

APPENDIX PERFORMANCE MEASUREMENTS

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APPENDIX PERFORMANCE MEASUREMENTS

1. INTRODUCTION

- 1.1 The Performance Measurements contained herein, notwithstanding any provisions in any other appendix in this Agreement, are not intended to create, modify or otherwise affect Parties' rights and obligations with respect to OSS access. The existence of any particular performance measure, or the language describing that measure, is not evidence that **LEVEL 3** is entitled to any particular manner of access, nor is it evidence **SBC-11STATE** is limited to providing any particular manner of access. The Parties' rights and obligations to such access are defined elsewhere, including the relevant laws, FCC and PUC decisions/regulations, tariffs, and within this Agreement.

2. SOLE REMEDY

- 2.1 These liquidated damages shall be the sole and exclusive remedy of **LEVEL 3** for **SBC 11-STATE**'s failure to meet specified performance measures and shall be in lieu of any other damages **LEVEL 3** might otherwise seek through any claim or suit brought under any contract or tariff to the extent such failure also constitutes a breach.

3. DEFINITIONS

- 3.1 When used in this Appendix, the following terms will have the meanings indicated:

3.1.1 Performance Criteria

- 3.1.1.1 The target level of **SBC-11STATE** performance specified for each Performance Measurement. Generally, the Performance Measurements contained in this Appendix specify performance equal to that **SBC-11STATE** achieves for itself in providing equivalent end user service as the Performance Criterion. Parity exists when the measured results in a single month (whether in the form of means, proportions, or rates) for the same measure, at equivalent disaggregation for **SBC-11STATE** and **LEVEL 3** are used to calculate an appropriate test statistic and the resulting test value has an associated probability that is no less than the critical probability indicated in the Table of Critical Values shown in Section 8.
- 3.1.1.2 Performance Measurements for which parity calculations are not possible have a specified *standard* as the Performance Criterion. Compliance is assessed by comparing the result obtained by **LEVEL 3** with the applicable standard using an appropriate statistical test. The result is compliant if the probability associated with the test statistic is no less than the critical probability indicated in the Table of Critical Values shown in Section 8.

3.1.2 Performance Measures

- 3.1.2.1 The set of measures listed in the region-specific Attachments is attached hereto and incorporated by reference into this Appendix. There is a separate Attachment for each Region, to best document unique processes. The purposes of the rules are consistent across the regions.

- 3.1.2.2 The set of measures listed in all of Section 13 of this Appendix.

3.1.3 Non-compliance

- 3.1.3.1 The failure by **SBC-11STATE** to meet the Performance Criteria for any performance measure identified as an available measurement type in Section 13.

4. OCCURRENCE OF A SPECIFIED PERFORMANCE BREACH

- 4.1 In recognition of either: 1) the loss of End User opportunities, revenues and goodwill which **LEVEL 3** might sustain in the event of a Specified Performance Breach; 2) the uncertainty, in the event of a Specified Performance Breach, of **LEVEL 3** having available to its End User opportunities similar to those opportunities available to **SBC-11STATE** at the time of a breach; or 3) the difficulty of accurately ascertaining the amount of damages **LEVEL 3** would sustain if a Specified Performance Breach occurs, **SBC-11STATE** agrees to pay **LEVEL 3** Liquidated Damages, subject to Section 5.1 below.

5. LIQUIDATED DAMAGES AS FORM OF REMEDY

- 5.1 The Parties agree and acknowledge that a) the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances known by the Parties at the time of the negotiation and entering into this Agreement, with due consideration given to the performance expectations of each Party; b) the Liquidated Damages constitute a reasonable approximation of the damages **LEVEL 3** would sustain if its damages were readily ascertainable; c) neither Party will be required to provide any proof of Liquidated Damages; and d) the Liquidated Damages provided herein will constitute full compensation for any failure of **SBC-11STATE** to meet a specified performance commitment in this Appendix and any specific time commitments for the same activity contained in any other Attachments or Appendices.

6. LIQUIDATED DAMAGES PAYMENT PLAN; GENERALLY

- 6.1 Liquidated damages apply to the available, non-diagnostic measurements of the FCC Merger Conditions designated in Section 13 below, when **SBC-11STATE** delivers non-compliant performance as defined in Section 3.1.3. In no event shall **SBC-11STATE** be required to pay liquidated damages for any performance which was at parity or in compliance with the applicable benchmark at the time that the performance occurred.
- 6.2 The Table of Critical Values (Section 8) gives the maximum number, F, of measurements of those required to be reported to **LEVEL 3** that may fail the Performance Criteria in any month. Liquidated damages apply to Non-compliant measures that are in excess of the applicable value of F.
- 6.3 There are two kinds of failures of the Performance Criteria. *Ordinary* failures are failures on a measure for one month or two consecutive months. *Chronic* failures are failures on a measure for three consecutive months. Ordinary failures may be excused up to the applicable value of F from the Table of Critical Values. Chronic failures may not be excused in that manner. \$500 is paid for each ordinary failure in excess of F. \$2,500 is paid for each Chronic failure. For example, if the value of F is 8 and there are 10 Ordinary failures and 1 Chronic failure in a month, then the Liquidated Damages for that month would be $(10-8)*\$500 + \$2,500 = \$3,500$. If there were 7 Ordinary failures and no Chronic failures, no Liquidated Damages would be paid.

7. LIQUIDATED DAMAGES; METHOD OF CALCULATION

- 7.1 **SBC-11STATE** and **LEVEL 3** agree to use the following as statistical tests for evaluating the compliance of **LEVEL 3** results with the Performance Criterion. These tests are applicable if the number of data points for **SBC-11STATE** and **LEVEL 3** is greater than or equal to 30 for a given measurement.
- 7.2 The following list describes the tests to be used in evaluating the performance criterion. In each test, the important concept is the probability that **LEVEL 3**'s results are significantly worse than either the comparable result for **SBC-11STATE** or the benchmark (whichever is relevant to the test). This probability is compared with the P value from the Table of Critical Values to decide if the measure meets the Performance Criterion. Probabilities that are less than the P value are deemed to have failed the test.

For parity measures that are expressed as Averages or Means, the following (Modified) Z test applies:

$$z = (\text{DIFF}) / \delta_{\text{DIFF}}$$

Where;

$$\text{DIFF} = M_{\text{ILEC}} - M_{\text{CLEC}}$$

M_{ILEC} = ILEC Average

M_{CLEC} = CLEC Average

$$\delta_{\text{DIFF}} = \text{SQRT} [\delta^2_{\text{ILEC}} (1/n_{\text{CLEC}} + 1/n_{\text{ILEC}})]$$

δ^2_{ILEC} = Calculated variance for ILEC.

n_{ILEC} = number of observations or samples used in ILEC measurement

n_{CLEC} = number of observations or samples used in CLEC measurement

The probability of the Z statistic is obtained from a standard normal distribution.

For parity measures that are expressed as Percentages or Proportions:

$$z = (\text{DIFF}) / \delta_{\text{DIFF}}$$

Where;

$$\text{DIFF} = P_{\text{ILEC}} - P_{\text{CLEC}}$$

P_{ILEC} = ILEC Proportion

P_{CLEC} = CLEC Proportion

$$\delta_{\text{DIFF}} = \text{SQRT} [\delta^2_{\text{ILEC}} (1/n_{\text{CLEC}} + 1/n_{\text{ILEC}})]$$

$\delta^2_{\text{ILEC}} = P_{\text{ILEC}} (1 - P_{\text{ILEC}})$.

n_{ILEC} = number of observations or samples used in ILEC measurement

n_{CLEC} = number of observations or samples used in CLEC measurement

The probability of the Z statistic is obtained from a standard normal distribution.

In the event that $P_{\text{ILEC}} = 0$ (and low values are associated with good service), the above test cannot be used. In such cases, Fisher's Exact Test is used to calculate the probability, P_{FE} , of the data given the hypothesis of parity.:

$$P_{\text{FE}} = 1 - \sum_{x=0}^{H_{\text{CLEC}}-1} \frac{\binom{n_{\text{CLEC}}}{x} \binom{n_{\text{ILEC}}}{H_{\text{CLEC}}+H_{\text{ILEC}}-x}}{\binom{n_{\text{CLEC}}+n_{\text{ILEC}}}{H_{\text{CLEC}}+H_{\text{ILEC}}}}$$

Where;

$$H_{\text{CLEC}} = P_{\text{CLEC}} n_{\text{CLEC}}$$

$$H_{\text{ILEC}} = P_{\text{ILEC}} n_{\text{ILEC}}.$$

If $P_{\text{ILEC}} = 1$ (and high values are associated with good service), the same formula is used with the following interpretation:

$$H_{\text{CLEC}} = n_{\text{CLEC}} - P_{\text{CLEC}} n_{\text{CLEC}}$$

$$H_{\text{ILEC}} = n_{\text{ILEC}} - P_{\text{ILEC}} n_{\text{ILEC}}.$$

Of course if it is also true that $H_{\text{CLEC}} = 0$, then $P_{\text{FE}} = 1$ because the results are at parity.

For parity measures that are expressed as Rates or Ratios: a binomial test is used to calculate the probability of the data given the hypothesis of parity:

$$P_{\text{Rate}} = 1 - \sum_{x=0}^{H_{\text{CLEC}}-1} \binom{N}{x} p^x (1-p)^{N-x}$$

Where;

H_{CLEC} = numerator for the CLEC

H_{ILEC} = numerator for the ILEC

$$N = H_{\text{CLEC}} + H_{\text{ILEC}}$$

D_{CLEC} = denominator for CLEC

D_{ILEC} = denominator for ILEC

$p = D_{CLEC} / (D_{CLEC} + D_{ILEC})$

In calculating the difference between the performances the formulae given above apply when a larger CLEC value indicates a higher quality of performance. For cases in which a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e., $M_{CLEC} - M_{ILEC}$, $P_{CLEC} - P_{ILEC}$).

For measures with benchmarks that are expressed as Averages or Means:

$t = (DIFF) / \delta_{DIFF}$

Where;

$DIFF = M_{CLEC} - BM$

M_{CLEC} = CLEC Average

BM = Benchmark

$\delta_{DIFF} = \text{SQRT} [\delta^2_{CLEC} (1/n_{CLEC})]$

δ^2_{CLEC} = Calculated variance for CLEC.

n_{CLEC} = number of observations or samples used in CLEC measurement

The probability of the t statistic is obtained from Student's distribution with $n_{CLEC} - 1$ degrees of freedom.

For measures with benchmarks that are expressed as Percentages or Proportions:

When high proportions designate good service, the probability of the CLEC result is given by

$$\sum_{x=0}^K \binom{N}{x} B^x (1-B)^{N-x}$$

Where

$K = PN$

P = CLEC proportion

N = number of observations or samples used in CLEC measurement

B = benchmark expressed as a proportion

When low proportions designate good service, the probability of the CLEC result is given by

$$1 - \sum_{x=0}^{K-1} \binom{N}{x} B^x (1-B)^{N-x}$$

with the same definition of symbols as is given above.

- 7.3 The following table will be used for determining the critical probabilities that define the Performance Criterion as well as the number of non-compliant measures that may be excused in a given month. The table is read as follows: (1) determine the number of measures to which Liquidated Damages are applicable and which have sample sizes greater than or equal to 30 cases. Let this number be M. (2) Find the value of M in the columns of the table with the heading "M". (3) To the immediate right of the value of M, find the value in the column labeled "F". This is the maximum number of measures that may be failed when there are M measures being evaluated. (4) To the immediate right of F in the column labeled "P" is the critical probability for determining compliance in each statistical test performed on the M measures. Statistical tests that yield probabilities less than this value indicate failures for the sub-measure.

8. TABLE OF CRITICAL VALUES

M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P
1	0	0.010	71	8	0.051	141	14	0.054	211	19	0.054	281	23	0.051	351	28	0.052
2	1	0.100	72	8	0.050	142	14	0.054	212	19	0.053	282	23	0.051	352	28	0.052
3	1	0.059	73	9	0.059	143	14	0.054	213	19	0.053	283	23	0.051	353	28	0.052
4	2	0.141	74	9	0.058	144	14	0.053	214	19	0.053	284	23	0.050	354	28	0.051
5	2	0.106	75	9	0.057	145	14	0.053	215	19	0.053	285	23	0.050	355	28	0.051
6	2	0.085	76	9	0.056	146	14	0.052	216	19	0.052	286	23	0.050	356	28	0.051
7	2	0.071	77	9	0.055	147	14	0.052	217	19	0.052	287	24	0.053	357	28	0.051
8	2	0.061	78	9	0.055	148	14	0.052	218	19	0.052	288	24	0.052	358	28	0.051
9	2	0.053	79	9	0.054	149	14	0.051	219	19	0.052	289	24	0.052	359	28	0.051
10	3	0.093	80	9	0.053	150	14	0.051	220	19	0.051	290	24	0.052	360	28	0.051
11	3	0.084	81	9	0.053	151	14	0.051	221	19	0.051	291	24	0.052	361	28	0.050
12	3	0.076	82	9	0.052	152	14	0.050	222	19	0.051	292	24	0.052	362	28	0.050
13	3	0.069	83	9	0.051	153	15	0.055	223	19	0.051	293	24	0.052	363	28	0.050
14	3	0.064	84	9	0.051	154	15	0.054	224	19	0.050	294	24	0.051	364	28	0.050
15	3	0.059	85	9	0.050	155	15	0.054	225	19	0.050	295	24	0.051	365	29	0.052
16	3	0.055	86	10	0.057	156	15	0.054	226	20	0.053	296	24	0.051	366	29	0.052
17	3	0.052	87	10	0.057	157	15	0.053	227	20	0.053	297	24	0.051	367	29	0.052
18	4	0.077	88	10	0.056	158	15	0.053	228	20	0.053	298	24	0.051	368	29	0.052
19	4	0.073	89	10	0.055	159	15	0.053	229	20	0.053	299	24	0.050	369	29	0.052
20	4	0.069	90	10	0.055	160	15	0.052	230	20	0.052	300	24	0.050	370	29	0.051
21	4	0.065	91	10	0.054	161	15	0.052	231	20	0.052	301	24	0.050	371	29	0.051
22	4	0.062	92	10	0.053	162	15	0.052	232	20	0.052	302	25	0.053	372	29	0.051
23	4	0.059	93	10	0.053	163	15	0.051	233	20	0.052	303	25	0.052	373	29	0.051
24	4	0.057	94	10	0.052	164	15	0.051	234	20	0.051	304	25	0.052	374	29	0.051
25	4	0.054	95	10	0.052	165	15	0.051	235	20	0.051	305	25	0.052	375	29	0.051
26	4	0.052	96	10	0.051	166	15	0.050	236	20	0.051	306	25	0.052	376	29	0.051
27	5	0.070	97	10	0.051	167	15	0.050	237	20	0.051	307	25	0.052	377	29	0.050
28	5	0.068	98	10	0.050	168	16	0.054	238	20	0.051	308	25	0.052	378	29	0.050
29	5	0.065	99	11	0.056	169	16	0.054	239	20	0.050	309	25	0.051	379	29	0.050
30	5	0.063	100	11	0.056	170	16	0.053	240	20	0.050	310	25	0.051	380	29	0.050
31	5	0.061	101	11	0.055	171	16	0.053	241	21	0.053	311	25	0.051	381	30	0.052
32	5	0.059	102	11	0.055	172	16	0.053	242	21	0.053	312	25	0.051	382	30	0.052
33	5	0.057	103	11	0.054	173	16	0.053	243	21	0.053	313	25	0.051	383	30	0.052
34	5	0.055	104	11	0.054	174	16	0.052	244	21	0.052	314	25	0.051	384	30	0.052
35	5	0.054	105	11	0.053	175	16	0.052	245	21	0.052	315	25	0.050	385	30	0.051
36	5	0.052	106	11	0.053	176	16	0.052	246	21	0.052	316	25	0.050	386	30	0.051
37	5	0.051	107	11	0.052	177	16	0.051	247	21	0.052	317	25	0.050	387	30	0.051
38	6	0.065	108	11	0.052	178	16	0.051	248	21	0.052	318	26	0.052	388	30	0.051
39	6	0.063	109	11	0.051	179	16	0.051	249	21	0.051	319	26	0.052	389	30	0.051
40	6	0.061	110	11	0.051	180	16	0.050	250	21	0.051	320	26	0.052	390	30	0.051
41	6	0.060	111	11	0.050	181	16	0.050	251	21	0.051	321	26	0.052	391	30	0.051
42	6	0.058	112	12	0.056	182	17	0.054	252	21	0.051	322	26	0.052	392	30	0.051
43	6	0.057	113	12	0.055	183	17	0.054	253	21	0.051	323	26	0.052	393	30	0.050
44	6	0.055	114	12	0.055	184	17	0.053	254	21	0.050	324	26	0.051	394	30	0.050
45	6	0.054	115	12	0.054	185	17	0.053	255	21	0.050	325	26	0.051	395	30	0.050
46	6	0.053	116	12	0.054	186	17	0.053	256	22	0.053	326	26	0.051	396	31	0.052
47	6	0.052	117	12	0.054	187	17	0.052	257	22	0.053	327	26	0.051	397	31	0.052
48	6	0.051	118	12	0.053	188	17	0.052	258	22	0.053	328	26	0.051	398	31	0.052

