

4.11.4 CLEC name used in branding calls may be subject to Commission regulations and should match the name in which CLEC is doing business.

4.12 Branding Load Charges:

4.12.1 SBC SOUTHWEST REGION 5-STATE – An initial non-recurring charge applies per state, per brand, per Operator assistance switch for the establishment of CLEC specific branding. An additional non-recurring charge applies per state, per brand, per Operator assistance switch for each subsequent change to the branding announcement. In addition, a per call charge applies for every OS/DA call handled by SBC SOUTHWEST REGION 5-STATE on behalf of CLEC when multiple brands are required on a single Operator Services trunk. This charge is set forth in Appendix Pricing under the "OTHER (Resale)" category.

4.12.1.1 SBC MIDWEST REGION 5-STATE – An initial non-recurring charge applies per brand, per Operator Assistance Switch, per trunk group for the establishment of CLEC specific branding. In addition, a per call charge applies for every OS call handled by SBC MIDWEST REGION 5-STATE on behalf of CLEC when such services are provided. An additional non-recurring charge applies per brand, per Operator assistance switch, per trunk group for each subsequent change to the branding announcement.

4.12.1.2 SBC-2STATE – An initial non-recurring charge applies per state, per brand, per Operator assistance switch, for the establishment of CLEC specific branding. An additional non-recurring charge applies per state, per brand, per Operator assistance switch for each subsequent change to the branding announcement.

4.12.1.3 SBC CONNECTICUT – An initial non-recurring charge applies per brand, per load, per Operator assistance switch for the establishment of CLEC specific branding. An additional non-recurring charge applies per brand, per load, per Operator assistance switch for each subsequent change to the branding announcement.

5. OS/DA RATE/REFERENCE INFORMATION

5.1 When an SBC-12STATE Operator receives a rate request from a CLEC End User, where technically feasible and available, SBC-12STATE will quote the applicable OS/DA rates as provided by the CLEC.

5.2 SBC CONNECTICUT - until technically feasible and/or available, when a SBC CONNECTICUT Operator receives a rate request from a CLEC end user, SBC CONNECTICUT will quote the surcharge rate only.

5.3 CLEC will furnish OS/DA Rate and Reference Information in accordance with the process outlined in the Operator Services Questionnaire (OSQ). CLEC will furnish to SBC-13STATE a completed OSQ thirty (30) calendar days in advance of the date when the DA Services are to be undertaken.

5.4 CLEC will inform SBC-12STATE, via the Operator Services Questionnaire (OSQ) of any changes to be made to such Rate/Reference Information fourteen calendar days prior to the effective Rate/Reference change date. CLEC acknowledges that it is responsible to provide SBC-12STATE updated Rate/Reference Information in advance of when the Rate/Reference Information is to become effective.

5.5 An initial non-recurring charge will apply per state, per Operator assistance switch for loading of CLEC's OS Reference/Rater Information. An additional non-recurring charge will apply per state, per Operator assistance switch for each subsequent change to either the CLEC's OS Reference or Rater information.

5.6 Payphone Services

5.6.1 CLEC may provide certain local Telecommunications Services to payphone service providers ("PSPs") for PSPs' use in providing payphone service. Local Telecommunications Services which PSPs use in providing payphone service that are provided to PSPs by CLEC by means of reselling SBC-13STATE's services offered pursuant to the appropriate payphone section(s) of SBC-13STATE's state specific tariff(s) applicable in each state covered by this Appendix are referred to in this Appendix as "Payphone Lines." In its Common Carrier Docket No. 96-128, the FCC ordered SBC-13STATE to compensate PSP customers of CLECs that resell SBC-13STATE's services for

certain calls originated from pay telephones. (Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, FCC Docket No. 96-128, Report and Order, para. 86 (1996)). This compensation is referred to in this Agreement as "Payphone Compensation."

- 5.6.2 The Parties desire that SBC-13STATE satisfy the obligation to pay Payphone Compensation to PSPs that are customers of CLEC by paying the Payphone Compensation to CLEC, who will then forward the Payphone Compensation directly to the PSPs.
- 5.6.3 SBC-13STATE will pay Payphone Compensation due with respect to Payphone Lines in compliance with the current or any future order of the FCC. SBC-13STATE will pay Payphone Compensation to CLEC only for:
 - 5.6.3.1 IntraLATA subscriber 800 calls for which SBC-13STATE provides the 800 service to the subscriber and carries the call; and
 - 5.6.3.2 IntraLATA calls placed using SBC-13STATE's prepaid calling card platform and carried by SBC-13STATE.
- 5.6.4 SBC-13STATE will not be required to pay any Payphone Compensation for non-sent paid calls.
- 5.6.5 SBC-13STATE will pay CLEC the Payphone Compensation due to CLEC's PSP customer(s) within sixty (60) calendar days after the close of the calendar quarter during which the call(s) for which Payphone Compensation is due were made. However, payment may be made later than sixty (60) calendar days if SBC-13STATE deems it necessary to investigate a call or calls for possible fraud.
- 5.6.6 SBC-13STATE will make payment of any Payphone Compensation due to CLEC under this Appendix by crediting CLEC's bill for the Payphone Line over which the call that gives rise to the Payphone Compensation was placed. SBC-13STATE will not automatically issue a check to CLEC if the credit for Payphone Compensation exceeds the balance due to SBC-13STATE on the bill.
- 5.6.7 Nothing in this Appendix entitles CLEC to receive or obligates SBC-13STATE to provide any call detail or other call record for any call that gives rise to Payphone Compensation.
- 5.6.8 CLEC represents and warrants that the only SBC-13STATE services that CLEC will make available to PSPs as Payphone Lines are the payphone services that SBC-13STATE offers pursuant to the appropriate payphone section(s) of SBC-13STATE's state specific tariff(s) applicable in each state covered by this Appendix.
- 5.6.9 Except as provided otherwise in this Section 4.9.9, CLEC shall pay the entire amount of the Payphone Compensation due with respect to each Payphone Line to the PSP that is the CLEC's customer for that Payphone Line. CLEC shall make such payment on or before the last business day of the calendar quarter following the calendar quarter during which the call(s) for which Payphone Compensation is due to the PSP were made. If SBC-13STATE pays any Payphone Compensation to CLEC later than sixty (60) calendar days after the close of the calendar quarter during which the call(s) for which Payphone Compensation is due were made, then CLEC shall pay the entire amount of such Payphone Compensation to the PSP that is CLEC's customer for that Payphone Line within ten (10) calendar days after receiving such Payphone Compensation from SBC-13STATE.
- 5.6.10 In addition to any other indemnity obligations in this Appendix or in the Agreement to which this Appendix is attached, CLEC shall indemnify, protect, save harmless and defend SBC-13STATE and SBC-13STATE's officers, employees, agents, representatives and assigns from and against any and all losses, costs, liability, damages and expense (including reasonable attorney's fees) arising out of any demand, claim, suit or judgment by any Third Party, including a PSP, in any way relating to or arising from any of the following:
 - 5.6.10.1 CLEC's failure to comply with all the terms and conditions of this Appendix; or
 - 5.6.10.2 Use by a PSP customer of CLEC of any service other than a Payphone Line to provide pay telephone service; or

