants and properties of the Corporation, located in the State of Kansas, which are used or useful in connection with the business of the Corporation as a telephone company, and which are purchased, constructed, erected, or otherwise acquired by the Corporation subsequent to March 31, 1941, and are properly chargeable, under sound accounting practice for companies engaged in businesses similar to that of the Corporation, at on, as additions to capital account. The term "Capital Additions" shall not include any of the following:

- (1) Any property which is not subject to the direct lien of this Indenture as a first lien, or which is subject to any lien, other than Permitted Liens, which is prior to or is on a parity with the lien hereof;
- (2) Any leases, franchises, contracts, choses in action, shares of stock, bonds, notes, bills of exchange, evidences of indebtedness, or other securities;
- (3) Any equipment, materials, goods, merchandise, appliances, or supplies acquired for the purpose of sale in the ordinary course of business, or for consumption in the operation of any properties of the Corporation, or any motor cars, or any furniture, or any materials, supplies or equipment acquired for the purpose of consumption or use in the construction or repair of any of the properties of the Corporation which are not chargeable to capital account in accordance with sound accounting practice, as above mentioned;
- (4) Any property acquired or constructed by the Corporation in maintaining the property which is subject to the lien of this Indenture in good repair, working order and condition, except to the extent that any part of such property may be chargeable to capital account, in accordance with sound accounting practice, as above mentioned.

The term "Capital Additions" may include properties which otherwise conform to the foregoing provisions of this Section, and which are acquired by means of or in connection with the merger into the Corporation of any other corporation, or the consolidation of the Corporation with any other corporation, or which are acquired as a part of the assets of any other corporation which itself is acquired by the Corporation as an entirety, or substantially as an entirety. Properties, plants, structures, extensions, additions and improvements otherwise conforming to the foregoing provisions of this Section, which are in the process of construction or erection, shall also be included in the term "Capital Additions" in so far as they are actually constructed or erected.

The term "Available Capital Additions" as of any particular time shall mean such capital additions as are in use at such time, or as are intended for use at a future time in the conduct of the business of the Corporation as a telephone company, but not including any of the following:

- (a) Capital Additions which have been made the basis of the authentication and delivery of bonds under this Indenture; and
- (b) Capital Additions which have been taken as a credit to the Maintenance Fund provided for in Article IV of this Indenture; and
- (c) Capital Additions which have been made the basis for the release of property from the lien of this Indenture (other than property released, which property had been purchased, constructed or otherwise acquired by the Corporation subsequent to March 31, 1941, and had not been made the basis for the issuance of bonds under this Indenture or for the withdrawal of cash or for the release of property under any provision of this Indenture or been taken as a credit to the Maintenance Fund provided for in Article IV of this Indenture); and
- (d) Capital Additions which have been made the basis for the withdrawal of cash deposited under any provision of this Indenture (other than cash constituting the proceeds, including insurance moneys, of property purchased, constructed or otherwise acquired by the Corporation subsequent to March 31, 1941, which property has not been made the basis for the issuance of bonds under this Indenture or for the withdrawal of cash or for the release of property under any provision of this Indenture or been taken as a credit to the Maintenance Fund provided for in Article IV of this Indenture).