49	7	0.062	119	12	0.053	189	17	0.052	259	22	0.052	329	26	0.051	399	31	0.052
50	7	0.061	120	12	0.052	190	17	0.052	260	22	0.052	330	26	0.050	400	31	0.052
51	7	0.059	121	12	0.052	191	17	0.051	261	22	0.052	331	26	0.050	401	31	0.051
52	7	0.058	122	12	0.051	192	17	0.051	262	22	0.052	332	26	0.050	402	31	0.051
53	7	0.057	123	12	0.051	193	17	0.051	263	22	0.052	333	27	0.052	403	31	0.051
54	7	0.056	124	12	0.050	194	17	0.051	264	22	0.051	334	27	0.052	404	31	0.051
55	7	0.055	125	13	0.056	195	17	0.050	265	22	0.051	335	27	0.052	405	31	0.051
56	7	0.054	126	13	0.055	196	17	0.050	266	22	0.051	336	27	0.052	406	31	0.051
57	7	0.053	127	13	0.055	197	18	0.054	267	22	0.051	337	27	0.052	407	31	0.051
58	7	0.052	128	13	0.054	198	18	0.053	268	22	0.051	338	27	0.052	408	31	0.050
59	7	0.051	129	13	0.054	199	18	0.053	269	22	0.050	339	27	0.051	409	31	0.050
60	7	0.050	130	13	0.053	200	18	0.053	270	22	0.050	340	27	0.051	410	31	0.050
61	8	0.060	131	13	0.053	201	18	0.052	271	23	0.053	341	27	0.051	411	31	0.050
62	8	0.059	132	13	0.053	202	18	0.052	272	23	0.053	342	27	0.051	412	32	0.052
63	8	0.058	133	13	0.052	203	18	0.052	273	23	0.052	343	27	0.051	413	32	0.052
64	8	0.057	134	13	0.052	204	18	0.052	274	23	0.052	344	27	0.051	414	32	0.052
65	8	0.056	135	13	0.051	205	18	0.051	275	23	0.052	345	27	0.051	415	32	0.052
66	8	0.055	136	13	0.051	206	18	0.051	276	23	0.052	346	27	0.050	416	32	0.051
67	8	0.054	137	13	0.051	207	18	0.051	277	23	0.052	347	27	0.050	417	32	0.051
68	8	0.053	138	13	0.050	208	18	0.051	278	23	0.052	348	27	0.050	418	32	0.051
69	8	0.053	139	14	0.055	209	18	0.050	279	23	0.051	349	28	0.052	419	32	0.051
70	8	0.052	140	14	0.055	210	18	0.050	280	23	0.051	350	28	0.052	420	32	0.051

9. LIMITATIONS

- 9.1 **SBC-11STATE** will not be excused from payment of liquidated damages, as calculated by the rules set forth herein, on any grounds, except as provided in Sections 9.2 and 9.3 and 10.6. Any dispute regarding whether a **SBC-11STATE** performance failure is excused under that paragraph will be resolved, through negotiation, through a dispute resolution proceeding under applicable Commission rules or, if the Parties agree, through commercial arbitration with the American Arbitration Association.
- 9.2 **SBC-11STATE** shall not be obligated to pay liquidated damages or assessments for noncompliance with a Performance Measurement to the extent that such noncompliance was the result of actions or events beyond **SBC-11STATE**'s control, including but not limited to the following: (i) a Force Majeure event; (ii) an act or omission by **LEVEL 3** to the extent that it is a direct cause of the noncompliance with a specific performance measure and contrary to its obligations under this Agreement with **SBC-11STATE** or law; (iii) environmental events beyond **SBC-11STATE**'s control even though not considered "Force Majeure"; (iv) problems associated with third-party systems or equipment which could not be avoided **SBC-11STATE** through the exercise of reasonable diligence, regardless of whether or not such third-party systems or equipment were sold to, leased, licensed or otherwise being provided to **SBC-11STATE** and (v) delays or other problems resulting from actions of a Service Bureau Provider acting on **LEVEL 3**'s behalf for connection to **SBC-11STATE**'s OSS, including Service Bureau Provider processes, services, systems or connectivity.
- 9.3 If a Delaying Event (i) prevents a Party from performing an activity, then such activity will be excluded from the calculation of **SBC-11STATE**'s compliance with the Performance Criteria, or (ii) only suspends **SBC-11STATE**'s ability to timely perform the activity, the applicable time frame in which **SBC-11STATE**'s compliance with the Performance Criteria is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event.

10. RECORDS AND REPORTS

- 10.1 **SBC-11STATE** will not levy a separate charge for provision of the data to **LEVEL 3** called for under this Appendix. Notwithstanding other provisions of this Agreement, the Parties agree that such data and associated records will be deemed Proprietary Information. Notwithstanding the foregoing, proposed disclosure of such proprietary information to a governmental authority shall be subject to Section 20.4 of the General Terms and Conditions.
- 10.2 Reports are to be made available to **LEVEL 3** by the 20th day following the close of the calendar month. If the 20th day falls on a weekend or holiday, the reports will be made available the next business day.
- 10.3 **LEVEL 3** will have access to monthly reports through an interactive Website.
- 10.4 **SBC-11STATE** will provide billing credits for the associated liquidated damages on or before the 30th day following the due date of the performance report for the month in which the obligation arose.
- 10.5 The measurement data herein shall be collected, reported and used to calculate payments or penalties on a per CLEC operating entity basis. The results of multiple **LEVEL 3** affiliates shall not be combined for any purpose under this Appendix.
- 10.6 **SBC-11STATE** will not pay liquidated damages in excess of the monthly maximum amounts listed in the table below. These thresholds are based on the aggregate damages to all CLECs in the designated state.

State	Monthly Maximum
Arkansas	\$.072M
Connecticut	\$.168M
Illinois	\$.51M
Indiana	\$.165M
Kansas	\$.101M
Michigan	\$.392M
Missouri	\$.189M
Ohio	\$.296M
Oklahoma	\$.120M
Texas	\$.713M
Wisconsin	\$.158M

11. AUDITS

- 11.1 **LEVEL 3** and **SBC-11STATE** will consult with one another and attempt in good faith to resolve any issues regarding the accuracy or integrity of data collected, generated, and reported pursuant to this Appendix. In the event that **LEVEL 3** requests such consultation and the issues raised by **LEVEL 3** have not been resolved within 30 days after **LEVEL 3**'s request for consultation, then **SBC-11STATE** will allow **LEVEL 3** to commence a mini-audit, at **LEVEL 3**'s expense, upon providing **SBC-11STATE** 5 days advance written notice (including e-mail).
- 11.2 **LEVEL 3** is limited to auditing three (3) single measures/submeasures during the year (hereafter, "Mini-Audits"). No more than three (3) Mini-Audits will be conducted simultaneously for **LEVEL 3**, unless more than one CLEC wants the same measure/sub-measure audited at the same time, in which case, Mini-Audits of the same measure/submeasure shall count as one Mini-Audit for the purposes of this paragraph only.

- 11.3 **LEVEL 3** will bear the expense of the Mini-Audits, unless **SBC-11STATE** is found to be “materially” misreporting or misrepresenting data or to have non-compliant procedures, in which case, **SBC-11STATE** will pay for the costs of the third party auditor. “Materially” at fault means that a reported successful measure changes as a consequence of the audit to a missed measure, or there is a change from an ordinary missed measure to another category, if such exists. Each Party to the Mini-Audit shall bear its own internal costs, regardless of which party ultimately bears the costs of the third party auditor. The major service categories are listed below:

Pre-Ordering/Ordering
Provisioning
Maintenance
Interconnection
Coordinated Conversions
Collocation
Billing

12. INITIAL IMPLEMENTATION

- 12.1 None of the liquidated damages provisions set forth in this proposal will apply during the first three months after a **LEVEL 3** first purchases an existing service or unbundled network element(s) associated with a particular performance measurement or purchases a new service with associated measures or purchases an existing service to which a new measure or submeasure has been added. During this three-month period the Parties agree to consider in good faith any adjustments that may be warranted to the Performance Criteria for that Performance Measurement.

13. PERFORMANCE MEASUREMENTS

- 13.1 **SBC-11STATE** will provide Performance Measurements under this Agreement, in accordance with the Business Rules and associated implementation timelines contained in paragraphs 23 and 24 of the FCC Merger Conditions, and its associated Attachments. Except as otherwise provided herein, the Performance Measure Business Rules contained in the FCC Merger Conditions, including any subsequent additions, modifications and/or deletions to the Business Rules adopted pursuant to FCC Merger Conditions, Attachment A, paragraph 4, shall also be incorporated into this Agreement by reference. As provided in Section 6.1 herein, liquidated damages apply to available, non-diagnostic measurements of the FCC Merger Conditions, when **SBC-11STATE** delivers non-compliant performance as defined in Section 3.1.3. **SBC-11STATE** will also report results for any measurements that have been ordered by the state commission that approved this Agreement, although liquidated damages shall not apply to such measurements. **SBC-11STATE** performance shall be measured by the Business Rules in effect on the first date of each month in which the activity subject to measurement occurred.

APPENDIX RECORDING

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APPENDIX RECORDING (Recording, Message Processing And Provision Of Interexchange Carrier Transported Message Detail Appendix)

1. INTRODUCTION

- 1.1 This Appendix sets forth the terms and conditions under which **SBC-13STATE** will provide recording, message processing and message detail services to a Facility-Based Provider as described in **Exhibit I** and **Exhibit II**, Exhibits I and II are part of this Appendix by reference. The terms and conditions under this Appendix will also apply when the Facility-Based Provider is the Recording Company.

2. RESERVED FOR FUTURE USE

3. RESPONSIBILITIES OF THE PARTIES

- 3.1 **SBC-13STATE** will record all IXC transported messages for **LEVEL 3** carried over all Feature Group Switched Access Services that are available to **SBC-13STATE** provided recording equipment or operators. Unavailable messages (i.e., certain operator messages that are not accessible by **SBC-13STATE** provided equipment or operators) will not be recorded. The recording equipment will be provided at locations selected by **SBC-13STATE**.
- 3.2 **SBC-13STATE** will perform assembly and editing, message processing and provision of applicable access usage record detail for IXC transported messages if the messages are recorded by **SBC-13STATE**.
- 3.3 **SBC-13STATE** will provide access usage records that are generated by **SBC-13STATE**.
- 3.4 Assembly and editing will be performed on all IXC transported messages recorded by **SBC-13STATE**, during the billing period established by **SBC-13STATE** and selected by **LEVEL 3**.
- 3.5 Standard EMI record formats for the provision of billable message detail and access usage record detail will be established by **SBC-13STATE** and provided to **LEVEL 3**.
- 3.6 Recorded billable message detail and access usage record detail will not be sorted to furnish detail by specific end users, by specific groups of end users, by office, by feature group or by location.
- 3.7 **SBC-13STATE** will provide message detail to **LEVEL 3** in data files, (a File Transfer Protocol or Connect:Direct "NDM"), or any other mutually agreed upon process to receive and deliver messages using software and hardware acceptable to both parties.
- 3.8 In **Exhibit II**, **LEVEL 3** will identify separately the location where the data transmissions should be sent (as applicable) and the number of times each month the information should be provided, except for **SBC-2STATE**. For **SBC-2STATE**, **LEVEL 3** will identify the location and number of times each month the information should be provided via Appendix Data Exchange's Technical Requirements Form document. **SBC-13STATE** reserves the right to limit the frequency of transmission to existing **SBC-13STATE** processing and work schedules, holidays, etc.
- 3.9 **SBC-13STATE** will determine the number data files required to provide the access usage record detail to **LEVEL 3**.
- 3.10 Recorded billable message detail and/or access usage record detail previously provided to **LEVEL 3**

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or **LEVEL 3**'s billing agent and lost or destroyed through no fault of **SBC-13STATE** will not be recovered and made available to **LEVEL 3** except on an individual case basis at a reasonable cost.

- 3.11 When **SBC-13STATE** receives rated billable messages from an IXC or another Local Exchange Carrier (LEC) that are to be billed by **LEVEL 3**, **SBC-13STATE** will forward those messages to **LEVEL 3** or **LEVEL 3**'s billing agent.
- 3.12 **SBC-13STATE** will record the applicable detail necessary to generate access usage records and forward them to **LEVEL 3** or **LEVEL 3**'s billing agent for its use in billing access to the IXC
- 3.13 *When **LEVEL 3** is the Recording Company, **LEVEL 3** will provide its recorded billable messages detail and access usage record detail data to **SBC-13STATE** under the terms and conditions of this Appendix.*

4. BASIS OF COMPENSATION

- 4.1 **SBC-13STATE** as the Recording Company, agrees to provide recording, assembly and editing, message processing and provision of message detail for Access Usage Records (AURs) ordered/required by **LEVEL 3** in accordance with this Appendix on a reciprocal, no-charge basis. **LEVEL 3**, as the Recording Company, agrees to provide to the extent that **LEVEL 3** has deployed systems supporting AUR any and all those Access Usage Records (AURs) required by **SBC-13STATE** on a reciprocal, no-charge basis. To the extent **LEVEL 3** is unable to provide AURs the Parties agree to explore additional options for recording, assembling and editing of message detail records necessary to accurate billing of traffic. The Parties agree *that this to reciprocally exchange mutual exchange of records at no charge to either Party shall otherwise be conducted* and according to the guidelines and specifications contained in the Multiple Exchange Carrier Access Billing (MECAB) document.

4.1.1 Where level 3 is unable to provide AUR, such as with IP enabled traffic, Level 3 will provide Call Records [as defined in this agreement] at intervals to assure SBC of accurate billing. At a minimum, Level 3 will provide Call Records on a monthly basis reflecting all traffic exchanged between the parties, for the exchange of intercarrier compensation.

5. LIABILITY

- 5.1 Except as otherwise provided herein, neither Party shall be liable to the other for any special, indirect, or consequential damage of any kind whatsoever. A Party shall not be liable for its inability to meet the terms of this Agreement where such inability is caused by failure of the first Party to comply with the obligations stated herein. Each Party is obliged to use its best efforts to mitigate damages.
- 5.2 When either Party is notified that, due to error or omission, incomplete data has been provided to the non-Recording Company, each Party will make reasonable efforts to locate and/or recover the data and provide it to the non-Recording Company at no additional charge. Such requests to recover the data must be made within sixty (60) calendar days from the date the Recording company provides the message detail for access usage record to the non-Recording Company. If the non-Recording Company fails to provide written notification post-marked, faxed or dated by commercial courier within sixty (60) calendar days from the date the Recording company provides the message detail for access usage record to the non-Recording Company, the Recording Company shall have no further obligation to recover the data and shall have no further liability to the non-Recording Company for the compensation arising from the message detail for access usage records.
- 5.3 If, despite timely notification by the non-Recording Company, message detail is lost and unrecoverable as a direct result of the Recording Company having lost or damaged tapes or incurred system outages while performing recording, assembly and editing, rating, message processing, and/or transmission of message

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- detail, both Parties will estimate the volume of lost messages and associated revenue based on information available to it concerning the average revenue per minute for the average interstate and/or intrastate call. In such events, the Recording Company's liability shall be limited to the granting of a credit adjusting amounts otherwise due from it equal to the estimated net lost revenue associated with the lost message detail.
- 5.4 Each Party will not be liable for any costs incurred by the other Party when transmitting data files via data lines and a transmission failure results in the non-receipt of data. Notwithstanding the foregoing, the Parties agree to use best efforts to ensure the timely and accurate delivery or exchange of billing data between each Party.
- 5.5 Each Party agrees to defend, indemnify, and hold harmless the other Party from any and all losses, damages, or other liability, including attorney fees, that it may incur as a result of claims, demands, or other suits brought by any party that arise out of the use of this service by the other Party, its customers or end users.
- 5.6 Each Party ("Indemnifying Party") also agrees to release, defend, indemnify and hold harmless the other Party ("Indemnified Party") from any claim, demand or suit that asserts any infringement or invasion of privacy or confidentiality of any person(s), caused or claimed to be caused, directly or indirectly, by the Indemnifying Party's employees and equipment associated with provision of this service to the extent such claim does not arise from the willful misconduct or gross negligence of the Indemnified Party. This includes, but is not limited to suits arising from disclosure of any customer specific information associated with either the originating or terminating numbers used to provision this service.
- 5.7 Each Party also agrees to release, defend, indemnify and hold harmless the Recording Company from any claim, demand or suit to perform under this Agreement should any regulatory body or any State or Federal Court find the existing terms of this contract to either be illegal, unenforceable, against public policy, or improper for the Recording Company.
- 5.8 Each Party makes no representations or warranties, express or implied, including but not limited to any warranty as to merchantability or fitness for intended or particular purpose with respect to services provided hereunder. Additionally, each Party assumes no responsibility with regard to the correctness of the data supplied when this data is accessed and used by a third party.
- .

EXHIBIT I SERVICES

The attached pages of this Exhibit show the service options that are offered under this Agreement.

EXPLANATION OF SERVICE OPTIONS

ORIGINATING 1+ DDD RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL AND ACCESS USAGE RECORDS

- Option #1:** This option has been withdrawn.
- Option #2:** The Recording Company performs recording, assembly and editing of the billable message detail and extracts that detail to the IXC for all 1+ IXC transported messages originating from the **LEVEL 3** end office. The Recording Company creates Access Usage Records for this traffic and forwards those AUR records to **LEVEL 3**.
- Option #3:** The Interexchange Carriers do own billable message recording for their 1+ IXC transported messages originating from the CLEC end office. The Recording Company performs recording for Access purposes only, assembles and edits this data, creates AURs and forwards the AUR records to the CLEC.

ORIGINATING OPERATOR RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL AND ACCESS USAGE RECORDS

- Option #4:** **LEVEL 3** Non-Equal Access End Office - The Interexchange Carriers do own billable message recording. The Recording Company performs local and intraLATA operator services for **LEVEL 3**. The Recording Company performs recording at the operator switch for all 0+, 0-, Coin Sent Paid, CAMA and International IXC transported messages. The Recording Company assembles and edits this data, creates AURs and forwards the AUR records to **LEVEL 3**.
- Option #5:** **LEVEL 3** Equal Access End Office - The Interexchange Carriers do own billable message recording. The Recording Company performs local and intraLATA operator services for **LEVEL 3**. The Recording Company performs recording at the operator switch for 0- only IXC transported messages. The Recording Company assembles and edits this data, creates AURs and forwards the AUR records to **LEVEL 3**.
- Option #6:** This option has been withdrawn.
- Option #7:** This option has been withdrawn.