5.6.10.3 False representation by CLEC.

5.7 Suspension of Service

5.7.1 CLEC may offer to resell Customer Initiated Suspension and Restoral Service to its End Users at the associated state specific retail tariff rates, terms and conditions for suspension of service at the request of the End User.

5.7.2 SBC-13STATE will offer CLEC local service provider initiated suspension service for CLEC's purposes at the associated SBC-13STATE state specific retail tariff rate for company initiated suspension of service. Carrier Disconnect Service is the provider initiated suspension service available to CLECs in SBC MIDWEST REGION 5-STATE. Service specifics may be obtained in state specific CLEC Handbooks.

5.7.2.1 CLEC shall be exclusively responsible for placing valid orders for the suspension and the subsequent disconnection or restoral of service to each of its End Users.

5.7.2.2 Should CLEC suspend service for one of its End Users and fail to submit a subsequent disconnection order within the maximum number of calendar days permitted for a company initiated suspension pursuant to the state specific retail tariff, CLEC shall be charged and shall be responsible for all appropriate monthly service charges for the End User's service from the suspension date through the disconnection date.

5.7.2.3 Should CLEC suspend service for one of its End Users and subsequently issue a restoral order, CLEC shall be charged the state specific tariff rate for the restoral plus all appropriate monthly service charges for the End User's service from the suspension date through the restoral date.

6. USE OF SBC BRAND

6.1 Except where otherwise required by law, CLEC shall not, without SBC-13STATE's prior written authorization, offer the services covered by this Appendix using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of SBC-13STATE or its Affiliates, nor shall CLEC state or imply that there is any joint business association or similar arrangement with SBC-13STATE in the provision of Telecommunications Services to CLEC's customers.

7. RESPONSIBILITIES OF SBC-13STATE

7.1 SBC-13STATE shall allow CLEC to place service orders and receive phone number assignments (for new lines). These activities shall be accomplished by facsimile or electronic interface. SBC-13STATE shall provide interface specifications for electronic access for these functions to CLEC. However, CLEC shall be responsible for modifying and connecting any of its systems with SBC-13STATE-provided interfaces, as outlined in Appendix OSS.

7.2 SBC-13STATE shall implement CLEC service orders within the same time intervals SBC-13STATE uses to implement service orders for similar services for its own End Users.

7.2.1 Methods and procedures for ordering are outlined in the CLEC Handbook, available on-line, as amended by SBC-13STATE in its sole discretion from time to time. All Parties agree to abide by the procedures contained therein.

7.3 CLEC will have the ability to report trouble for its End Users to the appropriate SBC-13STATE trouble reporting center(s) twenty-four (24) hours a day, seven (7) days a week. CLEC will be assigned customer contact center(s) when initial service agreements are made. CLEC End Users calling SBC-13STATE will be referred to CLEC at the number provided by CLEC. Nothing herein shall be interpreted to authorize CLEC to repair, maintain, or in any way touch SBC-13STATE's network facilities, including those on End User premises.

- 7.3.1 Methods and procedures for trouble reporting are outlined in the CLEC Handbook, available on-line, as amended by SBC-13STATE in its sole discretion from time to time. All Parties agree to abide by the procedures contained therein.
- 7.4 SBC-13STATE will provide CLEC with detailed billing information necessary for CLEC to issue bill(s) to its End User(s). CLEC has the option of receiving a daily usage file ("DUF") in accordance with the terms and conditions set forth in Section 8.8 of the General Terms and Conditions of the Agreement to which this Appendix is attached. Should CLEC elect to subscribe to the DUF, CLEC agrees to pay SBC-13STATE the charges specified in Appendix Pricing under the "OTHER (Resale)" category listed as "Electronic Billing Information Data (daily usage) (per message)."
- 7.5 SBC-13STATE shall make Telecommunications Services that SBC-13STATE provides at retail to subscribers who are not Telecommunications Carriers available for resale consistent with the obligation under Section 251(c)(4)(A) of the Act and other applicable limitations. SBC-13STATE will notify CLEC of any changes in the terms and conditions under which SBC-13STATE offers Telecommunications Services at retail to subscribers who are not Telecommunications Carriers, including but not limited to, the introduction of any new features, functions, services, promotions, grandfathering or the discontinuance of current features or services at the time a tariff filing is transmitted to the appropriate State Commission, or, in situations where a tariff filing is not so transmitted, within sixty (60) calendar days of the expected effective date of such change.
- 7.5.1 SBC-13STATE currently makes such notification as described in Section 17.2 of the General Terms and Conditions of the Agreement to which this Appendix is attached. Notification of any new service available to CLEC for resale shall advise CLEC of the category in which such new service shall be placed, and the same discount already applicable to CLEC in that category shall apply to the new service.
- 7.6 CLEC's End User's activation of Call Trace shall be handled by the SBC-13STATE operations centers responsible for handling such requests. SBC-13STATE shall notify CLEC of requests by its End Users to provide call records to the proper authorities. Subsequent communication and resolution of each case involving one of CLEC's End Users (whether that End User is the victim or the suspect) will be coordinated through CLEC.
- 7.6.1 CLEC acknowledges that for services where reports are provided to law enforcement agencies (for example, Call Trace) only billing number and address information shall be provided. It shall be CLEC's responsibility to provide additional information necessary for any police investigation.
- 7.6.1.1 In addition to any other indemnity obligations in this Appendix or the Agreement to which this Appendix is attached, CLEC shall indemnify SBC-13STATE against any Claim that insufficient information led to inadequate prosecution.
- 7.6.2 SBC-13STATE shall handle law enforcement requests consistent with the Law Enforcement Section of the General Terms and Conditions of the Agreement to which this Appendix is attached.
- 7.7 This section applies only to SBC CALIFORNIA:
- 7.7.1 Cooperation on Fraud
- 7.7.1.1 Traffic Alert Referral Service
- 7.7.1.1.1 Traffic Alert Referral Service ("TARS") is a service that monitors traffic patterns associated with a CLEC's resold lines. On no less than thirty (30) calendar days written notice, CLEC may order SBC CALIFORNIA's TARS. In providing TARS to CLEC, SBC CALIFORNIA notifies the CLEC of traffic abnormalities that indicate the possible occurrence of intraLATA fraud and furnishes to CLEC information on all 1+ alerts. CLEC understands and agrees that SBC CALIFORNIA will use electronic mail to provide such information and that such information will only be available via electronic mail at the present time. It is the responsibility of CLEC to provide SBC CALIFORNIA with the correct email

address. Information will be provided on a per-alert basis and will be priced on a per-alert basis. SBC CALIFORNIA grants to CLEC a non-exclusive right to use the information provided by SBC CALIFORNIA. CLEC will not permit anyone but its duly authorized employees or agents to inspect or use this information. CLEC agrees to pay SBC CALIFORNIA a recurring usage rate as set forth in Appendix Pricing in the "OTHER (Resale)" category listed as "Traffic Alert Referral Service."

- 7.7.1.2 CLEC shall be liable for all fraud associated with any resale service to which it subscribes. SBC CALIFORNIA takes no responsibility, will not investigate, and will make no adjustments to CLEC's account(s) in cases of fraud or any other related End User dispute.
- 7.7.1.3 In addition to any other indemnity obligations in this Appendix or in the Agreement to which this Appendix is attached, SBC CALIFORNIA shall not be liable for any damages to CLEC or to any other person or entity for SBC CALIFORNIA's actions or the conduct of its employees in providing TARS to CLEC. CLEC shall indemnify, defend, and hold SBC CALIFORNIA harmless from any and all claims, lawsuits, costs, damages, liabilities, losses, and expenses, including reasonable attorney fees, resulting from or in connection with CLEC's use of SBC CALIFORNIA's TARS, except when such claims, lawsuits, costs, damages, liabilities, losses, or expenses are proximately caused by the willful misconduct or gross negligence of SBC CALIFORNIA or its employees.

7.8 This section applies only to SBC CALIFORNIA:

- 7.8.1 SBC CALIFORNIA will make available to CLEC an optional service, Repair Transfer Service ("RTS"). In the event a CLEC's End User dials 611 (811-8081 for Priority Business customers) for repair, SBC CALIFORNIA will provide a recorded announcement of the CLEC name and number and SBC CALIFORNIA will automatically transfer the caller to the CLEC designated 800/888 number for repair service. CLEC must provide written notification to SBC CALIFORNIA at least thirty (30) calendar days prior to the implementation of RTS. Written notification must include the CLEC name and 800/888 numbers for RTS to the CLEC repair bureau and business office. There will be no charges associated with the initial set-up for RTS, however, charges will apply to any subsequent changes to the recorded name announcement and telephone number. Rates for subsequent changes are set forth in the Appendix Pricing in the "OTHER (Resale)" category listed as "Repair Transfer Service." Subsequent charges include: Recorded Name Announcement, 800/888 Telephone Number and Name Announcement & Telephone Number.

8. RESPONSIBILITIES OF CLEC

- 8.1 Prior to submitting an order under this Appendix, CLEC shall obtain End User authorization as required by applicable federal and state laws and regulations, and assumes responsibility for applicable charges as specified in Section 258(b) of the Act. SBC-13STATE shall abide by the same applicable laws and regulations.
- 8.2 Only an End User can initiate a challenge to a change in its local service provider. If an End User notifies SBC-13STATE or CLEC that the End User requests local exchange service, the Party receiving such request shall be free to provide service to such End User, except in those instances where the End User's account is local PIC protected. It is the responsibility of the End User to provide authorization in a FCC approved format to the current provider of record to remove local service provider protection before any changes in local service provider are processed.
 - 8.2.1 SBC-13STATE shall be free to connect an End User to any competitive local exchange carrier based upon that competitive local exchange carrier's request and that competitive local exchange carrier's assurance that proper End User authorization has been obtained. CLEC shall make any such authorization it has obtained available to SBC-13STATE upon request and at no charge.

8.2.1.1 The following applies to SBC MICHIGAN only: The Parties will adhere to the requirements adopted by the Commission in its Case No. U-11900 with respect to the selection of primary local exchange carriers and primary interexchange carriers.