800 RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL

- Option #8:** Recording Company performs SSP function for **LEVEL 3** end office and bills query charge to the appropriate Interexchange Carrier. The Recording Company performs recording for Access purposes only, assembles and edits this data, creates AURs and forwards AUR records to **LEVEL 3**.
- Option #9:** This option has been withdrawn.
- Option #10:** Recording Company performs SCP function for **LEVEL 3**. The Recording Company performs recording at the SCP, assembles and edits this data, creates SCP records and forwards SCP records to **LEVEL 3**.

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TERMINATING RECORDINGS - IXC TRANSPORTED ACCESS USAGE RECORDS

- Option #11:** Recording Company provides tandem function for LEVEL 3. LEVEL 3 requests Recording Company to provide all Feature Group B, Feature Group C and Feature Group D terminating usage recordings including Feature Group B over D and Feature Group C over D. Recording Company creates terminating AURs for this data and forwards AUR records to LEVEL 3.
- Option #12:** Recording Company provides tandem function for LEVEL 3. LEVEL 3 requests Recording Company to provide all Feature Group B terminating usage recordings excluding B over D. Recording Company creates terminating AURs for this data and forwards AUR records to LEVEL 3.
- Option #13:** Recording Company provides tandem function for LEVEL 3. LEVEL 3 requests Recording Company to provide all Feature Group B terminating usage recordings including Feature Group B over D. Recording Company creates terminating AURs for this data and forwards AUR records to LEVEL 3.
- Option #14:** Recording Company provides tandem function for LEVEL 3. LEVEL 3 requests Recording Company to provide all Feature Group D terminating usage recordings including B over D and C over D. Recording Company creates terminating AURs for this data and forwards AUR records to LEVEL 3.
- Option #15:** Recording Company provides tandem function for LEVEL 3. LEVEL 3 requests Recording Company to provide all Feature Group D terminating usage recordings including B over D. Recording Company creates terminating AURs for this data and forwards AUR records to LEVEL 3.

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EXHIBIT II

INVOICE DESIGNATION

COMPANY NAME:

EXCHANGE COMPANY I.D. NUMBER (OCN):

BILLABLE INVOICE INTERVAL:

Check One:

- ☐ Daily (Full Status RAO Companies will receive billable messages daily, Monday-Friday excluding holidays.)
- ☐ Bill period (Please choose a maximum of five dates for **SBC SOUTHWEST REGION 5-STATE** . A file will be created approximately 3 to 5 workdays after the chosen bill date(s):

1 3 5 7 9 11 13 15 17 19 21 23 25 27 29

AUR INVOICE INTERVAL:

Check One:

- ☐ Daily (Full Status RAO Companies will receive AURs daily, Monday-Friday except holidays.)
- ☐ Bill period (Please choose a maximum of five dates for **SBC SOUTHWEST REGION 5-STATE** . A file will be created approximately 3 to 5 workdays after the chosen bill date(s):

1 3 5 7 9 11 13 15 17 19 21 23 25 27 29

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APPENDIX SS7

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3. ADDITIONAL SS7 SERVICE 3

1. INTRODUCTION

- 1.1 This Appendix sets forth the terms and conditions under which **LEVEL 3** and **SBC-13 STATE** will interconnect their respective Common Channel Signaling/Signaling System 7 (CCS/557) signaling networks.

2. SERVICE DESCRIPTION

- 2.1 Either party may choose to provide its own SS7 signaling for its facility-based services, or to the extent available, it may purchase SS7 signaling from the other party under the terms and conditions of that party's tariff offering. Alternatively, either party may choose to obtain SS7 signaling from a third-party provider.
- 2.1.1 In the event that **LEVEL 3** chooses to act as its own SS7 service provider, the parties will effectuate a Bill and Keep arrangement and shall share the cost of the SS7 quad links in each LATA between their STPs; *provided, however, that said Bill and Keep arrangement and use of SS7 quad links apply only to LEVEL 3 CLEC calls and not to calls that are subject to traditional access compensation as found between a long distance carrier and a local exchange carrier, including LEVEL 3 acting as a long distance carrier.* **The parties agree that Level 3 may act as its own SS7 provider or contract with third parties to provide that function. In that event, the parties agree to establish one set of SS7 quad links per LATA. The parties agree to share the cost of the SS7 quad links between their respective networks (e.g. between the Signal Transfer Points.) Each party will bear the cost of all SS7 quad links on its side of the Point of Interconnection.**

3. ADDITIONAL SS7 SERVICES

- 3.1 Any request for SS7 service beyond offerings contained within the parties' tariffs must be negotiated between the Parties.

APPENDIX UNE

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It is Level 3's position that none of the language in this version of the UNE Appendix should be adopted. Level 3 has proposed its language for the UNE Appendix in a separate document which is being filed contemporaneously.

1. INTRODUCTION

- 1.1 This Appendix UNE sets forth the terms and conditions pursuant to which the applicable SBC Communications Inc. (SBC)-owned Incumbent Local Exchange Carrier (ILEC) agrees to furnish **LEVEL 3** with access to unbundled network elements as specifically defined in this Appendix UNEs for the provision by LEVEL 3 of a Telecommunications Service (Act, Sections 251(c)(3)). For information regarding deposit, billing, payment, non-payment, disconnect, and dispute resolution, see the General Terms and Conditions of this Agreement.
- 1.2 The Prices at which **SBC-13STATE** agrees to provide electronic access to its Directory Assistance (DA) database are contained in the applicable Appendix Pricing and/or the applicable Commissioned ordered tariff where stated.

2. TERMS AND CONDITIONS

- 2.1 **UNEs and Declassification.** This Agreement sets forth the terms and conditions pursuant to which **SBC-13STATE** will provide LEVEL 3 with access to unbundled network elements under **Section 251(c)(3) of the Act in SBC-13STATE's** incumbent local exchange areas for the provision of Telecommunications Services by LEVEL 3; ***provided, however, that notwithstanding any other provision of the Agreement, SBC-13STATE shall be obligated to provide UNEs only to the extent required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. UNEs that SBC-13STATE is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders shall be referred to in this Agreement as "Lawful UNEs."***
 - 2.1.1 A network element, ***including a network element referred to as a Lawful UNE under this Agreement***, will cease to be a UNE under this Agreement if it is no longer required ***by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. Without limitation, a Lawful UNE that has ceased to be a Lawful UNE may also be referred to as "Declassified."***
 - 2.1.2 ***Without limitation, a network element, including a network element referred to as a Lawful UNE under this Agreement is Declassified, upon or by (a) the issuance of the mandate in United States Telecom Association v. FCC, 290 F.3d 415 (D.C. Cir. 2002) ("USTA I"); or (b) operation of the Triennial Review Order released by the FCC on August 21, 2003 in CC Docket Nos. 01-338, 96-98 and 98-147, FCC 03-36, 18 FCC Rcd 16978 (rel. August 21, 2003), as modified by the Errata issued by the FCC in that same proceeding, FCC 03-227, 18 FCC Rcd 19020 (rel. Sept. 17, 2003) (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003, including rules promulgated thereby; or (c) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; or (d) the issuance of the mandate in the D.C. Circuit Court of Appeals' decision, United States Telecom Association v. FCC, 359F. 3d 554 (D.C. Cir. 2004)("USTA II"); or (e) the issuance of any valid law, order or rule***

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by the Congress, FCC or a judicial body stating that SBC-13STATE is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act. By way of example only, a network element can cease to be a Lawful UNE or be Declassified on an element-specific, route-specific or geographically-specific basis or a class of elements basis. Under any scenario, Section 2.5 "Transition Procedure" shall apply.

2.1.2.1 By way of example only, and without limitation, network elements that are Declassified and are not provided under this Agreement include at least the following: (i) entrance facilities (ii) dedicated transport, at any level, including but not limited to DSO, OCn, DS1, DS3, or Dark Fiber Transport (iii) Local Switching (as defined in Section 11 of this Appendix (iv) OCn Loops, , DS1 or DS3 Loops, or Dark Fiber Loops; (v) the Feeder portion of the Loop; (vi) Line Sharing; (vii) any Call-Related Database, other than the 911 and E911 databases, that is not provisioned in connection with LEVEL 3's use of SBC-13STATE's Lawful ULS (as no local switching constitutes Lawful UNE local switching, SBC-13STATE is not obligated to provide, and LEVEL 3 shall not request such Call-Related Databases, other than the 911 or E911 databases, under this Agreement)); (viii) SS7 signaling that is not provisioned in connection with LEVEL 3's use of SBC-13STATE's Lawful ULS (as no local switching constitutes Lawful UNE local switching, SBC-13STATE is not obligated to provide, and LEVEL 3 shall not request, SS7 signaling under this Agreement) ; (ix) Packet switching, including routers and DSLAMs; (xiii) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over Hybrid Loops (as defined in 47 CFR § 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier ("DLC") systems or equipment used to provide passive optical networking ("PON") capabilities; (xiv) Fiber-to-the-Home Loops (as defined in 47 CFR 51.319(a)(3)) ("FTTH Loops"), except to the extent that SBC-13STATE has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case SBC-13STATE will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH loop on an unbundled basis;

2.1.2.2 Additional network elements that may be Declassified and be subject to this Section 2.1 include any element or class of elements as to which a general determination is made that requesting Telecommunications Carriers are not impaired without access to such element or class of elements

2.1.2.3 At a minimum, at least the items set forth in this Section 2.1 shall not constitute Lawful UNEs under this Agreement.

2.1.3 It is the Parties' intent that **only** Lawful UNEs shall be available under this Agreement; **but have agreed, for ease of administration, that they will not require the insertion of the defined term "Lawful UNE" throughout the Agreement; accordingly, if this Agreement requires or appears to require Lawful UNE(s) or unbundling without specifically noting that the UNE(s) or unbundling must be "Lawful," the reference shall be deemed to be a reference to Lawful UNE(s) or Lawful unbundling, as defined in this Section 2.1.**

2.1.4 By way of example only, if terms and conditions of this Agreement state that SBC-13STATE is required to provide a UNE or UNE combination or other arrangement including a "UNE Loop," and Loops are Declassified or otherwise no longer constitute a UNE, then SBC-13STATE shall not be obligated to provide the item under this Agreement as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Agreement.

- 2.2 *Nothing contained in the Agreement shall be deemed to constitute consent by SBC-13STATE that any item identified in this Agreement as a UNE, network element or Lawful UNE is a network element or UNE under Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, that SBC-13STATE is required to provide to CLEC alone, or in combination with other network elements or UNEs (Lawful or otherwise), or commingled with other network elements, UNEs (Lawful or otherwise) or other services or facilities.*
- 2.3 *The preceding includes without limitation that SBC-13STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving SBC-13STATE network elements that do not constitute UNEs, or where UNEs are not requested for permissible purposes.*
- 2.4 *Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an unbundled network element or UNE in this Agreement is Declassified or is otherwise no longer a UNE, then the Transition Procedure defined in Section 2.5, below, shall govern.*
- 2.5 *Transition Procedure. SBC-13STATE shall only be obligated to provide UNEs under this Agreement. To the extent an element described as a UNE or an unbundled network element in this Agreement is Declassified or is otherwise no longer a UNE, SBC-13STATE may discontinue the provision of such element, whether previously provided alone or in combination with or as part of any other arrangement with other UNEs or other elements or services. Accordingly, in the event one or more elements described as UNEs or as unbundled network elements in this Agreement is Declassified or is otherwise no longer a UNE, SBC-13STATE will provide written notice to LEVEL 3 of its discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period of thirty (30) days from the date of such notice, SBC-13STATE agrees to continue providing such element(s) under the terms of this Agreement. Upon receipt of such written notice, LEVEL 3 will cease ordering new elements that are identified as Declassified or as otherwise no longer being a UNE in the SBC-13STATE notice letter referenced in this Section 2.5. SBC-13STATE reserves the right to audit LEVEL 3 orders transmitted to SBC-13STATE and to the extent that LEVEL 3 has processed orders and such orders are provisioned after this 30-day transitional period, such elements are still subject to this Section 2.5, including the options set forth in (a) and (b) below, and SBC-13STATE's rights of discontinuance or conversion in the event the options are not accomplished. During such 30-day transitional period, the following options are available to LEVEL 3 with regard to the element(s) identified in the SBC-13STATE notice, including the combination or other arrangement in which the element(s) were previously provided:*
- (a) LEVEL 3 may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or*
 - (b) SBC-13STATE and LEVEL 3 may agree upon another service arrangement or element (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous access product or service may be substituted, if available.*

Notwithstanding anything to the contrary in this Agreement, including any amendments to this Agreement, at the end of that thirty (30) day transitional period, unless LEVEL 3 has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a), above, and if LEVEL 3 and SBC-13STATE have failed to reach agreement, under (b), above, as to a substitute service arrangement or element, then SBC-13STATE may, at its sole option, disconnect the element(s), whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available.

- 2.6 SBC-13STATE and LEVEL 3 may agree to connect LEVEL 3's facilities with SBC-13STATE's network at any technically feasible point for access to UNEs for the provision by LEVEL 3 of a Telecommunications Service. (Act, Section 251(c)(2)(B); 47 CFR § 51.305(a)(2)(vi)).
- 2.7 SBC-13STATE will provide LEVEL 3 nondiscriminatory access to UNEs (Act, Section 251(c)(3); 47 CFR § 51.307(a))
- 2.7.1 At any technically feasible point within its network ((SBC agrees that it must discharge these duties in compliance with Applicable Law including but not limited the following: Act, Section 251(c)(3); 47 CFR § 51.307(a));
- 2.7.2 At the rates, terms, and conditions which are just, reasonable, and nondiscriminatory (SBC agrees that it must discharge these duties in compliance with Applicable Law including but not limited to the following: Act, Section 251(c)(3); 47 CFR § 51.307(a));
- 2.7.3 In a manner that allows LEVEL 3 to provide a Telecommunications Service that may be offered by means of that UNE Section 251(c)(3); 47 CFR § 51.307 (c));
- 2.7.4 In a manner that allows access to the facility or functionality of a requested UNE to be provided separately from access to other elements, and for a separate charge(§ 51.307(d));
- 2.7.5 With technical information regarding SBC-13STATE's network facilities to enable LEVEL 3 to achieve access to UNEs_§ 51.307(e));
- 2.7.6 Without limitations, restrictions, or requirements on requests that would impair LEVEL 3's ability to provide a Telecommunications Service in a manner it intends (47 CFR § 51.309(a));
- 2.7.7 ***Reserved for future use.***
- 2.7.8 Where applicable, terms and conditions of access to UNEs shall be no less favorable than terms and conditions under which SBC-13STATE provides such elements to itself 47 CFR_§ 51.313(b)).
- 2.7.9 ***Only to the extent it has been determined that these elements are required by the "necessary" and "impair" standards of the Act (Act, Section 251(d)(2)).***
- 2.7.10 Except upon request of LEVEL 3, SBC-13STATE shall not separate LEVEL 3-requested UNEs that ***are currently combined*** (47 CFR § 51.315(b)) SBC-13STATE is not prohibited from or otherwise limited in separating any UNEs not requested by LEVEL 3 or a Telecommunications Carrier, including without limitation in order to provide a UNE(s) or other SBC-13STATE offering(s).
- 2.8 As provided for herein, SBC-13STATE will permit LEVEL 3 exclusive use of a ***UNE*** facility for a period of time, and when LEVEL 3 is purchasing access to a feature, function, or capability of such a facility, SBC-13STATE will provide use of that feature, function, or capability for a period of time (47 CFR § 51.309(c)).
- 2.9 SBC-13STATE will maintain, repair, or replace UNEs (47 CFR_§ 51.309(c)) as provided for in this Agreement.
- 2.10 ***To the extent*** technically feasible, the quality of the UNE and access to such UNE shall be at least equal to what SBC-13STATE provides ***itself or other telecommunications carriers*** (47 CFR § 51.311(a), (b)).
- 2.11 Each Party shall be solely responsible for the services it provides to its End Users and to other Telecommunications Carriers.
- 2.12 Reserved for future use.
- 2.12 ***UNEs provided to LEVEL 3 under the provisions of this Appendix shall remain the property of SBC-13STATE.***
- 2.13 Performance of UNEs
- 2.13.1 Each UNE will be provided in accordance with SBC-13STATE ***Technical Publications or other written descriptions, if any, as changed from time to time by SBC-13STATE at its sole discretion***

- 2.13.2 Nothing in this Appendix will limit either Party's ability to modify its network through the incorporation of new equipment, new software or otherwise, SBC 13STATE will provide the other Party written notice of any upgrades in its network which will materially impact the other Party's service consistent with 47 CFR § 51.325.
- 2.13.3 SBC-13STATE may elect to conduct Central Office switch conversions for the improvement of its network. During such conversions, **LEVEL 3 orders for UNEs from *that* switch *shall be suspended* for a period of three days prior and one day after the conversion date, consistent with the suspension SBC-13STATE places on itself for orders from its End Users**
- 2.13.4 Level 3 will be solely responsible, at its own expense, for the overall design of its Telecommunications Services and for any redesigning or rearrangement of its Telecommunications Services which may be required because of changes in facilities, operations, or procedure of SBC-13STATE, minimum network protection criteria, or operating or maintenance characteristics of the facilities.
- 2.14 Conditions for Access to UNEs
- 2.14.1 . ***Reserved for future use***
- 2.14.2 In order to access and use UNEs, LEVEL 3 must be a Telecommunications Carrier (Section 251(c)(3)), and must use the UNE(s) for the provision of a Telecommunications Service (Section 251(c)(3)). ***Together, these conditions are the "Statutory Conditions" for access to UNEs. Accordingly, LEVEL 3 hereby represents and warrants that it is a Telecommunications Carrier and that it will notify SBC-13STATE immediately in writing if it ceases to be a Telecommunications Carrier. Failure to so notify SBC-13STATE shall constitute material breach of this Agreement.***
- 2.14.2.1.1 ***By way of example, use of a UNE (whether on a stand-alone basis, in combination with other UNEs with a network element possessed by LEVEL 3, or otherwise) to provide service to LEVEL 3 or for other administrative purpose(s) does not constitute using a UNE pursuant to the Statutory Conditions.***
- 2.14.3 Other conditions to accessing and using any UNE (whether on a stand-alone basis or in combination with other network elements or UNEs(***Lawful or otherwise***)) may be applicable under ***lawful and effective*** FCC rules ***and associated lawful and effective FCC and judicial orders*** and will also apply.