- 8.3 When an End User changes or withdraws authorization, each Party shall release customer-specific facilities in accordance with the End User's direction or the direction of the End User's authorized agent. Further, when an End User abandons its premise, SBC-13STATE is free to reclaim the facilities for use by another customer and is free to issue service orders required to reclaim such facilities.
- 8.4 Neither Party shall be obligated by this Appendix to investigate any allegations of unauthorized changes in local exchange service (slamming) on behalf of the other Party or a Third Party. If SBC-13STATE, on behalf of CLEC, agrees to investigate an alleged incidence of slamming, SBC-13STATE shall charge CLEC an investigation fee as set forth in Appendix Pricing in the "OTHER (Resale)" category, listed as "Slamming Investigation Fee."
- 8.5 Should SBC-13STATE receive an order from CLEC for services under this Appendix, and SBC-13STATE is currently providing the same services to another local service provider for the same End User, CLEC agrees that SBC-13STATE may notify the local service provider from whom the End User is being converted of CLEC's order coincident with or following processing CLEC's order. It shall then be the responsibility of the former local service provider of record and CLEC to resolve any issues related to the End User. This Section 8.5 shall not apply to new or additional lines and services purchased by the End User from multiple CLECs or from SBC-13STATE.
- 8.5.1 If SBC-13STATE receives an order from another local service provider to convert services for an End User for whom CLEC is the current local service provider of record, and if CLEC already subscribes to the Local Disconnect Report ("LDR"), covered in Section 8.5.2, then SBC-13STATE shall notify CLEC of such order coincident with or following processing such order. It shall be the responsibility of CLEC and the other local service provider to resolve any issues related to the End User. This Section 8.5.1 shall not apply to new or additional lines and services purchased by an End User from multiple CLECs or from SBC-13STATE.
- 8.5.2 On no less than sixty (60) calendar days advance written notice, CLEC may, at its option, subscribe to the LDR. SBC-13STATE will furnish the following information via the LDR: the Billing Telephone Number ("BTN"), Working Telephone Number "WTN"), and terminal number of all End Users who have disconnected CLEC's service. Information furnished electronically will be provided daily on a per WTN basis and priced on a per WTN basis. CLEC shall pay SBC-13STATE for the LDR per WTN plus any applicable transmission charges for the LDR; current WTN prices are as set forth in Appendix Pricing in the "OTHER (Resale)" category, listed as "Local Disconnect Report." CLEC agrees that SBC-13STATE may change the per WTN charge, at SBC-13STATE's sole discretion, so long as SBC-13STATE provides CLEC no less than thirty (30) calendar days notice prior to any change in the per WTN charge. SBC-13STATE grants to CLEC a non-exclusive right to use the LDR information provided by SBC-13STATE. CLEC will not permit anyone but its duly authorized employees or agents to inspect or use this information.
- 8.6 CLEC is solely responsible for the payment of all charges for all services furnished under this Appendix, including but not limited to, calls originated or accepted at CLEC's location and its End Users' service locations; provided, however, CLEC shall not be responsible for payment of charges for any retail services furnished by SBC-13STATE directly to End Users and billed by SBC-13STATE directly to End Users.
- 8.6.1 Interexchange carried traffic (for example, sent-paid, information services and alternate operator services messages) received by SBC-13STATE for billing to resold End User accounts will be returned as unbillable and will not be passed to CLEC for billing. An unbillable code will be returned with those messages to the carrier indicating that the messages originated from a resold account and will not be billed by SBC-13STATE.
- 8.7 SBC-13STATE shall not be responsible for the manner in which utilization of resold services or the associated charges are allocated to End Users or others by CLEC. All applicable rates and charges for

services provided to CLEC under this Appendix will be billed directly to CLEC and shall be the responsibility of CLEC; provided, however, that CLEC shall not be responsible for payment of charges for any retail services furnished by SBC-13STATE directly to End Users and billed by SBC-13STATE directly to End Users.

8.7.1 Charges billed to CLEC for all services provided under this Appendix shall be paid by CLEC regardless of CLEC's ability or inability to collect from its End Users for such services.

- 8.8 If CLEC does not wish to be responsible for payment of charges for collect, third number billed, toll and information services (for example, 900) calls, it must order the appropriate blocking for lines provided under this Appendix and pay any applicable charges. It is the responsibility of CLEC to order the appropriate toll restriction or blocking on lines resold to End Users. CLEC acknowledges that blocking is not available for certain types of calls, including 800, 888, 411 and Directory Assistance Express Call Completion. Depending on the origination point, for example, calls originating from correctional facilities, some calls may bypass blocking systems. CLEC acknowledges all such limitations and accepts all responsibility for any charges associated with calls for which blocking is not available and any charges associated with calls that bypass blocking systems. Charges for Alternatively Billed Calls shall be paid by CLEC at the rated value of the call less the appropriate State discount.
- 8.9 CLEC shall be responsible for modifying and connecting any of its systems with SBC-13STATE-provided Interfaces as described in this Appendix and Appendix OSS.
- 8.10 CLEC shall be responsible for providing to its End Users and to SBC-13STATE a telephone number or numbers that CLEC's End Users may use to contact CLEC in the event that the End User desires a repair/service call.
- 8.10.1 In the event that CLEC's End Users contact SBC-13STATE with regard to repair requests, SBC-13STATE shall inform such End Users to call CLEC and may provide CLEC's contact number.
- 8.11 CLEC acknowledges and agrees that, in the event CLEC makes any "CLEC Change" as that term is defined in Section 4.10 of the General Terms and Conditions of the Agreement to which this Appendix is attached, CLEC shall comply with the provisions set forth in Section 4.10 of the General Terms and Conditions of the Agreement to which this Appendix is attached as though set forth herein.
- 8.12 CLEC will provide forecasts to SBC-13STATE every January and July using the SBC-13STATE network information form, or a format mutually agreed to by the Parties. These written forecasts will be based on CLEC's best estimates and will include all resale products CLEC will be ordering within the forecast period.