2.15 Reserved for Future Use

2.16 New Combinations Involving UNEs

- 2.16.1 Subject to the provisions hereof and upon LEVEL 3's request, SBC-13STATE shall meet its combining obligations involving UNEs ***as and to the extent required by FCC rules and orders, and Verizon Comm. Inc. v. FCC, 535 U.S. 467 (May 13, 2002) ("Verizon Comm. Inc.") and, to the extent not inconsistent therewith, the rules and orders of relevant state Commission and any other Applicable Law.***
- 2.16.1.1 ***Any combining obligation is limited solely to combining of UNEs; accordingly, no other facilities, services or functionalities are subject to combining, including but not limited to facilities, services or functionalities that SBC might offer pursuant to Section 271 of the Act.***
- 2.16.2 In ***the*** event ***that*** SBC-13STATE ***denies*** a request to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements possessed by LEVEL 3, SBC-13STATE shall, provide written notice to LEVEL 3 of such denial and the basis thereof Any

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dispute over such denial **shall** be addressed using the dispute resolution procedures applicable to this Agreement. In any dispute resolution proceeding, SBC-13STATE shall **have** the burden **to prove** that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, *Verizon Comm. Inc.* and the Agreement, including Section 2.16 of this Appendix.

- 2.16.3 In accordance with and subject to the provisions of this Section 2.16, including Section 2.16.3.2 and 2.16.5, the new UNE combinations set forth in the Schedule(s) UNE Combinations, **if any**, attached and incorporated into this Appendix shall be made available to LEVEL 3 as specified in the specific Schedule, **if any**, for a particular State.

2.16.3.3 ***The Parties acknowledge that the United States Supreme Court in Verizon Comm. Inc. relied on the distinction between an incumbent local exchange carrier such as SBC-13STATE being required to perform the functions necessary to combine UNEs and to combine UNEs with elements possessed by a requesting Telecommunications Carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the time this Appendix was agreed-to by the Parties, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, SBC-13STATE is willing to perform the actions necessary to also complete the actual physical combination for those new UNE combinations set forth in the Schedule(s) – UNE Combinations to this Appendix, subject to the following:***

2.16.3.3.1 ***Section 2.16, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, SBC-13STATE from pursuing any of its rights, remedies or arguments, including but not limited to those with respect to Verizon Comm. Inc., the remand thereof, or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by SBC-13STATE. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect SBC-13STATE from taking any position with respect to combinations including Lawful UNEs or any issue or subject addressed or related thereto.***

2.16.3.3.2 ***Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's combining obligations, SBC-13STATE shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Agreement or otherwise, and LEVEL 3 shall thereafter be solely responsible for any such non-included functions or other actions. This Section 2.16.3.3.2 shall apply in accordance with its terms, regardless of change in law, intervening law or other similarly purposed provision of the Agreement and, concomitantly, the first sentence of this Section 2.16.3.2.2 shall not affect the applicability of any such provisions in situations not covered by that first sentence.***

2.16.3.3.3 ***Without affecting the application of Section 2.16.3.3.2 (which shall apply in accordance with its provisions), upon notice by SBC-13STATE, the Parties shall engage in good faith negotiations to amend the Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine UNEs***

and combine UNEs with elements possessed by a requesting Telecommunications Carrier, and to eliminate any SBC-13STATE obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those functions necessary to combine UNEs and combine UNEs with elements possessed by a requesting Telecommunications Carrier, shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.

- 2.16.3.4** Where electronic ordering is not available, manual ordering shall be used.
- 2.16.3.5 For a new UNE combination listed on a Schedule UNE Combinations, *if any*, LEVEL 3 shall issue appropriate service requests. SBC 13STATE will process these requests and charge LEVEL 3 the applicable UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual UNE and cross connect ordered.
- 2.16.3.6 Upon notice by SBC-13STATE, the Parties shall engage in good faith negotiations to amend the Agreement to include a fee(s) for any work performed by SBC-13STATE in providing the new UNE combinations, *if any*, set forth in Schedule(s) UNE Combinations, which work is not covered by the charges applicable per Section 2.16.3.5. For any such work done by SBC-13STATE under Section 2.16.1, any such fee(s) shall be a reasonable cost-based fee, and shall be calculated using the Time and Material charges as reflected in State-specific pricing. For any such work that is not so required to be done by SBC-13STATE, any such fee(s) shall be at a **market-based** rate. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties concerning any such fee(s) shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.
- 2.16.4 In accordance with and subject to the provisions of this Section 2.16, any request not included in Section 2.16.3 in which LEVEL 3 wants SBC-13STATE to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements possessed by LEVEL 3 (as well as requests where LEVEL 3 also wants SBC-13STATE to complete the actual combination), shall be made by LEVEL 3 in accordance with the bona fide request (BFR) process set forth in this Agreement
- 2.16.4.1 In any such BFR, LEVEL 3 must designate among other things the UNE(s) sought to be combined and the needed location(s), the order in which the UNEs and any LEVEL 3 elements are to be connected, and how each connection (e.g., cross-connected) is to be made between an SBC-13STATE UNE and the network element(s) possessed by LEVEL 3.
- 2.16.4.2 In addition to any other applicable charges, LEVEL 3 shall be charged a reasonable cost-based fee for any combining work done by SBC-13STATE under Section 2.16.1. Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. SBC-13STATE's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified combining. With respect to a BFR in which LEVEL 3 requests SBC-13STATE to perform work not required by Section 2.16.1, LEVEL 3 shall be charged a **market-based** rate for any such work.
- 2.16.5 Without affecting the other provisions hereof, the UNE combining obligations referenced in this Section 2.16 apply where each of the following is met:
- 2.16.5.1 it is technically feasible, **including that network reliability and security would not be impaired;**

2.16.5.2 SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would not be impaired;

2.16.5.3 SBC-13STATE would not be placed at a disadvantage in operating its own network;

2.16.5.4 it would not undermine the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with SBC-13STATE's network; and

2.16.5.5 **Level 3 is**

2.16.5.5.1 unable to make the combination itself; or

2.16.5.5.2 a new entrant and is unaware that it needs to combine certain UNEs to provide a Telecommunications Service, but such obligation under this Section 2.16.5.5 ceases if SBC-13STATE informs LEVEL 3 of such need to combine.

2.16.6 For purposes of Section 2.16.5.5 and without limiting other instances in which LEVEL 3 may be able to make a combination itself, LEVEL 3 is deemed able to make a combination itself when the UNE(s) sought to be combined are available to LEVEL 3, including without limitation:

2.16.6.1 at an SBC-13STATE premises where LEVEL 3 is physically collocated or has an on-site adjacent collocation arrangement;

2.16.6.2 for SBC CALIFORNIA only, within an adjacent location arrangement, if and as permitted by this Agreement.

2.16.7 Section 2.16.5.5 shall only begin to apply thirty (30) days after notice by SBC-13STATE to Level 3. Thereafter, SBC-13STATE may invoke Section 2.16.5.5 with respect to any request for a combination involving UNEs.

2.17 Conversion of Wholesale Services to UNEs

With the issuance of the Court's mandate in USTA II, and in the absence of lawful and effective FCC rules or orders requiring conversion of special access services to combinations of UNE Loop(s) and Lawful UNE Dedicated Transport(s),, SBC-13STATE is not obligated to and shall not perform such conversions, and LEVEL 3 shall not request such conversions.. If lawful and effective FCC rules or orders require conversion of wholesale services to UNEs, such conversion(s) and for all other conversion requests the following shall apply:

2.17.1 Upon request, SBC-13STATE shall convert a wholesale service, or group of wholesale services, to the equivalent UNE, or combination of UNEs, that is available to LEVEL 3 under terms and conditions set forth in this Appendix, so long as LEVEL 3 and the wholesale service, or group of wholesale services, meets the eligibility criteria that may be applicable for such conversion. (By way of example only, the **statutory conditions would constitute** is one such eligibility criterion.)

2.17.2 Where processes for the conversion requested pursuant to this Appendix are not already in place, SBC-13STATE will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with mutually agreeable applicable Change Management guidelines.

2.17.3 **Reserved for future use..**

2.17.3.1 SBC-13STATE's may charge applicable service order charges and record change charges.

2.17.4 This Section 2.17 only applies to situations where the wholesale service, or group of wholesale services, is comprised solely of UNEs offered or otherwise provided for in this Appendix.

2.17.5 If LEVEL 3 does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service, or group of wholesale services, to

the equivalent UNE, or combination of UNEs, LEVEL 3 shall not request such conversion or continue using such the UNE or UNEs that result from such conversion. ***To the extent LEVEL 3 fails to meet (including ceases to meet) the eligibility criteria applicable to a UNE or combination of UNEs, or Commingled Arrangement (as defined herein), SBC-13STATE may convert the UNE or UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon written notice to Level 3.***

2.17.5.1 This Section 2.17.5 applies to any UNE or combination of UNEs, including whether or not such UNE or combination of UNEs had been previously converted from an SBC-13STATE service.

2.17.5.2 SBC-13STATE may exercise its rights provided for hereunder and those allowed by law in auditing compliance with any applicable eligibility criteria.

2.17.6 In requesting a conversion of an SBC-13STATE service, LEVEL 3 must follow the guidelines and ordering requirements provided by SBC-13STATE that are applicable to converting the particular SBC-13STATE service sought to be converted.

2.17.7 Nothing contained in this Appendix or Agreement provides LEVEL 3 with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects SBC-13STATE's ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges.

2.18 Commingling

2.18.1 "Commingling" means the connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to one or more facilities or services that LEVEL 3 has obtained at wholesale from SBC-13STATE, or the combining of a UNE, or a combination of UNEs, with one or more such facilities or services. "Commingle" means the act of commingling.

2.18.1.1 "Commingled Arrangement" means the arrangement created by Commingling.

2.18.1.2 ***Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an SBC-13STATE offering pursuant to 47 U.S.C. § 271 that is not a UNE under 47 U.S.C. § 251(c)(3).***

2.18.1.3 Where processes for any Commingling requested pursuant to this Agreement (including, by way of example, for existing services sought to be converted to a Commingled Arrangement) are not already in place, SBC-13STATE will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.

2.18.1.4 Any commingling obligation is limited solely to commingling of one or more facilities or services that LEVEL 3 has obtained at wholesale from SBC-13STATE with UNEs; accordingly, no other facilities, services or functionalities are subject to commingling, including but not limited to facilities, services or functionalities that SBC might offer pursuant to Section 271 of the Act.

2.18.2 Except as provided in Section 2 and, further, subject to the other provisions of this Agreement, SBC-13STATE shall permit LEVEL 3 to Commingle a UNE or a combination of UNEs with facilities or services obtained at wholesale from SBC-13STATE to the extent required by FCC rules and orders.

2.18.3 ***Upon request, and subject to this Section 2, SBC-13STATE shall perform the functions necessary to Commingle a UNE or a combination of UNEs with one or more facilities or services that LEVEL 3 has obtained at wholesale from SBC-13STATE (as well as requests where LEVEL 3 also wants SBC-13STATE to complete the actual Commingling), except that SBC-13STATE shall have no obligation to perform the functions necessary to Commingle (or***

to complete the actual Commingling) if (i) LEVEL 3 is able to perform those functions itself; or (ii) it is not technically feasible, including that network reliability and security would be impaired; or (iii) SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (iv) SBC-13STATE would be placed at a disadvantage in operating its own network; or (v) it would undermine the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with SBC-13STATE's network. Where LEVEL 3 is a new entrant and is unaware that it needs to Commingle to provide a Telecommunications Service, SBC-13STATE's obligation to commingle ceases if SBC-13STATE informs LEVEL 3 of such need to Commingle..

2.18.3.1 *For purposes of Section 2.18.3 and without limiting other instances in which LEVEL 3 may be able to Commingle for itself, LEVEL 3 is deemed able to Commingle for itself when the UNE(s), UNE combination, and facilities or services obtained at wholesale from SBC-13STATE are available to LEVEL 3, including without limitation:*

2.18.3.1.1 *at an SBC-13STATE premises where LEVEL 3 is physically collocated or has an on-site adjacent collocation arrangement;*

2.18.3.1.2 *for SBC CALIFORNIA only, within an adjacent location arrangement, if and as permitted by this Agreement.*

2.18.3.2 *Section 2.18.3(i) shall only begin to apply thirty (30) days after notice by SBC-13STATE to LEVEL 3. Thereafter, SBC-13STATE may invoke Section 2.18.3(i) with respect to any request for Commingling.*

2.18.4 In accordance with and subject to the provisions of this Section 2.18, any request by LEVEL 3 for SBC-13STATE to perform the functions necessary to Commingle (as well as requests where LEVEL 3 also wants SBC-13STATE to complete the actual Commingling), shall be made by LEVEL 3 in accordance with the bona fide request (BFR) process set forth in this Agreement.

2.18.4.1 In any such BFR, LEVEL 3 must designate among other things the UNE(s), combination of UNEs, and the facilities or services that LEVEL 3 has obtained at wholesale from SBC-13STATE sought to be Commingled and the needed location(s), the order in which such UNEs, such combinations of UNEs, and such facilities and services are to be Commingled, and how each connection (e.g., cross-connected) is to be made between them.

2.18.4.2 In addition to any other applicable charges, LEVEL 3 shall be charged a reasonable fee for any Commingling work done by SBC-13STATE under this Section 2.18 (including performing the actual Commingling). Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. SBC-13STATE's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified Commingling. With respect to a BFR in which LEVEL 3 requests SBC-13STATE to perform work not required by this Section 2.18.4, LEVEL 3 shall be charged a market-based rate for any such work.

2.18.5 SBC-13 STATE shall not be required to, and shall not, provide "ratcheting" as a result of Commingling or a Commingled Arrangement. As a general matter, "ratcheting" is a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate. SBC-13STATE shall charge the rates for UNEs (or UNE combinations) Commingled with facilities or services obtained at wholesale (including for example special access services) on an element-by-element basis, and such facilities and services on a facility-by-facility, service-by-service basis.

2.18.6 Nothing in this Agreement shall impose any obligation on SBC-13STATE to allow or otherwise permit Commingling, a Commingled Arrangement, or to perform the functions necessary to Commingle, or to allow or otherwise permit LEVEL 3 to Commingle or to make a Commingled Arrangement, beyond those obligations imposed by the Act, as determined by lawful **and** effective FCC rules and associated lawful **and** effective FCC and judicial orders. The preceding includes without limitation that SBC-13STATE shall not be obligated to Commingle network elements that do

not constitute UNEs under 47 U.S.C. § 251(c)(3), or where UNEs are not requested for permissible purposes.

- 2.18.7 In the event that Commingling involves SBC-13STATE performing the functions necessary to combine UNEs (e.g., make a new combination of UNEs), and including making the actual UNE combination, then Section 2.16 shall govern with respect to that UNE combining aspect of that particular Commingling and/or Commingled Arrangement.
- 2.18.8 Subject to this 2.18, SBC-13STATE shall not deny access to a UNE or a combination of UNEs on the grounds that one or more of the UNEs:
- 2.18.8.1 Is connected to, attached to, linked to, or combined with, a facility or service obtained at wholesale from SBC-13STATE;
- 2.18.9 *Commingling in its entirety (including its definition, the ability of LEVEL 3 to Commingle, SBC-13STATE's obligation to perform the functions necessary to Commingle, and Commingled Arrangements) shall not apply to or otherwise include, involve or encompass SBC-13STATE offerings pursuant to 47 U.S.C. § 271 that are not UNEs under 47 U.S.C. § 251(c)(3).*
- 2.20 Where processes for any UNE requested pursuant to this Agreement, whether alone or in conjunction with any other UNE(s) or service(s), are not already in place, SBC-13STATE will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with **any applicable** Change Management guidelines.
- 2.21 SBC-13STATE will combine UNEs, combine UNE(s) with network elements possessed by LEVEL 3, and/or Commingle only as set forth in this Appendix UNE.
- 2.22 The Parties intend that this Appendix UNEs contains the **sole and exclusive** terms and conditions by which LEVEL 3 will obtain UNEs from SBC-13STATE. **Accordingly, except as may be specifically permitted by this Appendix UNEs, and then only to the extent permitted, LEVEL 3 and its affiliated entities hereby fully and irrevocably waive any right or ability any of them might have to purchase any unbundled network element (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by LEVEL 3, or pursuant to Commingling or otherwise) directly from any SBC-13STATE tariff, and agree not to so purchase or attempt to so purchase from any such tariff. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to enforce the foregoing (including if SBC-13STATE fails to reject or otherwise block orders for, or provides or continues to provide, unbundled network elements, Lawful or otherwise, under tariff) shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder. At its option, SBC-13STATE may either reject any such order submitted under tariff, or without the need for any further contact with or consent from LEVEL 3, SBC-13STATE may process any such order as being submitted under this Appendix UNE and, further, may convert any element provided under tariff, to this Appendix UNE, effective as of the later in time of the (i) Effective Date of this Agreement/Amendment, or (ii) the submission of the order by LEVEL 3.**

3. ACCESS TO UNE CONNECTION METHODS

- 3.1 Subject to Section 2 of this Appendix UNEs, SBC-13STATE shall provide Access to UNE Connection Methods under the following terms and conditions.
- 3.2 This Section describes the connection methods under which SBC-13STATE agrees to provide LEVEL 3 with access to UNE Local Loops, and the conditions under which SBC-13STATE makes these methods available. These methods provide LEVEL 3 access to multiple SBC-13STATE UNEs that LEVEL 3 may then combine. The methods listed below provide LEVEL 3 with access to UNEs without compromising the security, integrity, and reliability of the public switched network, as well as to minimize potential service disruptions.

- 3.2.1 Subject to availability of space and equipment, LEVEL 3 may use the methods listed below to access and combine UNE Local Loops within a requested SBC-13STATE Central Office.
- 3.2.1.1 (Method 1)
- SBC-13STATE will extend SBC-13STATE UNEs requiring cross connection to LEVEL 3's Physical or Virtual Collocation Point of Termination (POT) when LEVEL 3 is Physically Collocated, in a caged or shared cage arrangement or Virtually Collocated, within the same Central Office where the UNEs which are to be combined are located. For Collocation terms and conditions refer to the Physical and Virtual Collocation Appendices.
- 3.2.1.2 (Method 2)
- SBC-13STATE will extend SBC-13STATE UNEs that require cross connection to LEVEL 3's UNE frame located in the common room space, other than the Collocation common area, within the same Central Office where the UNEs which are to be combined are located.
- 3.2.1.3 (Method 3)
- SBC-13STATE will extend SBC-13STATE UNEs to LEVEL 3's UNE frame that is located outside the SBC-13STATE Central Office where the UNEs are to be combined in a closure such as a cabinet provided by SBC-13STATE on SBC-13STATE property.
- 3.3 The following terms and conditions apply to Methods 2 and 3 when SBC-13STATE provides access to UNEs pursuant to Sections 3.2.1. 2 and 3.2.1.3:
- 3.3.1 LEVEL 3 may cancel the request at any time, but will pay SBC-13STATE's reasonable and demonstrable costs for modifying SBC-13STATE's Central Office up to the date of cancellation.
- 3.3.2 LEVEL 3 shall be responsible for initial testing and trouble sectionalization of facilities containing LEVEL 3 installed cross connects.
- 3.3.3 LEVEL 3 shall refer trouble sectionalized in the SBC-13STATE UNE to SBC-13STATE.
- 3.3.4 Prior to SBC-13STATE providing access to UNEs under this Appendix, LEVEL 3 and SBC-13STATE shall provide each other with a point of contact for overall coordination.
- 3.3.5 LEVEL 3 shall provide all tools and materials required to place and remove the cross connects necessary to combine and disconnect UNEs when LEVEL 3 combines or disconnects UNEs.
- 3.3.6 LEVEL 3 shall designate each UNE being ordered from SBC-13STATE. LEVEL 3 shall provide an interface to receive assignment information from SBC-13STATE regarding location of the affected UNEs. This interface may be manual or mechanized.
- 3.3.7 SBC-13STATE will provide LEVEL 3 with contact numbers as necessary to resolve assignment conflicts encountered. All contact with SBC-13STATE shall be referred to such contact numbers.
- 3.3.8 Certain construction and preparation activities may be required to modify a building or prepare the premises for access to UNEs.
- 3.3.8.1 Where applicable, costs for modifying a building or preparing the premises for access to SBC-13STATE UNEs will be made on an individual case basis (ICB).
- 3.3.8.2 SBC-13STATE will contract for and perform the construction and preparation activities using same or consistent practices that are used by SBC-13STATE for other construction and preparation work performed in the building.

4. ADJACENT LOCATION

- 4.1 Consistent with Section 2.1 of this Appendix UNEs, SBC-13STATE shall provide Adjacent Location provision under the following terms and conditions.
- 4.2* This Section describes the Adjacent Location Method for accessing UNEs. This Section also provides the conditions in which SBC CALIFORNIA offers the Adjacent Location Method.

- 4.3* The Adjacent Location Method allows LEVEL 3 to access loops for a LEVEL 3 location adjacent to a SBC CALIFORNIA Central Office as identified by SBC CALIFORNIA. Under this method SBC CALIFORNIA UNEs will be extended to the adjacent location, via copper cabling provided by LEVEL 3, which LEVEL 3 can then utilize to provide Telecommunications Service.
- 4.4* This method requires LEVEL 3 to provide copper cable, greater than 600 pairs, to the last manhole outside the SBC CALIFORNIA Central Office. LEVEL 3 shall provide enough slack for SBC CALIFORNIA to pull the cable into the Central Office and terminate the cable on the Central Office Intermediate Distribution Frame (IDF).
- 4.5* LEVEL 3 will obtain all necessary rights of way, easements, and other third party permissions.
- 4.6* The following terms and conditions apply when SBC CALIFORNIA provides the adjacent location:
- 4.6.1 LEVEL 3 is responsible for Spectrum Interference and is aware that not all pairs may be ADSL or POTS capable.
- 4.7* The installation interval applies on an individual application basis. LEVEL 3 is responsible for paying all up front charges (nonrecurring and case preparation costs) before work will begin. This assumes that all necessary permits will be issued in a timely manner.
- 4.8* LEVEL 3 will provide the excess cable length necessary to reach the SBC CALIFORNIA IDF in the SBC CALIFORNIA Central Office where LEVEL 3 requests connection.
- 4.9* LEVEL 3 will be responsible for testing and sectionalization of facilities from the End User's location to the entrance manhole.
- 4.10* LEVEL 3 should refer any sectionalized trouble determined to be in SBC CALIFORNIA's facilities to SBC CALIFORNIA.
- 4.11* LEVEL 3's employees, agents and contractors will be permitted to have access to LEVEL 3's cable where it is delivered to SBC CALIFORNIA (outside the entrance manhole). LEVEL 3 is only able to enter the entrance manhole to splice under a duct lease agreement. If LEVEL 3 leases ducts to get to the Central Office LEVEL 3 has the right to splice the manholes on the route, including the entrance manhole.
- 4.12* In order for SBC CALIFORNIA to identify the entrance manhole for, LEVEL 3 must specify the direction from which the cable originates. SBC CALIFORNIA will verify that a vacant sleeve or riser duct exists at the entrance manhole. If none exists, construction of one will be required. If a vacant access sleeve or riser duct does not exist, and one must be constructed, LEVEL 3 will pay for the construction on an Outside Plant Custom Work Order.
- 4.13* LEVEL 3 will retain all assignment control. SBC CALIFORNIA will maintain TIRKS records for cable appearance information on the horizontal and vertical appearance on the SBC CALIFORNIA frame.
- 4.14* LEVEL 3 will pay Time and Materials charges when SBC CALIFORNIA dispatches personnel and failure is in LEVEL 3's facility.
- 4.15* SBC CALIFORNIA will not assume responsibility for the quality of service provided over this special interconnection arrangement. Service quality is the responsibility of LEVEL 3. SBC CALIFORNIA limits each CLEC to two building entrances. Two entrances allow for LEVEL 3 growth or a diverse path.
- 4.16* Prior to SBC CALIFORNIA providing the Adjacent Location Method in this Appendix, LEVEL 3 and SBC CALIFORNIA shall provide each other with a single point of contact for overall coordination.
- 4.17* The Adjacent Location Method of Accessing UNEs only allows for copper cable termination.

5. **INTENTIONALLY LEFT BLANK.**

6. **BONA FIDE REQUEST**

- 6.1 Subject to Section 2, SBC-13STATE shall process BFR requests under the following terms and conditions in this subsection.

- 6.2 The Bona Fide Request process described in Item I of this Section 6 applies to each Bona Fide Request submitted in the SBC-10STATE and SBC NEVADA Territory. The Bona Fide Request process described in Item II of this Section 6 shall apply to each Bona Fide Request submitted in the SBC CONNECTICUT Territory and the Bona Fide Request Process described in Item III of this Section shall apply to each Bona Fide Request submitted in the SBC CALIFORNIA Territory. If LEVEL 3 submits the same Request in more than one Territory that requires such Request to be processed under more than one Item in this Section 6 (e.g., in Territories that have different processes), separate BFRs shall be required. For purposes of this Appendix, a "Business Day" means Monday through Friday, excluding Holidays observed by SBC-13STATE.

6.3 **Item I**

SBC-10STATE, SBC NEVADA Bona Fide Request Process

- 6.3.1 A Bona Fide Request ("BFR") is the process by which LEVEL 3 may request SBC-10STATE, SBC NEVADA to provide LEVEL 3 access to a previously undefined UNE, UNE Combination **and/or** **Commingling arrangement** that constitute or involve a UNE required to be provided by SBC-10STATE, SBC NEVADA but that is not available under this Agreement at the time of LEVEL 3's request.
- 6.3.2 The BFR process set forth herein does not apply to those services requested pursuant to Report & Order and Notice of Proposed Rulemaking 91-141 (rel. Oct. 19, 1992) paragraph 259 and n. 603 and subsequent rulings.
- 6.3.3 All BFRs must be submitted with a BFR Application Form in accordance with the specifications and processes set forth in the respective sections of the **CLEC** Handbook. Included with the Application LEVEL 3 shall provide a technical description of each requested UNE, drawings when applicable, the location(s) where needed, the date required, and the projected quantity to be ordered with a 3 year forecast.
- 6.3.4 LEVEL 3 is only responsible for all the reasonable costs incurred by SBC-10STATE, SBC NEVADA to review, analyze and process a BFR. When submitting a BFR Application Form, LEVEL 3 has two options to compensate SBC-10STATE, SBC NEVADA for its costs incurred to complete the Preliminary Analysis of the BFR:
- 6.3.4.1 Include with its BFR Application Form a \$2,000 deposit to cover SBC-10STATE, SBC NEVADA's preliminary evaluation costs, in which case SBC-10STATE, SBC NEVADA **may shall** not charge LEVEL 3 in excess of \$2,000 to complete the Preliminary Analysis; or
- 6.3.4.2 Not make the \$2,000 deposit, in which case LEVEL 3 shall be responsible for all preliminary evaluation costs incurred by SBC-10STATE, SBC NEVADA to complete the preliminary Analysis (regardless of whether such costs are greater or less than \$2,000).
- 6.3.5 If LEVEL 3 submits a \$ 2,000 deposit with its BFR, and SBC-10STATE, SBC NEVADA is not able to process the Request or determines that the Request does not qualify for BFR treatment, then SBC-10STATE, SBC NEVADA will return the \$2,000 deposit to LEVEL 3. Similarly, if the costs incurred to complete the Preliminary Analysis are less than \$2,000, the balance of the deposit will, at the option of LEVEL 3, either be refunded or credited toward additional developmental costs authorized by LEVEL 3.
- 6.3.6 Upon written notice, LEVEL 3 may cancel a BFR at any time, but will pay SBC-10STATE, SBC NEVADA its reasonable and demonstrable costs of processing and/or implementing the BFR up to and including the date SBC-10STATE, SBC NEVADA received notice of cancellation. If cancellation occurs prior to completion of the preliminary evaluation, and a \$2,000 deposit has been made by LEVEL 3, and the reasonable and demonstrable costs are less than \$2,000, the remaining balance of the deposit will be, at the option of LEVEL 3, either returned to LEVEL 3 or credited toward additional developmental costs authorized by LEVEL 3.

- 6.3.7 SBC-10STATE, SBC NEVADA will promptly consider and analyze each BFR it receives. Within ten (10) Business Days of its receipt SBC-10STATE, SBC NEVADA will acknowledge receipt of the BFR and in such acknowledgement advise LEVEL 3 of the need for any further information needed to process the Request. LEVEL 3 acknowledges that the time intervals set forth in this Appendix begins once SBC-10STATE, SBC NEVADA has received a complete and accurate BFR Application Form and, if applicable, \$2,000 deposit.
- 6.3.8 Except under extraordinary circumstances, within thirty (30) calendar days of its receipt of a complete and accurate BFR SBC-10STATE, SBC NEVADA will provide to LEVEL 3 a preliminary analysis of such Request (the “Preliminary Analysis”). The Preliminary Analysis will (i) indicate that SBC-10STATE, SBC NEVADA will offer the Request to LEVEL 3 or (ii) advise LEVEL 3 that SBC-10STATE, SBC NEVADA will not offer the Request. If SBC-10STATE, SBC NEVADA indicates it will not offer the Request, SBC-10STATE, SBC NEVADA will provide a detailed explanation for the denial. Possible explanations may be, but are not limited to: i) access to the Request is not technically feasible, ii) that the Request is not for a UNE, or is otherwise not required to be provided by SBC-10STATE, SBC NEVADA under the Act and/or, iii) that the BFR is not the correct process for the request.
- 6.3.9 If the Preliminary Analysis indicates that SBC-10STATE, SBC NEVADA will offer the Request, LEVEL 3 may, at its discretion, provide written authorization for SBC-10STATE, SBC NEVADA to develop the Request and prepare a “BFR Quote”. The BFR Quote shall, as applicable, include (i) the first date of availability, (ii) installation intervals, (iii) applicable rates (recurring, nonrecurring and other), (iv) BFR development and processing costs and (v) terms and conditions by which the Request shall be made available. LEVEL 3’s written authorization to develop the BFR Quote must be received by SBC-10STATE, SBC NEVADA within thirty (30) calendar days of LEVEL 3’s receipt of the Preliminary Analysis. If no authorization to proceed is received within such thirty (30) calendar day period, the BFR will be deemed canceled and LEVEL 3 will pay to SBC-10STATE, SBC NEVADA all demonstrable costs as set forth above. Any request by LEVEL 3 for SBC-10STATE, SBC NEVADA to proceed with a Request received after the thirty (30) calendar day window will require LEVEL 3 to submit a new BFR.
- 6.3.10 As soon as feasible, but not more than ninety (90) calendar days after its receipt of authorization to develop the BFR Quote, SBC-10STATE, SBC NEVADA shall provide to LEVEL 3 a BFR Quote.
- 6.3.11 Within thirty (30) calendar days of its receipt of the BFR Quote, LEVEL 3 must either (i) confirm its order pursuant to the BFR Quote (ii) cancel its BFR and reimburse SBC-10STATE, SBC NEVADA for its costs incurred up to the date of cancellation, or (iii) if it believes the BFR Quote is inconsistent with the requirements of the Act and/or this Appendix, exercise its rights under the Dispute Resolution Process set forth in the General Terms and Conditions of this Agreement. If SBC-10STATE, SBC NEVADA does not receive notice of any of the foregoing within such thirty (30) calendar day period, the BFR shall be deemed canceled. LEVEL 3 shall be responsible to reimburse SBC-10STATE, SBC NEVADA for its costs incurred up to the date of cancellation (whether affirmatively canceled or deemed canceled by LEVEL 3).
- 6.3.12 Unless LEVEL 3 agrees otherwise, all rates and costs quoted or invoiced herein shall be consistent with the pricing principles of the Act.
- 6.3.13 If a Party believes that the other Party is not requesting, negotiating or processing a BFR in good faith and/or as required by the Act, or if a Party disputes a determination, or price or cost quote, such Party may seek relief pursuant to the Dispute Resolution Process set forth in the General Terms and Conditions section of this Agreement.

6.4* Item II

SBC CONNECTICUT Bona Fide Request Process

* Section 6.4 is available only in the State of Connecticut. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS, Paragraph 2.10.1.

- 6.4.1 The Bona Fide Request provisions set forth in 6.3 Item I shall apply to BFRs submitted to **SBC CONNECTICUT**, with the following exceptions:
- 6.4.2 Section 6.3.1 is amended to add the following: A **LEVEL 3** may submit a BFR to request new UNEs, provided the request is not covered by one of the following conditions:
- 6.4.2.1 The UNEs requested have not previously been identified or defined by the Department of Public Utility Control (DPUC), the Federal Communications Commission, **LEVEL 3's** approved interconnection agreement, or in the listings of combinations in Docket No. 98-02-01, DPUC Investigation into Rebundling of Telephone Company Network Elements, August 17, 1998.
- 6.4.2.2 The UNEs requested are not currently deployed by an incumbent local exchange carrier in another jurisdiction or deemed acceptable for deployment by another state Commission or an industry standards body.
- 6.4.2.3 The UNEs requested are not included in a Telco tariffed offering as an existing capability or functional equivalent.
- 6.4.2.4 If the request is covered by one of the conditions listed above, **SBC CONNECTICUT** will make these items generally available.
- 6.4.3 Sections 6.3.3 and 6.3.4 are amended as follows: No charges apply for **SBC CONNECTICUT** to prepare the Preliminary Analysis.
- 6.4.4 Section 6.3.6 is amended as follows: Cancellation charges will not apply if the written notice of cancellation is received by **SBC CONNECTICUT** after **SBC CONNECTICUT** submits its Preliminary Analysis to **LEVEL 3** but before **LEVEL 3's** request for the BFR Quote. Cancellation charges will apply after **LEVEL 3** submits its request for **SBC CONNECTICUT** to provide a BFR Quote, but before the BFR Quote is provided to **LEVEL 3**. **LEVEL 3** shall be liable for reimbursement of all actual costs in connection with developing the BFR Quote incurred up to the time **SBC CONNECTICUT** receives the written notice of cancellation from **LEVEL 3**. However, if **SBC CONNECTICUT** receives notification from **LEVEL 3** for cancellation of the BFR after receipt by **LEVEL 3** of the BFR Quote, the cancellation charges shall not exceed the lesser of the actual costs incurred by **SBC CONNECTICUT** or the estimate in the BFR Quote plus twenty percent (20%).
- 6.4.5 Section 6.3.7 is amended as follows: **SBC CONNECTICUT** will promptly consider and analyze each BFR it receives. Within ten (10) Business Days of its receipt, **SBC CONNECTICUT** will acknowledge receipt of the BFR and in such acknowledgement advise **LEVEL 3** of the need for any further information needed to process the Request. **LEVEL 3** acknowledges that the time intervals set forth in this Appendix begin once **SBC CONNECTICUT** has received a complete and accurate BFR Application Form.
- 6.4.6 **SBC CONNECTICUT** will apply standard tariffed Processing Fees (BFR development costs) according to the Connecticut Access Service Tariff 4.11.
- 6.4.7 For **SBC CONNECTICUT**, under the Dispute Resolution Process (DRP), either Party may petition the Department for relief pursuant to its own processes and the Uniform Administrative Procedures Act regarding the issues raised during the BFR process. Upon request, a designated member of the Department staff may confer with both Parties orally or in person concerning the substance of the Parties' dispute, and may make such recommendations as he or she shall deem appropriate for consideration by both Parties to resolve expeditiously the issues in dispute. Any such participation by Department staff in such mediation shall not be construed in any subsequent proceeding as establishing precedent or any Formal position of the Department on the matter in dispute.