**APPENDIX FOR ACCESS
TO SBC COMMUNICATION INC.'S STRUCTURE
(POLES, CONDUITS, AND RIGHTS OF WAYS)**

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APPENDIX FOR ACCESS TO SBC COMMUNICATION INC.'S STRUCTURE (POLES, CONDUITS, AND RIGHTS OF WAYS)

1. INTRODUCTION

- 1.1 This Appendix sets forth the terms and conditions for Rights of Way (ROW), Conduits and Poles provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and CLEC.
 - 1.1.1 SBC Communications Inc. (SBC) means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.
 - 1.1.2 SBC-2STATE - As used herein, SBC-2STATE means SBC CALIFORNIA and SBC NEVADA, the applicable SBC-owned ILEC(s) doing business in California and Nevada.
 - 1.1.3 SBC-13STATE - As used herein, SBC-13STATE means SBC SOUTHWEST REGION 5-STATE, SBC MIDWEST REGION 5-STATE, SBC-2STATE and SBC CONNECTICUT the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
 - 1.1.4 SBC CONNECTICUT - As used herein, SBC CONNECTICUT means The Southern New England Telephone Company d/b/a SBC Connecticut, the applicable above listed ILEC doing business in Connecticut.
 - 1.1.5 SBC MIDWEST REGION 5-STATE - As used herein, SBC MIDWEST REGION 5-STATE means Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio and Wisconsin.
 - 1.1.6 SBC SOUTHWEST REGION 5-STATE - As used herein, SBC SOUTHWEST REGION 5-STATE means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

2. DEFINITIONS

- 2.1 Definitions in general. As used in this Appendix, the terms defined in this article shall have the meanings set forth below in Sections 2.1 to 2.14 except as the context otherwise requires.
- 2.2 Conduit. The term "conduit" refers to tubes or structures, underground or above ground (on bridges, inside buildings, etc), containing one or more ducts used to enclose cables, wires, and associated transmission equipment. As used in this Appendix, the term "conduit" refers only to conduit structures (including ducts, manholes and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other SBC-13STATE structures (such as huts and cabinets) which branch off from or are connected to SBC-13STATE's conduit.
- 2.3 Conduit system. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Appendix, the term "conduit system" does not include (a) cables and other telecommunications equipment located within conduit structures or (b)

central office vaults, controlled environment vaults, or other SBC-13STATE structures (such as huts and cabinets) which branch off from or are connected to SBC-13STATE's conduit.

- 2.4 **Duct.** The term "duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Appendix, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels, but does not include cables and other telecommunications equipment located within such ducts.
- 2.5 **Handhole.** The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter and is used for the purpose of installing, operating, maintaining, and repairing communications facilities. As used in this Appendix, the term "handhole" refers only to handholes which are part of SBC-13STATE's conduit system and does not refer to handholes which provide access to buried cables not housed within SBC-13STATE ducts or conduits. As used in this Appendix, the term "handhole" refers only to handhole structures owned or controlled by SBC-13STATE and does not include cables and other telecommunications equipment located within handhole structures.
- 2.6 **Occupancy Permit.** The term "occupancy permit" refers to a written instrument confirming that SBC-13STATE has granted the structure access request of Attaching Party or a third party for access to pole, duct, conduit, or rights-of-way space.
- 2.7 **Maintenance Duct.** The term "maintenance duct" generally refers to a full-sized duct (typically three inches in diameter or larger) for use, on a short-term basis, for maintenance, repair, or emergency restoration activities. The term "maintenance duct" does not include ducts and conduits extending from an SBC-13STATE manhole to customer premises. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.
- 2.8 **Make-ready work.** The term "make-ready work" refers to all work performed or to be performed to prepare SBC-13STATE's poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Attaching Party's facilities.
- 2.9 **Manhole.** The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in ducts or conduits which are parts of SBC-13STATE's conduit system. As used in this Appendix, the term "manhole" does not include cables and other telecommunications equipment located within manhole structures.
- 2.10 **Other User.** The term "Other User" refers to entities, other than the Attaching Party, with facilities on an SBC-13STATE pole, duct, conduit or rights-of-way to which the Attaching Party has obtained access. Other Users may include SBC-13STATE, other attaching parties, municipalities or other governmental entities, and electric utilities (which may own interests in SBC-13STATE's poles, ducts, conduits or rights-of-ways).
- 2.11 **Overlashing.** The term "Overlashing" refers to the practice of placing an additional cable by lashing or otherwise wrapping such cable with spinning wire over an existing cable and strand.
- 2.12 **Pole.** The term "pole" refers to poles (and associated anchors) which are owned or controlled by SBC-13STATE and does not include cables and other telecommunications equipment attached to pole structures.
- 2.13 **Rights-of-way.** The term "rights-of-way" refers to SBC-13STATE owned or controlled legal rights to pass over or through property of another party and used by SBC-13STATE for its telecommunications distribution system. For purposes of this Appendix, "rights-of-way" includes property owned by SBC-13STATE and used by SBC-13STATE for its telecommunications distribution facilities. Rights-of-way does not include:
 - 2.13.1 cables and other telecommunications equipment buried or located on such rights-of-way,
 - 2.13.2 public rights of way (which are owned by and subject to the control of governmental entities), or
 - 2.13.3 any space which is owned and controlled by a third-party property owner and occupied by SBC-13STATE with permission from such owner rather than as a matter of legal right.

2.14 Structure. The term "Structure" refers collectively to poles, ducts, conduits and rights-of-way.

3. SCOPE OF APPENDIX

- 3.1 This Appendix establishes the rates, terms, conditions, and procedures by which SBC-13STATE shall provide non-discriminatory access to SBC-13STATE's Structure. Separate tariffs, appendix, or agreements shall govern Attaching Party's access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Appendix:
- 3.1.1 SBC-13STATE's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from SBC-13STATE's central offices;
 - 3.1.2 controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
 - 3.1.3 ducts and conduits located within buildings owned by SBC-13STATE; and
 - 3.1.4 ducts, conduits, equipment rooms, and similar spaces located in space leased by SBC-13STATE from third-party property owners for purposes other than to house cables and other equipment in active service as part of SBC-13STATE's network distribution operations.
- 3.2 No Transfer of Property Rights to Attaching Party. Nothing contained in this Appendix, or any occupancy permit subject to this Appendix, shall create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other.
- 3.3 No Effect on SBC-13STATE's Right to Abandon, Convey or Transfer Structure. Nothing contained in this Appendix, or any occupancy permit subject to this Appendix, shall in any way affect SBC-13STATE's right to abandon, convey, or transfer to any other person or entity, SBC 13STATE's interest in any of SBC-13STATE's Structure. SBC-13STATE shall give Attaching Party at least sixty (60) days written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transfer fee, if any, to whom any such pole, duct, conduit, or rights-of-way is to be conveyed or transferred. FCC RULE 1.1403 allows for SBC-13STATE to remove a pole, etc. upon 60 days notice. If CLEC disagrees, CLEC can then file for a stay with the FCC. The rights granted to Sprint under this Appendix, or any occupancy permit subject to this Appendix, shall survive the conveyance, transfer or assignment of any Structure subject to this Appendix by SBC-13STATE.

4. EFFECTIVE DATE, TERM, AND ELECTIVE TERMINATION

- 4.1 Effective Date. This Appendix shall be effective as of the _____ day of _____, 2005, or, if this Appendix has been entered into as an appendix, attachment, or exhibit to an Interconnection Appendix between the parties, the date of approval by the State Commission of the Interconnection Appendix, whichever date first occurs.
- 4.2 Initial Term. Unless sooner terminated as herein provided, the Initial term of this Appendix shall run from the effective date until the end of the calendar year which includes the effective date. In the event this Appendix is entered into as a part of an Interconnection Agreement, this Appendix shall terminate upon the termination of the Interconnection Appendix of which this is a part. If the Interconnections Agreement that contains this Appendix is terminated, SBC-13STATE, as deemed necessary, will negotiate in good faith a separate Pole and Conduit License Agreement.
- 4.3 Automatic Renewal. Unless sooner terminated as herein provided, this Appendix shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year after the effective date, or in the same fashion as the Interconnection Appendix renews, if a part of the Interconnection Appendix.
- 4.4 Elective Termination. Either party may terminate this Appendix by giving the other party at least six (6) months prior written notice as provided in this section. The notice of termination shall state the effective

date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current term of this Appendix or six (6) months after the date the notice is given.

- 4.5 **Elective Termination by SBC-13STATE.** SBC 13STATE may not terminate this Appendix while the interconnection Appendix remains in effect. Attaching Party shall, within sixty (60) days after the effective date of the elective termination by SBC-13STATE, either initiate negotiations for continued access to SBC-13STATE's poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Section 28 of this Appendix.
- 4.6 **Effect of Elective Termination.** Elective termination of this Appendix by Attaching Party, as permitted under Section 4 of this Appendix, shall not affect Attaching Party's liabilities and obligations incurred under this Appendix prior to the effective date of termination and shall not entitle Attaching Party to the refund of any advance payment made to SBC-13STATE under this Appendix. Elective termination of this Appendix by SBC-13STATE shall not affect SBC-13STATE's obligations to afford access to SBC-13STATE's poles, ducts, conduits, and rights-of-way owned or controlled by SBC-13STATE as required by the Pole Attachment Act, the Telecommunications Act of 1996, and other applicable laws, regulations, and commission orders.

5. GENERAL PROVISIONS

- 5.1 **Entire Appendix.** This Appendix, together with the Interconnection Appendix, if any, of which this Appendix is a part, and the Guidelines for Access to SBC-13STATE Structure, attached hereto and incorporated herein by reference, sets forth the entire understanding and Appendix of the parties.
- 5.2 **Prior Agreements Superseded.** This Appendix supersedes all prior Agreements and understandings, whether written or oral, between Attaching Party and SBC-13STATE relating to the placement and maintenance of Attaching Party's facilities on and within SBC-13STATE's poles, ducts, and conduits within this State. Any Attachment placed prior to the execution of this Appendix will not be subject to the placement and maintenance standards contained within this Appendix which exceed such standards as existed when the attachment was initially placed provided Sprint will bring those facilities into compliance where SBC 13STATE, in its sole discretion, determines safety hazards exist or have developed.
- 5.3 **Amendments Shall Be in Writing.** Except as otherwise specifically provided to the contrary by other provisions of this Appendix, the terms and conditions of this Appendix shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.
- 5.4 **Survival of Obligations.** Any liabilities or obligations of either party for acts or omissions prior to the termination of this Appendix, any obligations of either party under provisions of this Appendix relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Appendix which, by their terms, are contemplated to survive (or be performed after) termination of this Appendix, will survive the termination of this Appendix.
- 5.5 **Multiple Counterparts.** This Appendix may be executed in multiple counterparts.
- 5.6 **Effect on Licenses or Occupancy Permits Issued Under Prior Agreements.** All currently effective pole attachment and conduit occupancy permits granted to Attaching Party shall, on the effective date of this Appendix, be subject to the rates, terms, conditions, and procedures set forth in this Appendix.
- 5.7 **Force Majeure.** Except as otherwise specifically provided in this Appendix, neither party will be liable for any delay or failure in performance of any part of this Appendix caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the party claiming excusable delay or other failure to perform; provided, however, that Force Majeure will not include acts of any governmental authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs, the party whose performance fails or is delayed because of such Force Majeure condition will give prompt notice to the other party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

- 5.8 Severability. If any article, section, subsection, or other provision or portion of this Appendix is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Appendix as to either party, the invalidity of such provision shall not render this entire Appendix unenforceable and this Appendix shall be administered as if it did not contain the invalid provision.
- 5.9 Choice of Law. Except to the extent that federal law controls any aspect of this Appendix, the validity of this Appendix, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties will be governed by the laws of this State (the State where the facilities are located), applied without regard to the provisions of this State's laws relating to conflicts-of-laws.
- 5.10 Changes in the Law. The parties agree to negotiate in good faith changes to this Appendix to conform to changes in applicable law pertaining to access to poles, ducts, conduits and rights-of-way, including the Pole Attachment Act.
- 5.11 The parties shall at all times observe and comply with, and the provisions of this Appendix are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties.

6. DISCLAIMER OF WARRANTIES

- 6.1 SBC-13STATE MAKES NO REPRESENTATIONS AND DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, THAT SBC-13STATE'S POLES, DUCTS, CONDUITS AND WARRANTIES ARE SUITABLE FOR THE ATTACHING PARTY'S INTENDED USES OR ARE FREE FROM DEFECTS. THE ATTACHING PARTY SHALL IN EVERY INSTANCE BE RESPONSIBLE TO DETERMINE THE ADEQUACY OF SBC-13STATE'S POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY FOR THE ATTACHING PARTY'S INTENDED USE.