6.5 Item III

SBC CALIFORNIA Bona Fide Request Process

- 6.5.1 The Bona Fide Request provisions set forth in 6.3 Item I shall apply to BFRs submitted to **SBC CALIFORNIA**, with the following exceptions:
- 6.5.2 Section 6.3.1 is amended as follows: A Bona Fide Request (“BFR”) is the process by which **LEVEL 3** may request **SBC CALIFORNIA** to provide **LEVEL 3** access to an additional or new, undefined UNE.
- 6.5.3 Interconnection arrangement, or other (a “Request”), that is required to be provided by **SBC CALIFORNIA** under the Act but is not available under this Agreement or defined in a generic appendix at the time of **LEVEL 3**’s request.
- 6.5.4 Section 6.3.3 is amended as follows: All BFRs must be submitted with a BFR/Interconnection or Network Element Application Form in accordance with the specifications and processes set forth in the sections of the Handbook.
- 6.5.5 Section 6.3.8 is amended as follows: Except under extraordinary circumstances, within thirty (30) calendar days of its receipt of a complete and accurate BFR, **SBC CALIFORNIA** will provide to **LEVEL 3** a Preliminary Analysis of such Request. The Preliminary Analysis will confirm that **SBC CALIFORNIA** will offer the request. The Preliminary Analysis provided by **SBC CALIFORNIA** will include cost categories (material, labor and other) and high level costs for the request. **SBC CALIFORNIA** will attempt to provide a “yes” response earlier than thirty (30) calendar days if possible. **LEVEL 3** acknowledges that an earlier “yes” response will not include high level costs. The costs will be sent by the 30th calendar day. When wholesale construction is required, costs will be provided within an additional twenty-four (24) calendar days (i.e., by the 54th calendar day).
- 6.5.6 If the BFR is denied, **SBC CALIFORNIA** will notify **LEVEL 3** within fifteen (15) calendar days. The reason for denial will accompany the notification. Reasons for denial may include, but are not limited to: 1) not technically feasible, 2) the BFR is not the appropriate process for the Request and there is a referral to the appropriate process, and/or 3) the Request does not qualify as a new UNE, interconnection or other arrangement required by law.
- 6.5.7 If **SBC CALIFORNIA** refers **LEVEL 3** to an alternate process, the details of the provision of the alternate process will accompany the notification. The details may include an application form for the alternate process and other documentation required for **LEVEL 3** to submit the application for the alternate process.

7. NETWORK INTERFACE DEVICE

- 7.1 Subject to Section 2 of this Appendix UNE, **SBC-13STATE** shall provide UNE Network Interface Device under the following terms and conditions in this subsection.
- 7.2 The UNE Network Interface Device (NID) is defined as any means of interconnection of End User premises wiring to **SBC-13STATE**’s distribution loop facilities, such as a cross connect device used for that purpose. Fundamentally, the UNE NID establishes the final (and official) network demarcation point between the loop and the End User’s inside wire. Maintenance and control of the End User’s inside wiring (on the End User’s side of the UNE NID) is under the control of the End User. Conflicts between telephone service providers for access to the End User’s inside wire must be resolved by the End User. Pursuant to applicable FCC rules, **SBC-13STATE** offers nondiscriminatory access to the UNE NID on an unbundled basis to **LEVEL 3** for the provision of a Telecommunications Service. **LEVEL 3** access to the UNE NID is offered as specified below (**SBC-12STATE**) or by tariff (**SBC CONNECTICUT**).
- 7.3 **SBC-12STATE** will permit **LEVEL 3** to connect its local loop facilities to End Users’ premises wiring through **SBC-12STATE**’s UNE NID, or at any other technically feasible point.

* Section 6.5 is available only in the State of California. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS, Paragraph 2.10.1.

- 7.4 LEVEL 3 may connect to the End User's premises wiring through the SBC-12STATE UNE NID, as is, or at any other technically feasible point. Any repairs, upgrade and rearrangements to the UNE NID required by LEVEL 3 will be performed by SBC-12STATE based on Time and Material charges. SBC-12STATE, at the request of LEVEL 3, will disconnect the SBC-12STATE local loop from the UNE NID, at charges reflected in the state specific Appendix Pricing.
- 7.5 With respect to multiple dwelling units or multiple-unit business premises, LEVEL 3 will connect directly with the End User's premises wire, or may connect with the End User's premises wire via SBC-12STATE's UNE NID where necessary.
- 7.6 The SBC-12STATE UNE NIDs that LEVEL 3 uses under this Appendix will be existing UNE NIDs installed by SBC-12STATE to serve its End Users.
- 7.7 LEVEL 3 shall not attach to or disconnect SBC-12STATE's ground. LEVEL 3 shall not cut or disconnect SBC-12STATE's loop from the UNE NID and/or its protector. LEVEL 3 shall not cut any other leads in the UNE NID.
- 7.8 LEVEL 3, who has constructed its own NID at a premises and needs only to make contact with SBC-12STATE's UNE NID, can disconnect the End User's wiring from SBC-12STATE's UNE NID and reconnect it to LEVEL 3's NID..
- 7.9 *If LEVEL 3 requests a different type of UNE NID not included with the loop, SBC-12STATE will consider the requested type of UNE NID to be facilitated via the Bona Fide Request (BFR) Process.*

8. UNE LOCAL LOOP

- 8.1 Subject to the other terms and conditions of this Appendix, SBC-13STATE shall provide UNE Local Loop under the following terms and conditions in this subsection.
- 8.2 A UNE Local Loop is a transmission facility between a distribution frame (or its equivalent) in an SBC-13STATE Central Office and the loop demarcation point at an End User premises. SBC-13STATE will make available the UNE Local Loops set forth herein below between a distribution frame (or its equivalent) in an SBC-13STATE Central Office and the loop demarcation point at an End User premises. The Parties acknowledge and agree that SBC-13STATE shall not be obligated to provision any of the UNE Local Loops provided for herein to cellular sites or to any other location that does not constitute an End User premises. Where applicable, the UNE Local Loop includes all wire within multiple dwelling and tenant buildings and campuses that provides access to End User premises wiring, provided such wire is owned and controlled by SBC-13STATE. The UNE Local Loop includes all features, functions and capabilities of the transmission facility, including attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and LEVEL 3 requested line conditioning **for purposes of the deployment of xDSL-based technologies**. UNE Local Loop **are** copper loops (two-wire and four-wire analog voice-grade copper loops, digital copper loops [e.g., DS0s and integrated services digital network lines]), as well as two-wire and four-wire copper loops conditioned, at LEVEL 3 request and subject to charges, to transmit the digital signals needed to provide digital subscriber line services), LEVEL 3 agrees to operate each UNE Local Loop type within applicable technical standards and parameters. **The Parties acknowledge and agree that DSL, Line Sharing and Line splitting rates, terms and conditions are not included in this Agreement and therefore Local Loops for purposes of LineSharing, LineSplitting and xDSL services will not be provided to Level 3.**
- 8.2.1 When a UNE Local Loop is provisioned in a high voltage area, the Parties understand and agree that pursuant to the applicable SBC tariff, the UNE Local Loop may require High Voltage Protective Equipment (HVPE) (e.g., a positron), to ensure the safety and integrity of the network, the Parties' employees and/or representatives, and LEVEL 3's End User. In the event that it is determined by SBC-13STATE that such HVPE is required, Level 3 will submit to SBC-13STATE pursuant to Section 6 of this Agreement, a BFR for the provisioning of such loop subject to the applicable SBC-13STATE tariff.

- 8.3 The following types of **UNE** Local Loop will be provided at the rates, terms, and conditions set forth in this Appendix (SBC-12STATE) or by tariff (SBC CONNECTICUT) and in the state specific Appendix Pricing (SBC-12STATE) or by tariff (SBC CONNECTICUT):

8.3.1 INTENTIONALLY OMITTED.

8.3.1.2 INTENTIONALLY OMITTED.

8.3.2 INTENTIONALLY OMITTED.

8.3.2.1 INTENTIONALLY OMITTED.

8.3.3 INTENTIONALLY OMITTED.

8.3.3.1 INTENTIONALLY OMITTED.

8.3.4 As no other type of loop constitutes a UNE loop (other than 2-wire and 4-wire xDSL loops provided for elsewhere in this Agreement), SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any other type of loop, including, but not limited to DS1, DS3 or higher capacity loops, or dark fiber loops. LEVEL 3 shall not request such loops under this Agreement, whether alone, in combination or Commingled. Accordingly, if LEVEL 3 requests and SBC-13STATE provides a loop(s) that is not described or provided for in this Agreement, SBC-13STATE may, at any time, even after the loop(s) has been provided to LEVEL 3, discontinue providing such loop(s) (including any combination(s) including that loop) upon 30 days' advance written notice to LEVEL 3. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to such loop(s) (whether on a stand-alone basis, in combination with UNEs, (Lawful or otherwise) with a network element possessed by LEVEL 3, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.

8.5 Routine Network Modifications – UNE Local Loops

8.5.1 **SBC 13STATE** shall make routine network modifications to UNE Local Loop facilities used by requesting telecommunications carriers where the requested UNE Local Loop facility has already been constructed. **SBC 13STATE** shall perform routine network modifications to UNE Local Loop facilities in a nondiscriminatory fashion, without regard to whether the UNE Local Loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

8.5.2 A routine network modification is an activity that **SBC-13STATE** regularly undertakes for its own **retail** customers **where there are no additional charges or minimum term commitments**. Routine network modifications include rearranging or splicing of **existing** cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to activate such loop for its own **retail** customers, **under the same conditions and in the same manner that SBC-13STATE does for its own retail customers** even if such electronics are not attached to a particular loop. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings.

8.5.3 Routine network modifications do not include constructing new loops; installing new cable; splicing cable at any location other than an existing splice point or at any location where a splice enclosure is not already present; securing permits, rights-of-way, or building access arrangements; constructing and/or placing new manholes, handholes, poles, ducts or conduits; installing new terminals or terminal enclosures (e.g., controlled environmental vaults, huts, or cabinets); or providing new space or power for requesting carriers; removing or reconfiguring packetized transmission facility; or the provision of electronics for the purpose of lighting dark fiber (i.e., optronics). SBC-13 STATE is not obligated to perform those activities for a requesting telecommunications carrier.

8.5.4 SBC-13STATE shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to SBC-13STATE's retail customers.

8.5.5 This Agreement does not require SBC-13STATE to deploy time division multiplexing-based features, functions and capabilities with any copper or fiber packetized transmission facility to the extent SBC-13STATE has not already done so; remove or reconfigure packet switching equipment or equipment used to provision a packetized transmission path; reconfigure a copper or fiber packetized transmission facility to provide time division multiplexing-based features, functions and capabilities; nor does this Agreement prohibit SBC-13STATE from upgrading a customer from a TDM-based service to a packet switched or packet transmission service, or removing copper loops or subloops from the network, provided SBC-13STATE complies with the copper loop or copper subloop retirement rules in 47 C.F.R. 51.319(a)(3)(iii).

8.5.6 SBC-12STATE shall provide routine network modifications at the rates, terms and conditions set out in this Appendix (SBC-12STATE), and in the state specific Appendix Pricing (SBC-12STATE) or by tariff (SBC-CONNECTICUT).

9. UNE SUBLOOPS

9.1 Subject to the other terms and conditions of this Appendix, SBC-12STATE shall provide UNE Subloops under the following terms and conditions in this subsection.

9.2 SBC-12STATE will provide UNE Subloops as set forth in this Appendix. Other than as specifically set out elsewhere in this Agreement, SBC CONNECTICUT does not offer UNE Subloops under this Agreement. Rather, UNE Subloops are available as described in Section 18 of the Connecticut Service Tariff.

9.2.1 A UNE Subloop is a smaller included segment of SBC-12STATE's local loop plant, i.e., a portion of the loop from some technically accessible terminal beyond SBC-12STATE's central office and the network demarcation point, including that portion of the loop, if any, which SBC-12STATE's owns and controls inside the End User premises.

9.3 Definitions pertaining to the UNE Subloop

9.3.1 Accessible terminals contain cables and their respective wire pairs that terminate on screw posts. This allows technicians to affix cross connects between binding posts of terminals collocated at the same point. Terminals differ from splice cases, which are inaccessible because the case must be breached to reach the wires within.

9.3.2 "Dead Count" refers to those binding posts which have cable spliced to them but which cable is not currently terminated to any terminal to provide service.

9.3.3 "Demarcation Point" is defined as the point on the loop where the ILEC's control of the wire ceases and the subscriber's control (or on the case of some multiunit premises, the landlord's control) of the wire begins.

- 9.3.4 “Digital **UNE** Subloop” may be deployed on non-loaded copper cable pairs, channels of a digital loop carrier system, channels of a fiber optic transport system or other technologies suitable for the purpose of providing 160 Kbps **UNE** Subloop transport.
- 9.3.5 “Distribution Cable” is defined as the cable from the SAI/FDI to the terminals from which an end user can be connected to the ILEC’s network.
- 9.3.6 “MTE” for the purpose of Term To NID **UNE** Subloop. “MTE” is a Multi Tenant Environment for buildings with exterior or interior mounted terminals.
- 9.3.7 “Network Terminating Wire (NTW)” is the service wire that connects the ILEC’s distribution cable to the NID at the demarcation point.
- 9.3.8 “SAI/FDI-to-Term **UNE** Subloop” is that portion of the loop from the SAI/FDI to an accessible terminal.
- 9.3.9 “SAI/FDI-to-NID **UNE** Subloop” is that portion of the loop from the SAI/FDI to the Network Interface Device (NID), which is located an end user’s premise.
- 9.3.10 SPOI” is defined as a Single Point of Interconnection. At the request of LEVEL 3, and subject to charges, SBC-12STATE will construct a SPOI only to those multiunit premises where SBC-12STATE has distribution facilities to the premises and SBC-12STATE either owns, controls, or leases the inside wire, if any, at such premises. If SBC-12STATE has no facilities which it owns, controls or leases at a multiunit premises through which it serves, or can serve, End Users at such premises, it is not obligated to construct a SPOI. SBC-12STATE’s obligation to build a SPOI for multiunit premises only arises when LEVEL 3 indicates that it will place an order for a UNE Subloop via a SPOI.
- 9.3.11 “SAI/FDI” is defined as the point in the ILEC’s network where feeder cable is cross connected to the distribution cable. “SAI” is Serving Area Interface. “FDI” is Feeder Distribution Interface. The terms are interchangeable.
- 9.3.12 “Term-to-NID **UNE** Subloop” is that portion of the loop from an accessible terminal to the NID, which is located at an end user’s premise. Term-to-NID **UNE** Subloop includes use of the Network Terminating Wire (NTW).
- 9.4 **SBC-12STATE** will offer the following **UNE** Subloop types:
- 9.4.1 2-Wire Analog **UNE** Subloop provides a 2-wire (one twisted pair cable or equivalent) capable of transporting analog signals in the frequency range of approximately 300 to 3000 hertz (voiceband).
- 9.4.2 4-Wire Analog **UNE** Subloop provides a 4-wire (two twisted pair cables or equivalent, with separate transmit and receive paths) capable of transporting analog signals in the frequency range of approximately 300 to 3000 hertz (voiceband).
- 9.4.3 *The Parties acknowledge and agree that DSL, Line Sharing and Line Splitting rates, terms and conditions are not included in this Agreement and UNE xDSL Subloops will therefore not be provided to Level 3.***
- 9.4.4 *As no other type of Subloop constitutes a UNE subloop, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any other type of subloop. LEVEL 3 shall not request such subloops under this Agreement, whether alone, in combination or Commingled. Accordingly, if LEVEL 3 requests and SBC-13STATE provides a subloop(s) that is not described or provided for in this Agreement, SBC-13STATE may, at any time, even after the subloop(s) has been provided to LEVEL 3, discontinue providing such subloop(s) (including any combination(s) including that subloop) upon 30 days’ advance written notice to LEVEL 3. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to such subloop(s) (whether on a stand-alone basis, in combination with UNEs (Lawful or***

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*otherwise), with a network element possessed by **LEVEL 3**, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.*

9.5 Left Blank Intentionally.

9.6 **UNE** Subloops are provided “as is” unless **LEVEL 3** requests loop conditioning on **UNE** xDSL Subloops for the purpose of offering advanced services. **UNE** xDSL Subloop conditioning will be provided at the rates, terms, and conditions set out in the state specific Appendix Pricing.

9.7 If a Term to NID **UNE** Subloop has been disconnected and thus an end-user is no longer receiving service via that **UNE** Subloop, and such **UNE** Subloop has been determined to be a non-defective pair, then that **UNE** Subloop would be considered an existing spare portion of the loop, based on a first come first served basis.

9.8 Copper **UNE** Subloops

9.8.1 Access to terminals for copper **UNE** Subloops is defined to include:

- any technically feasible point near the End User premises accessible by a cross-connect (such as the pole or pedestal, the NID, or the minimum point of entry (MPOE) to the End User premises),
- the Feeder Distribution Interface (FDI) or Serving Area Interface (SAI), where the “feeder” leading back to the central office and the “distribution” plant branching out to the subscribers meet,
- the Terminal (underground or aerial).

9.9 **LEVEL 3** may request access to the following copper **UNE** Subloop segments:

<u>FROM:</u>	<u>TO:</u>
1. Serving Area Interface or Feeder Distribution Interface	Terminal
2. Serving Area Interface or Feeder Distribution Interface	Network Interface Device
3. Terminal	Network Interface Device
4. NID	Stand Alone
5. SPOI (Single Point of Interface)	Terminal
6. SPOI (Single Point of Interface)	Network Interface Device

9.10 Provisioning

9.10.1 Connecting Facility Arrangement (CFA) assignments must be in-place prior to ordering and assigning specific **UNE** Subloop circuit(s).