7. DISPUTE RESOLUTION

- 6.2 In the event that this Appendix is a part of an Interconnect Agreement between the parties, the dispute resolution provisions of the Interconnection Agreement shall apply to disputes under this Appendix.

8. INDEMNIFICATION

- 8.1 Definitions. The term "Claims" as used in Section 8 shall mean any suit, claim, demand, loss, damage, liability, fee, fine, penalty, or expense, of every kind and character.
- 8.2 Indemnities Excluded. Except as otherwise specifically provided in this article, neither party (as an "indemnifying party") shall be required to indemnify or defend the other party (as an "indemnified party") against, or hold the indemnified party harmless from, any Claims arising out of:
 - 8.2.1 any breach by the indemnified party of any provision of this Appendix or any breach by the indemnified party of the parties' Interconnection Agreement, if any;
 - 8.2.2 the violation of any law by any employee of the indemnified party or other person acting on the indemnified party's behalf;
 - 8.2.3 willful or intentional misconduct or gross negligence committed by any employee of the indemnified party or by any other person acting on the indemnified party's behalf; or
 - 8.2.4 any negligent act or acts committed by any employee of the indemnified party or other person acting on the indemnified party's behalf, if such negligent act or acts are the sole producing cause of the injury, loss, or damage giving rise to the Claim for which indemnity is requested.
- 8.3 Workplace Injuries. Except as expressly provided in this Appendix to the contrary, each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any injury, loss, or damage suffered by any person, which arises out of or in connection with the personal injury or death of any employee of the indemnifying party (or other person acting on the indemnifying party's behalf) if such injury or death results, in whole or in part, from any occurrence or condition on, within, or in the vicinity of SBC-13STATE's Structure.

- 8.4 Other Claims Brought Against Either Party by Employees and Other Persons Acting on the Other Party's Behalf. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims (other than workplace injury claims subject to Section 8.3 above) made, brought, or sought against the indemnified party by any employee, contractor, or subcontractor of the indemnifying party or by any other person acting on the indemnifying party's behalf.
- 8.5 THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 8.3-8.4 SHALL ARISE EVEN IF THE INJURY, SICKNESS, DISEASE, OR DEATH WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.
- 8.6 Claims Brought Against Either Party by Vendors, Suppliers and Customers of the Other Party. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims (other than workplace injury claims subject to Section 8.3, or other claims subject to Section 8.4) made, brought, or sought against the indemnified party by any vendor, supplier, or customer of the indemnifying party.
- 8.7 Injuries to Third Parties and Third party Property Owners Resulting from the Parties' Conduct. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with the personal injury or death of any third party or physical damage to real or personal property owned by a third party, arising, in whole or in part, out of or in connection with the conduct of employees of the indemnifying party or other persons acting on the indemnifying party's behalf.
- 8.8 Indemnification for Environmental Claims.
- 8.8.1 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the violation or breach, by any employee of the indemnifying party or other person acting on the indemnifying party's behalf, of
- 8.8.1.1 any federal, state, or local environmental statute, rule, regulation, ordinance, or other law or
- 8.8.1.2 any provision or requirement of this Appendix dealing with hazardous substances or protection of the environment.
- 8.8.2 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of the indemnifying party, or by any person acting on the indemnifying party's behalf, while present on, within, or in the vicinity of any SBC-13STATE pole, duct, conduit, or right-of-way.
- 8.8.3 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the removal or disposal of any hazardous substances by the indemnifying party or by any person acting on the indemnifying party's behalf, or arising out of or in connection with the subsequent storage, processing or other handling of such hazardous substances by any person or entity after they have been removed by the indemnifying party or persons acting on the indemnifying party's behalf from the site of any SBC-13STATE pole, duct, conduit, or right-of-way.
- 8.8.4 Except as otherwise specifically provided in this section, neither party shall be required to indemnify or defend the other party against, or hold the other party harmless from any Claims for which the other party may be liable under any federal, state, or local environmental statute, rule, regulation, ordinance, or other law.
- 8.9 Miscellaneous Claims. Attaching Party shall indemnify, on request defend, and hold SBC-13STATE harmless from any and all Claims, of every kind and character, made, brought, or sought against SBC-13STATE by any person or entity, arising out of or in connection with the subject matter of this Appendix and based on either:

- 8.9.1 Claims for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on SBC-13STATE due to the placement or presence of Attaching Party's facilities on or within SBC-13STATE's poles, ducts, conduits, or rights-of-way; or
- 8.9.2 Claims based on the violation by Attaching Party of any third party's intellectual property rights, including but not limited to claims for copyright infringement, patent infringement, or unauthorized use or transmission of television or radio broadcast programs or other program material.
- 8.10 Attaching Party's General Indemnity Obligations to SBC-13STATE. This section applies only in those situations not expressly covered by Sections 8.3 through 8.10 and does not apply to any Claims resulting from Attaching Party's enforcement of its rights against SBC-13STATE pursuant to this Appendix or other provisions in the parties' Interconnection Agreement, if any. Except as otherwise expressly provided in this Appendix to the contrary, and subject to the exclusions set forth in Section 8.2, Attaching Party shall indemnify, on request defend, and hold SBC-13STATE harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with Attaching Party's access to or use of SBC-13STATE's poles, ducts, conduits, or rights-of-way, Attaching Party's performance of any acts authorized under this Appendix, or the presence or activities of Attaching Party's employees or other personnel acting on Attaching Party's behalf on, within, or in the vicinity of SBC-13STATE's poles, ducts, conduits, or rights-of-way.
- 8.11 SBC-13STATE's General Indemnity Obligations to Attaching Party. This section applies only in those situations not expressly covered by Sections 8.3-8.9 and does not apply to any Claims resulting from SBC-13STATE's enforcement of its rights against Attaching Party pursuant to this Appendix or other provisions in the parties' Interconnection Agreement, if any. Except as otherwise expressly provided in this Appendix to the contrary, SBC-13STATE shall indemnify, on request defend, and hold Attaching Party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with SBC-13STATE's access to or use of SBC-13STATE's poles, ducts, conduits, or rights-of-way, SBC-13STATE's performance of any acts authorized under this Appendix, or the presence or activities of SBC-13STATE's employees or other personnel acting on SBC-13STATE's behalf on, within, or in the vicinity of SBC-13STATE's poles, ducts, conduits, or rights-of-way.