9.10.2 Spare **UNE** Subloop(s) will be assigned to **LEVEL 3** only when an LSR/ASR is processed. LSR/ASRs will be processed on a “first come first serve” basis.

9.11 Maintenance

9.11.1 The Parties acknowledge that by separating switching, and distribution plant, the ability to perform mechanized testing and monitoring of the **UNE** Subloop from the **SBC-12STATE** switch/testing equipment will be lost.

9.11.2 **LEVEL 3** shall isolate trouble to the **SBC-12STATE** **UNE** Subloop portion of LEVEL 3’s service before reporting trouble to **SBC-12STATE**.

9.11.3 **SBC-12STATE** shall charge LEVEL 3 a Maintenance of Service Charge (MSC) when **LEVEL 3** dispatches **SBC-12STATE** on a trouble report and the fault is determined to be in LEVEL 3’s portion of the loop. Such charges may be found in the individual state pricing appendices or tariffs.

- 9.11.4 Once all **UNE** Subloop access arrangements have been completed and balance of payment due **SBC-12STATE** is received, LEVEL 3 may place a LSR for Subloops at this location. Prices at which **SBC-12STATE** agrees to provide **LEVEL 3** with **UNE** Subloops are contained in the state specific Appendix Pricing.
- 9.11.5 In the event of Catastrophic Damage to the RT, SAI/FDI, Terminal, SPOI, or NID where **LEVEL 3** has a SAA, **SBC-12STATE** repair forces will restore service in a non-discriminatory manner which will allow the greatest number of all End Users to be restored in the least amount of time. Should LEVEL 3 cabling require replacement, **SBC-12STATE** will provide prompt notification to **LEVEL 3** for **LEVEL 3** to provide the replacement cable to be terminated as necessary.
- 9.12 **UNE Subloop Access Arrangements**
- 9.12.1 Prior to ordering **UNE** Subloop facilities, **LEVEL 3** will establish Collocation using the Collocation process as set forth in the Collocation Appendix, or will establish a **UNE** Subloop Access Arrangement utilizing the Special Construction Arrangement (SCA), either of which are necessary to interconnect to the **SBC-12STATE** **UNE** Subloop network.
- 9.12.2 The space available for collocating or obtaining various **UNE** Subloop Access Arrangements will vary depending on the existing plant at a particular location. LEVEL 3 will initiate an SCA by submitting a **UNE** Subloop Access Arrangement Application.
- 9.12.3 Upon receipt of a complete and correct application, **SBC-12STATE** will provide to **LEVEL 3** within 30 days a written estimate for the actual construction, labor, materials, and related provisioning costs incurred to fulfill the SCA on a Time and Materials basis. When **LEVEL 3** submits a request to provide a written estimate for **UNE** Subloop access, appropriate rates for the engineering and other associated costs performed will be charged.
- 9.12.4 The assignment of **UNE** Subloop facilities will incorporate reasonable practices used to administer outside plant loop facilities. For example, where SAI/FDI interfaces are currently administered in 25 pair cable complements, this will continue to be the practice in assigning and administering **UNE** Subloop facilities.
- 9.12.5 Subloop inquiries do not serve to reserve **UNE** Subloops.
- 9.12.6 Several options exist for Collocation or **UNE** Subloop Access Arrangements at technically feasible points. Sound engineering judgment will be utilized to ensure network security and integrity. Each situation will be analyzed on a case-by-case basis.
- 9.12.7 **LEVEL 3** will be responsible for obtaining rights of way from owners of property where **SBC-12STATE** has placed the equipment necessary for the SAA prior to submitting the request for SCA.
- 9.12.8 Prior to submitting **the** **UNE** Subloop Access Arrangement Application for SCA, LEVEL 3 should have the "Collocation" and "Poles, Conduit, and Row" appendices in the Agreement to provide the guidelines for both **LEVEL 3** and ILEC to successfully implement **UNE** Subloops, should collocation, access to poles/conduits or rights of way be required.
- 9.12.9 Except as set forth below in this 9.12.9, construction of the **UNE** Subloop Access Arrangement shall be completed within 90 days of **LEVEL 3** submitting to **SBC-12STATE** written approval and payment of not less than 50% of the total estimated construction costs and related provisioning costs after an estimate has been accepted by the carrier and before construction begins, with the balance payable upon completion. **SBC-12STATE** will not begin any construction under the SCA until LEVEL 3 has provided proof that it has obtained necessary rights of way as defined in Section 9.12.7. In the event **LEVEL 3** disputes the estimate for an SAA in accordance with the dispute resolution procedures set forth in this Agreement, **SBC-12STATE** will proceed with construction of the SAA upon receipt from **LEVEL 3** of notice of the dispute and not less than fifty percent (50%) of the total estimated costs, with the balance payable by **LEVEL 3** upon completion of the SAA. Such payments may be subject to any "true-up", if applicable, upon resolution of the dispute in accordance with the Dispute Resolution procedures.

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- 9.12.10 Upon completion of the construction activity, LEVEL 3 will be allowed to test the installation with a SBC-12STATE technician. If LEVEL 3 desires test access to the SAA, LEVEL 3 should place its own test point in its cable prior to cable entry into SBC-12STATE's interconnection point.
- 9.12.11 A non-binding LEVEL 3 forecast shall be required as a part of the request for SAA, identifying the UNE Subloops required for line-shared and non line-shared arrangements to each subtending SAI. This will allow SBC-12STATE to properly engineer access to each SAI and to ensure SBC-12STATE does not provide more available terminations than LEVEL 3 expects to use.
- 9.12.12 In order to maximize the availability of terminations for all CLECs, LEVEL 3 shall provide CFA for their UNE Subloop pairs utilizing the same 25-pair binder group. LEVEL 3 would begin utilizing the second 25-pair binder group once the first 25-pair binder group reached its capacity.
- 9.12.13 Unused LEVEL 3 terminations (in normal splicing increments such as 25-pair at a SAI/FDI) which remain unused for a period of one year after the completion of construction shall be subject to removal at LEVEL 3 expense.
- 9.12.14 In the event a LEVEL 3 elects to discontinue use of an existing SAA, or abandons such arrangement, LEVEL 3 shall pay SBC-12STATE for removal of their facilities from the SAA.
- 9.13 UNE Subloop Access Arrangement (SAA) Access Points
- 9.13.1 SAI/FDI, ECS, SPOI, or Terminal
- 9.13.1.1 LEVEL 3 cable to be terminated in a SBC-12STATE SAI/FDI, or Terminal, shall consist of 22 or 24-gauge copper twisted pair cable bonded and grounded to the power company Multi Grounded Neutral (MGN). Cable may be filled if buried or buried to aerial riser cable. LEVEL 3's Aerial cables should be aircore.
- 9.13.1.2 LEVEL 3 may elect to place their cable to within 3 feet of the SAA site and coil up an amount of cable, defined by the engineer in the design phase, that SBC-12STATE will terminate on available binding posts in the SAI/FDI or Terminal.
- 9.13.1.3 LEVEL 3 may "stub" up a cable at a prearranged meet point, defined during the engineering site visit, and SBC-12STATE will stub out a cable from the SAI/FDI or Terminal, which SBC-12STATE will splice to the LEVEL 3 cable at the meet point.
- 9.13.1.4 Dead counts will be offered as long as they have not been placed for expansion purposes planned within the 12-month period beginning on the date of the inquiry LSR.
- 9.13.1.5 Exhausted termination points in a SAI/FDI - When a SAI/FDI's termination points are all terminated to assignable cable pairs, SBC-12STATE may choose to increase capacity of the SAI/FDI by the method of its choice, for which LEVEL 3 will be charged a portion of the expense to be determined with the engineer, for the purpose of allowing LEVEL 3 to terminate its cable at the SAI/FDI.
- 9.13.1.6 Exhausted Termination Points in a Terminal- When a terminal's termination points are all terminated to assignable cable pairs, SBC-12STATE may choose to increase the capacity of the Terminal or to construct an adjacent termination facility to accommodate LEVEL 3 facilities for which LEVEL 3 will be charged.
- 9.14 Relocation of Existing ILEC/LEVEL 3 Facilities involved in a SAA at a RT/ECS, SAI/FDI, SPOI, Terminal or NID
- 9.14.1 SBC-12STATE shall notify LEVEL 3 of pending relocation as soon as SBC-12STATE receives such notice.
- 9.14.2 LEVEL 3 shall notify SBC-12STATE of its intentions to remain, or not, in the SAA by way of a new UNE Subloop Access Arrangement Application for a new SCA.

- 9.14.3 SBC-12STATE shall then provide LEVEL 3 an estimate to terminate their facilities as part of the relocation of the site including the applicable SAA. This process may require a site visit with the LEVEL 3 and SBC-12STATE engineer.
- 9.14.4 LEVEL 3 shall notify SBC-12STATE of acceptance or rejection of the new SCA within 10 business days of its receipt of SBC-12STATE's estimate.
- 9.14.5 Upon acceptance of the SBC-12STATE estimate, LEVEL 3 shall pay at least 50% of the relocation costs at the same time as they notify SBC-12STATE of their acceptance of estimate costs.
- 9.14.6 Should LEVEL 3 decide not to continue the SAA, LEVEL 3 will notify SBC-12STATE as to the date that SBC-12STATE may remove LEVEL 3's facilities from that SAA. LEVEL 3 will pay SBC-12STATE for all costs associated with the removal of LEVEL 3's SAA.
- 9.14.7 In the event that LEVEL 3 does not respond to SBC-12STATE in time to have their facilities relocated, SBC-12STATE shall move LEVEL 3 facilities and submit a bill for payment to LEVEL 3 for the costs associated with the relocation. Should LEVEL 3 elect not pay this bill, then LEVEL 3 facilities will be removed from the site upon 30 days notice to LEVEL 3.
- 9.15 Establishment of Intermediary Box for LEVEL 3 Access to Term to NID MTE UNE Subloop Segment
- 9.15.1 As an alternative to the establishment of a UNE Subloop Access Arrangement in those instances where LEVEL 3 wishes to access/lease SBC-12STATE Term to NID UNE Subloop segments in order to serve its End Users at MTEs in SBC-12STATE ("Term to NID MTE UNE Subloop Segments"), LEVEL 3 may place, own and manage, for its own use, an intermediary box, which would provide LEVEL 3 with access to a Term to NID MTE UNE Subloop Segment cross-connect leased from SBC-12STATE within the intermediary box (in order to obtain access to SBC-12STATE Term to NID MTE UNE Subloop Segments). In the event LEVEL 3 wishes to access SBC-12STATE Term to NID MTE UNE Subloop Segments via the establishment of an intermediary box, the following rates, terms and conditions shall apply:
- 9.15.1.1 LEVEL 3 would manage the process for placing its own intermediary box, including, without limitation, coordination with the property owner and/or management. LEVEL 3 may, at its discretion, choose to retain ownership in whole or to share ownership of the intermediary box with other LEVEL 3s. Intermediary box shall be placed no more than two feet from the SBC terminal.
- 9.15.1.2 The intermediary box shall contain blocks that meet SBC-12STATE's published industry standards for the placement of services and facilities and should be labeled with LEVEL 3's ACNA to enable the SBC-12STATE technician the ability to run jumper/cross connect from SBC-12STATE terminal to the intermediary box.
- 9.15.1.3 LEC agrees that the SBC-12STATE technician shall run the jumper/cross-connect from SBC-12STATE's serving terminal to LEVEL 3's intermediary box, in order for LEVEL 3 to access SBC-12STATE Term to NID MTE UNE Subloop Segments in SBC-12STATE. For security and safety, SBC will incase the cross connect in conduit, a protective covered common path, between the SBC terminal and LEVEL 3's intermediary box.
- 9.15.1.4 LEVEL 3 must have in place Connecting Facility Arrangement (CFA) assignments prior to ordering and assigning specific Term to NID MTE UNE Subloop Segments from SBC-12STATE.
- 9.15.1.5 Following LEVEL 3's provisioning, placement, and completion of Connecting Facility Arrangement Assignments ("CFA") data submission to SBC-12STATE associated with the intermediary box, LEVEL 3 would place orders and schedule activities related to access to the Term to NID MTE UNE Subloop Segment including, without limitation: transferring the End User's service from SBC-12STATE to LEVEL 3, providing SBC-12STATE with CFA prior to ordering and the assigning of a specific Term to NID MTE UNE Subloop Segment(s).

- 9.15.1.6 The ordering procedures for the Term to NID MTE UNE Subloop Segment will be the same as those that apply to UNE Subloop today and shall be submitted to **SBC-12STATE** by **LEVEL 3** via a Local Service Request ("LSR").
- 9.15.1.7 **SBC-12STATE** will upon receipt of the LSR from **LEVEL 3** for a Term to NID MTE UNE Subloop Segment, process the order and place the jumper/cross connect to the CFA provided by LEVEL 3 on the LSR, from the **SBC-12STATE** terminal to the **LEVEL 3** intermediary box. **SBC-12STATE** must have access to the intermediary box for completion of the order.
- 9.15.2 In connection with the MTE intermediary box for **LEVEL 3** access to Term to NID MTE UNE Subloop Segments in **SBC-12STATE** only, **LEVEL 3** may elect to lease from **SBC-12STATE** Term to NID MTE UNE Subloop Segments which do not include traditional testing and the associated labor, at the recurring and non-recurring rates set forth in Appendix Pricing for the "Term to NID MTE UNE Subloop Segment." In the event **LEVEL 3** wishes to lease the Term to NID MTE UNE Subloop Segment from **SBC-12STATE** in lieu of **SBC-12STATE**'s standard Term to NID UNE Subloop segment addressed in this 9.15.2, **LEVEL 3** understands and agrees no performance measures and/or remedies shall apply to the Term to NID MTE UNE Subloop Segment as a result of the elimination of associated testing and reduction in functionality associated with the Term to NID MTE UNE Subloop Segment.
- 9.16 Establishment of Term to NID MTE UNE Subloop Segment When no Intermediary Box is installed
- 9.16.1 In those instances where **LEVEL 3** elects not to install an intermediary box or to have **SBC-12STATE** install an intermediary box pursuant to the SAA process outlined herein above, LEVEL 3 may still lease from **SBC-12STATE** Term to NID MTE UNE Subloop Segments which do not include traditional testing and the associated labor, at the recurring and non-recurring rates set forth in Appendix Pricing for the "Term to NID MTE UNE Subloop Segment". In the event **LEVEL 3** wishes to lease the Term to NID MTE UNE Subloop Segment from **SBC-12STATE** in lieu of **SBC-12STATE**'s standard Term to NID UNE Subloop segment addressed in Section 9.15.2 above, **LEVEL 3** understands and agrees no performance measures and/or remedies shall apply to the Term to NID MTE UNE Subloop Segment as a result of the elimination of associated testing and reduction in functionality associated with the Term to NID MTE UNE Subloop Segment. In such cases, **SBC-12STATE** will provide **LEVEL 3** with access to the Term To NID MTE UNE Subloop via a cross connect. The SBC technician will tag appropriately and will leave up to two feet of exposed wire at **SBC-12STATE**'s terminal. The cross connect would then be terminated by the **LEVEL 3** technician in the **LEVEL 3** terminal, at a time of **LEVEL 3**'s own choosing. For security and safety, SBC will incase the cross connect in conduit, a protective covered common path, between the SBC terminal and the **LEVEL 3**'s terminal.
- 9.16.2 If **LEVEL 3** elects this option to obtain access to the Term To NID UNE Subloop in an MTE Environment, neither the **SBC-12STATE** SAA process nor the intermediary box option would be required. Because LEVEL 3 would have full responsibility for terminating the **SBC-12STATE** cross-connect, **SBC-12STATE** could not require any CFA information from **LEVEL 3**.

10. **ENGINEERING CONTROLLED SPLICE (ECS)**

- 10.1 Subject to the other terms and conditions of this Appendix, **SBC-12STATE** shall provide to Engineering controlled Splice under the following terms and conditions in this subsection.
- 10.2 Although under no obligation to do so at non-Pronto sites, as a voluntary offering, **SBC-12STATE** will also make available an Engineering Controlled Splice (ECS), which will be owned by **SBC-12STATE**, for **LEVEL 3s** to gain access to UNE Subloops at or near remote terminals. This voluntary service is in addition to FCC UNE Remand requirements.
- 10.3 The ECS shall be made available for UNE Subloop Access Arrangements (SAA) utilizing the Special Construction Arrangement (SCA).

- 10.3.1 LEVEL 3 requesting such a SCA shall pay all of the actual construction, labor, materials and related provisioning costs incurred to fulfill its SCA on a Time and Materials basis, provided that SBC-12STATE will construct any UNE Subloop Access Arrangement requested by a Telecommunications Carrier in a cost-effective and efficient manner. If SBC-12STATE elects to incur additional costs for its own operating efficiencies and that are not necessary to satisfy an SCA in a cost-effective and efficient manner, LEVEL 3 will not be liable for such extra costs.
- 10.3.2 LEVEL 3 shall be liable only for costs associated with cable pairs that it orders to be presented at an engineering controlled splice (regardless of whether the requesting carrier actually utilizes all such pairs), even if SBC-12STATE places more pairs at the splice.
- 10.3.3 SBC-13STATE will either use existing copper or construct new copper facilities between the SAI(s) and the ECS, located in or at the remote terminal site. Although SBC-12STATE will construct the engineering controlled splice, the ECS maybe owned by SBC-12STATE or LEVEL 3 (depending on the specific arrangement) at the option of SBC-12STATE.
- 10.3.4 If more than one requesting Telecommunications Carrier obtains space in expanded remote terminals or adjacent structures and obtains an SAA with the new copper interface point at the ECS, the initial Telecommunications Carrier which incurred the costs of construction of the engineering controlled splice and/or additional copper/fiber shall be reimbursed those costs in equal proportion to the space or lines used by the requesting carriers.
- 10.3.5 SBC-12STATE may require a separate SCA for each remote terminal site.
- 10.3.6 Except as set forth below in this Section 10.3.6, written acceptance and at least 50% of payment for the SCA must be submitted at least 90 days before access to the copper UNE Subloop is to be provisioned by SBC-12STATE. If an augment of cabling is required between the ECS and the SAI, the interval for completion of the SCA will be determined on an individual case basis. SBC-12STATE will not begin any construction of the ECS until LEVEL 3 has provided proof that it has obtained the necessary rights of way as defined in Section 9.12.7. In the event LEVEL 3 disputes the estimate for the ECS in accordance with the dispute resolution procedures set forth in this Agreement, SBC-12STATE will proceed with construction of the ECS upon receipt from LEVEL 3 of notice of the dispute and not less than fifty percent (50%) of the total estimated costs, with the balance payable by LEVEL 3 upon completion of the ECS. Such payments may be subject to any "true-up", if applicable, upon resolution of the dispute in accordance with the Dispute Resolution procedures.
- 10.4 LEVEL 3s will have two (2) options for implementing the ECS: a "Dedicated Facility Option" (DFO) and a "Cross-connected Facility Option" (CFO).
- 10.4.1 Dedicated Facility Option (DFO)
- 10.4.1.1 LEVEL 3 may request SBC-12STATE splice the existing cabling between the ECS and the SAI to LEVEL 3's SAA facility. This facility will be "dedicated" to LEVEL 3 for subsequent UNE Subloop orders.
- 10.4.1.2 LEVEL 3 must designate the quantity of UNE Subloops they desire to access via this spliced, dedicated facility, specified by subtending SAI.
- 10.4.1.3 LEVEL 3s will compensate SBC-12STATE for each of the dedicated UNE Subloop facilities, based on recurring UNE Subloop charges, for the quantity of UNE Subloops dedicated to LEVEL 3 between the ECS and the SAI.
- 10.4.2 Cross-connected Facility Option (CFO)
- 10.4.2.1 LEVEL 3 may request SBC-12STATE build an ECS cross-connect junction on which to terminate LEVEL 3's SAA facility.

10.4.2.2 The SCA associated with this option will include the charges associated with constructing the cross-connect device, including the termination of SBC-12STATE cabling between the ECS and the RT and/or SAI, and the inventorying of that SBC-12STATE cabling.

10.4.2.3 LEVEL 3 must designate the quantity of UNE Subloops they desire to access via this cross-connectable, dedicated facility, specified by subtending SAI.

10.4.2.4 LEVEL 3s will compensate SBC-12STATE for the charges incurred by SBC-12STATE derived from LEVEL 3's request for the SCA.

10.5 The introduction of an ECS creates the following additional copper UNE Subloop segments:

<u>FROM:</u>	<u>TO:</u>
1. RT	Serving Area Interface or Feeder Distribution Interface
2. RT	Terminal
3. RT	NID

11. LOCAL SWITCHING (ULS)

11.1 As no local circuit switching constitutes Lawful UNE switching, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any type of local circuit or other switching, and CLEC shall not request local circuit or other switching under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and SBC-13STATE provides local circuit or other switching under this Agreement, SBC-13STATE may, at any time, even after the local circuit or other switching has been provided to CLEC, discontinue providing such local circuit or other switching (including any combination(s) including local circuit or other switching) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to local circuit or other switching (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.

11.1.1 For purposes of this Appendix, local circuit switching (Local Switching) is defined as follows:

11.1.1.1 all line-side and trunk-side facilities as defined in TRO, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and

11.1.1.2 all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions.

12. SHARED TRANSPORT (UST)

12.1 As no local circuit switching constitutes Lawful UNE switching, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any type of shared transport. CLEC shall not request shared transport under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and SBC-13STATE otherwise provides shared transport under this Agreement, SBC-13STATE may, at any time, even after the shared transport has been provided to CLEC, may discontinue providing such shared transport (including any combination(s) including shared transport) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE

provides or continues to provide, access to shared transport (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.

13. UNE DEDICATED TRANSPORT

- 13.1 *As no dedicated transport constitutes Lawful UNE dedicated transport, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any type of dedicated transport, and LEVEL 3 shall not request dedicated transport under this Agreement, whether alone, in combination or Commingled. Accordingly, if LEVEL 3 requests and SBC-13STATE provides dedicated transport under this Agreement, SBC-13STATE may, at any time, even after the dedicated transport has been provided to LEVEL 3, discontinue providing such dedicated transport (including any combination(s) including dedicated transport) upon 30 days' advance written notice to LEVEL 3. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to dedicated transport (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by LEVEL 3, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.*

13.2 *Reserved for Future Use.*

14. UNE DEDICATED TRANSPORT AND LOOP DARK FIBER

- 14.1 *As no dark fiber dedicated transport or dark fiber loop constitutes Lawful UNE dark fiber dedicated transport or dark fiber loop, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any type of dark fiber dedicated transport or dark fiber loop. LEVEL 3 shall not request dark fiber dedicated transport or dark fiber loop under this Agreement, whether alone, in combination or Commingled. Accordingly, if LEVEL 3 requests and SBC-13STATE provides dark fiber dedicated transport or dark fiber loop under this Agreement, SBC-13STATE may, at any time, even after the dark fiber dedicated transport or dark fiber loop has been provided to LEVEL 3, discontinue providing such dark fiber dedicated transport or dark fiber loop (including any combination(s) including dark fiber dedicated transport or dark fiber loop) upon 30 days' advance written notice to LEVEL 3. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to dark fiber dedicated transport or dark fiber loop (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by LEVEL 3, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.*

14.2 *Reserved for Future Use*

15. RESERVED FOR FUTURE USE

16. CALL-RELATED DATABASES

- 16.1 *Access to the SBC-13STATE 911 or E911 call related databases will be provided as described in the Lawful 911 and E911 Appendix. As no local circuit switching constitutes UNE switching, SBC-13STATE is not obligated to provide, and LEVEL 3 shall not request, call related databases under this Agreement (other than 911 and E911), including LIDB and CNAM-AS, LIDB and CNAM Queries,*

800, or Access to AIN. LEVEL 3 access to any call related databases (other than 911 and E911) shall be pursuant to another agreement, including, where applicable, effective tariffs.

- 16.2 For purposes of this Section 16.2 only, references to Call-Related Databases shall not include 911 and E911 databases. As set forth herein, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any type of unbundled access to Call-Related Databases. LEVEL 3 shall not request access to Call-Related Databases under this Agreement, whether alone, in combination or Commingled. Accordingly, if LEVEL 3 requests and/or SBC-13STATE otherwise provides access to Call-Related Databases under this Agreement, SBC-13STATE may refuse to provide and, at any time, even after any such access has been provided to LEVEL 3, discontinue providing access to Call-Related Databases (including any combination(s) that include Call-Related Databases) upon 30 days' advance written notice to LEVEL 3. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to Call-Related Databases (whether on a stand-alone basis, or in combination with UNEs (Lawful or otherwise) or with a network element possessed by LEVEL 3, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.**

17. OPERATIONS SUPPORT SYSTEMS FUNCTIONS

- 17.1 Operations Support Systems Functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by SBC-13STATE's databases and information. SBC-13STATE will provide LEVEL 3 access to its Operations Support Systems Functions as outlined in Appendix OSS.**

18. CROSS CONNECTS

- 18.1 SBC-13STATE shall provide Cross Connects under the following terms and conditions in this subsection. SBC-13STATE shall only be obligated to provide Cross Connects under this Appendix for purposes of permitting LEVEL 3 to connect SBC-13STATE UNE(s) to other UNE(s) or to LEVEL 3's own facilities.**
- 18.2 The cross connect is the media between the SBC-7STATE UNE and a LEVEL 3 designated point of access as described in various sections of this Appendix, or the media between a SBC-7STATE UNE and a Collocation area for the purpose of permitting LEVEL 3 to connect the SBC-7STATE UNE to other UNEs or to LEVEL 3's own facilities **or another CLEC** Where SBC-7STATE has otherwise committed to connect one UNE to another UNE on behalf of LEVEL 3, or to leave connected one UNE to another UNE on behalf of LEVEL 3 the cross connect is the media between one SBC-7STATE UNE and another SBC-7STATE UNE. **Nothing in this section is a commitment to connect or leave connected any two or more UNEs.****
- 18.3 SBC-7STATE will provide cross connects at the rates, terms, and conditions set forth in Appendix Pricing. Pricing for SBC MIDWEST REGION 5-STATE is provided as set forth in Appendix Pricing. For all other cross-connect pricing for SBC CONNECTICUT refer to the applicable state tariff.**
- 18.4 The applicable UNE Loop cross connects to point of access for the purpose of LEVEL 3 combining a SBC-13STATE UNE Loop with another SBC-13STATE UNE are as follows:**
- 18.4.1 2-Wire Analog Loop to UNE Connection Methods point of access**
 - 18.4.2 4 -Wire Analog Loop to UNE Connection Methods point of access**
 - 18.4.3 2 -Wire Digital Loop to UNE Connection Methods point of access**
- 18.5 *Reserved for Future Use***
- 18.6 The applicable Loop cross connects for the purpose of LEVEL 3 connecting a SBC SOUTHWEST REGION 5-STATE and SBC NEVADA UNE Loop to a LEVEL 3's Collocated facilities are as follows:**
- 18.6.1 2-Wire Analog Loop to Collocation**
 - 18.6.2 2-Wire Analog Loop to Collocation (without testing)**

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- 18.6.3 4-Wire Analog Loop to Collocation
- 18.6.4 4-Wire Analog Loop to Collocation (without testing)
- 18.6.5 2-Wire Digital Loop to Collocation
- 18.6.6 2-Wire Digital Loop to Collocation (without testing)
- 18.6.7 ***Reserved for Future Use***
- 18.6.8 ***Reserved for Future Use***
- 18.6.9 2-wire DSL Shielded Cross Connect to Collocation
- 18.6.10 4-wire DSL Shielded Cross Connect to Collocation
- 18.6.11 2-Wire DSL non-shielded Cross Connect to Collocation
- 18.6.12 4-Wire DSL non-shielded Cross Connect to Collocation

- 18.7 ***Reserved for Future Use***
- 18.8 ***Reserved for Future Use***

- 18.9 The applicable cross connects for the purpose of a LEVEL 3 connecting a SBC CALIFORNIA UNE Loop, to a LEVEL 3's Collocated facility are as follows:
 - 18.9.1 Voice Grade/ISDN EISCC
 - 18.9.2 DS-0 EISCC
 - 18.9.3 ***Reserved for Future Use***
 - 18.9.4 ***Reserved for Future Use***

 - 18.9.5 DSL Shielded Cross Connect to Collocation
- 18.10 The applicable cross connects for SBC MIDWEST REGION 5-STATE UNE Loop are as follows:
 - 18.10.1 2-Wire

- 18.12 The applicable UNE Loop cross connects to the Adjacent Location Method of Accessing UNEs for the purpose of a LEVEL 3 combining a SBC CALIFORNIA UNE Loop with a LEVEL 3's own facilities for are as follows:
 - 18.12.1 2-Wire Analog Loop to Adjacent Location Method point of access
 - 18.12.2 4 -Wire Analog Loop to Adjacent Location Method point of access
 - 18.12.3 2 -Wire Digital Loop to Adjacent Location Method point of access
 - 18.12.4 DSL shielded Cross Connect to Adjacent Location point of access

19. PROVISIONING/MAINTENANCE OF UNES

- 19.1 Access to UNEs is provided under this Agreement over such routes, technologies, and facilities as SBC-13STATE may elect at its own discretion. SBC-13STATE will provide access to UNEs where technically feasible. Where facilities and equipment are not available, SBC-13STATE shall not be required to provide UNEs. However, LEVEL 3 may request and, to the extent required by law, SBC-13STATE may agree to provide UNEs, through the Bona Fide Request (BFR) process.
- 19.2 Subject to the terms herein, SBC-13STATE is responsible only for the installation, operation and maintenance of the UNEs it provides. SBC-13STATE is not otherwise responsible for the Telecommunications Services provided by LEVEL 3 through the use of those UNEs.
- 19.3 Where UNEs provided to LEVEL 3 are dedicated to a single End User, if such UNEs are for any reason disconnected they shall be made available to SBC-13STATE for future provisioning needs, unless such UNE is disconnected in error. LEVEL 3 agrees to relinquish control of any such UNE concurrent with the disconnection of a LEVEL 3's End User's service.

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- 19.4 LEVEL 3 shall make available at mutually agreeable times the UNEs provided pursuant to this Appendix in order to permit SBC-13STATE to test and make adjustments appropriate for maintaining the UNEs in satisfactory operating condition. No credit will be allowed for any interruptions involved during such testing and adjustments.
- 19.5 LEVEL 3's use of any SBC-13STATE UNE, or of its own equipment or facilities in conjunction with any SBC-13STATE UNE, will not materially interfere with or impair service over any facilities of SBC-13STATE, its affiliated companies or its connecting and concurring carriers involved in its services, cause damage to their plant, impair the privacy of any communications carried over their facilities or create hazards to the employees of any of them or the public. Upon reasonable written notice and opportunity to cure, SBC-13STATE may discontinue or refuse service if LEVEL 3 violates this provision, provided that such termination of service will be limited to LEVEL 3's use of the UNE(s) causing the violation.
- 19.6 When a SBC-13STATE provided tariffed or resold service is replaced by LEVEL 3's facility-based service using any SBC-13STATE provided UNE(s), LEVEL 3 shall issue appropriate service requests, to both disconnect the existing service and order UNEs. These requests will be processed by SBC-13STATE, and LEVEL 3 will be charged the applicable UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual UNE and cross connect ordered. Similarly, where an End User served by one CLEC using SBC-13STATE provided UNEs is converted to a different CLEC's service which also uses any SBC-13STATE provided UNEs, and where one of said CLECs is Level 3, Level 3 shall issue an appropriate service request, either to disconnect the existing service or to connect the new service. These requests will be processed by SBC-13STATE and LEVEL 3 will be charged the applicable service order charge(s), in addition to the recurring and nonrecurring charges for each individual UNE and cross connect Level 3 orders.
- 19.7 LEVEL 3 shall connect equipment and facilities that are compatible with the SBC-13STATE UNEs, and shall use UNEs in accordance with the applicable regulatory standards and requirements referenced in this Agreement.
- 19.8 LEVEL 3 shall not combine or use UNEs in a manner that will undermine the ability of other Telecommunications Carriers to obtain access to unbundled network elements or to Interconnect with SBC-13STATE's network.
- 19.8.1 SBC-13STATE shall charge LEVEL 3 a **reasonable** Maintenance of Service Charge (MSC) when LEVEL 3 reports a suspected failure of a UNE and SBC-13STATE dispatches personnel to the End User's premises or an SBC-13STATE Central Office and trouble was not caused by SBC-13STATE's facilities or equipment LEVEL 3. Time and materials will include all technicians dispatched, including technicians dispatched to other locations for purposes of testing.
- 19.9 LEVEL 3 shall pay Time and Material charges when SBC-13STATE dispatches personnel and the trouble is in equipment or communications systems provided an entity by other than SBC-13STATE or in detariffed CPE provided by SBC-13STATE, unless covered under a separate maintenance agreement.
- 19.10 LEVEL 3 shall pay Maintenance of Service charges when the trouble clearance did not otherwise require dispatch, but dispatch was requested for repair verification or cooperative testing, and the circuit did not exceed maintenance limits.
- 19.11 If LEVEL 3 issues a trouble report allowing SBC-13STATE access to End User's premises and SBC-13STATE personnel are dispatched but denied access to the premises, then Time and Material charges will apply for the period of time that SBC-13STATE personnel are dispatched. Subsequently, if SBC-13STATE personnel are allowed access to the premises, these charges will still apply.
- 19.12 Time and Material charges apply on a first and additional basis for each half-hour or fraction thereof. If more than one technician is dispatched in conjunction with the same trouble report, the total time for all technicians dispatched will be aggregated prior to the distribution of time between the "First Half Hour or Fraction Thereof" and "Each Additional Half Hour or Fraction Thereof" rate categories. Basic Time is work-related efforts of SBC-13STATE performed during normally scheduled working hours on a normally

scheduled workday. Overtime is work-related efforts of SBC-13STATE performed on a normally scheduled workday, but outside of normally scheduled working hours. Premium Time is work related efforts of SBC-13STATE performed other than on a normally scheduled workday.

19.12.1 If LEVEL 3 requests or approves an SBC-13STATE technician to perform services in excess of or not otherwise contemplated by the nonrecurring charges herein, LEVEL 3 will pay Time and Material charges for any additional work to perform such services, including requests for installation or other work outside of normally scheduled working hours.

19.13 Maintenance of Elements

19.13.1 If trouble occurs with UNEs provided by SBC-13STATE, LEVEL 3 will first determine whether the trouble is in LEVEL 3's own equipment and/or facilities or those of the End User. If LEVEL 3 determines the trouble is in SBC-13STATE's equipment and/or facilities, LEVEL 3 will issue a trouble report to SBC-13STATE.

19.13.2 LEVEL 3 shall pay Time and Material charges (maintenance of service charges/additional labor charges) when LEVEL 3 reports a suspected failure of a UNE and SBC-13STATE dispatches personnel to the End User's premises or an SBC-13STATE Central Office and trouble was not caused by SBC-13STATE's facilities or equipment. Time and Material charges will include all technicians dispatched, including technicians dispatched to other locations for purposes of testing.

20.1 ***SBC-13STATE's provision of UNEs identified in this Agreement is subject to the provisions of the Federal Act, including but not limited to, Section 251(d). By entering into this Agreement which makes available certain UNEs, or any Amendment to this Agreement, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including but not limited each Party's right to dispute whether any elements identified in the Agreement must be provided as UNEs under Section 251(c)(3) and Section 251(d) of the Act, and under this Agreement, including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: Verizon v. FCC, et. al, 535 U.S. 467 (2002); USTA, et. al v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including without limitation, this Appendix), SBC-13STATE shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and LEVEL 3's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. If any action by any state or In the event that a state or federal regulatory or legislative body or a court of competent jurisdiction, in any proceeding finds, rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the***

interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.