9. LIABILITIES AND LIMITATIONS OF LIABILITY

- 9.1 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION LIMITS EACH PARTY'S LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH NEGLIGENT (INCLUDING GROSSLY NEGLIGENT) ACTS OR OMISSIONS OF SUCH PARTY BUT DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR INTENTIONAL MISCONDUCT.
- 9.2 SBC-13STATE Not Liable to Attaching Party for Acts of Third Parties or Acts of God. By affording Attaching Party access to SBC-13STATE Structure SBC-13STATE does not warrant, guarantee, or insure the uninterrupted use of such facilities by Attaching Party. Except as specifically provided in Section 9.5 of this Appendix, Attaching Party assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to Attaching Party's facilities attached to SBC-13STATE's poles or placed in SBC-13STATE's Structure and SBC-13STATE shall not be liable to Attaching Party for any damages to Attaching Party's facilities other than as provided in Section 9.5. In no event shall SBC-13STATE be liable to Attaching Party under this Agreement for any death of person or injury, loss, or damage resulting from the acts or omissions of (1) any Other User or any person acting on behalf of an Other User, (2) any governmental body or governmental employee, (3) any third-party property owner or persons acting on

behalf of such property owner, or (4) any permit, invitee, trespasser, or other person present at the site or in the vicinity of any SBC-13STATE pole, duct, conduit, or right-of-way in any capacity other than as a SBC-13STATE employee or person acting on SBC-13STATE's behalf. In no event shall SBC-13STATE be liable to Attaching Party under this Agreement for injuries, losses, or damages resulting from acts of God (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on SBC-13STATE's behalf, cable cuts by persons other than SBC-13STATE's employees or persons acting on SBC-13STATE's behalf, or other causes beyond SBC-13STATE's control which occur at sites subject to this Appendix.

- 9.3 **Damage to Facilities.** Each party shall exercise due care to avoid damaging the facilities of the other or of Other Users and hereby assumes all responsibility for any and all loss from damage caused by the party and persons acting on the party's behalf. A party shall make an immediate report to the other of the occurrence of any damage and hereby agrees to reimburse the other party, and/or Other Users for any property damaged caused by the party or persons acting on the party's behalf.
- 9.4 **No Limitations of Liability in Contravention of Federal or State Law.** Nothing contained in this article shall be construed as exempting either party from any liability, or limiting such party's liability, in contravention of federal law or in contravention of the laws of this State.

10. INSURANCE

- 10.1 At all times in which the Attaching Party has attachments to SBC-13STATE poles, or is occupying SBC-13STATE conduit or right-of-way, Attaching Party shall keep and maintain in force, at its own expense, the minimum insurance coverage and limits set for below. Such insurance and coverage shall not only cover the Attaching Party, but it must cover all contractors, subcontractors and/or any other person acting on Attaching Party's behalf, that are providing services under this Appendix.
- 10.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Appendix and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee.
- 10.1.2 For MO: Commercial General Liability, including coverage for Contractual Liability and Products/Completed Operations Liability, with a limit of not less than \$1,000,000 combined single limit per occurrence for bodily injury, property damage and personal injury liability and \$2,000,000 general
- 10.1.3 Automobile Liability Insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired and non-owned vehicles.
- 10.2 Attaching Party agrees to name SBC-13STATE as an Additional Insured on the Commercial General Liability policy and Commercial Automobile Liability Policy.
- 10.3 SBC-13STATE agrees to accept the Attaching Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
- 10.3.1 Workers' Compensation and Employers Liability: Attaching Party submit to SBC-13STATE its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Appendix or the employer's state of hire; and
- 10.3.2 Automobile liability: Attaching Party shall submit to SBC-13STATE a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Appendix; and
- 10.3.3 General liability: Attaching Party must provide evidence acceptable to SBC-13STATE that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 10.4 All insurance required in accordance with this section must be in effect before SBC-13STATE will issue pole attachment or conduit occupancy permits under this Appendix.

- 10.5 Attaching Party agrees to provide SBC-13STATE with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

11. ASSIGNMENT OF RIGHTS

- 11.1 Assignment Permitted. Neither party may assign or otherwise transfer its rights nor obligations under this Appendix except as provided in this section.

11.1.1 SBC-13STATE may assign its rights, delegate its benefits, and delegate its duties and obligations under this Appendix, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with SBC-13STATE or which acquires or succeeds to ownership of substantially all of SBC-13STATE's assets. SBC-13STATE shall give Attaching Party at least thirty (30) days written notice prior to such assignment or transfer of its rights or obligations under this Appendix. Any other assignment or transfer by SBC-13STATE also may be made without consent of the Attaching Party, but for such other assignments or transfers SBC-13STATE shall give Attaching Party at least (60) days written notice prior to such assignment or transfer of its rights or obligations under this Appendix.

11.1.2 Overlapping of Attaching Party's facilities on SBC-13STATE poles by a third party will be allowed under the following conditions:

11.1.2.1 Intentionally left blank

11.1.2.2 The Overlapping entity must obtain written approval from the Attaching Party and provide a copy to SBC-13STATE prior to submitting a request for access to structure.

11.1.2.3 The Overlapping party must submit a written request for access to structure, and indicate on the request that the request is for Overlapping of an existing attachment of the Attaching Party.

11.1.3 Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without SBC-13STATE's consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Appendix, subject to the express terms of this Appendix. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire Attaching Party's assets through public or private sale or through an Agreement with Attaching Party, Attaching Party's lender or the third party acquiring Attaching Party's rights under this Appendix shall assume all outstanding obligations of Attaching Party under the agreement and provide proof satisfactory to SBC-13STATE that such lender or third party has complied or will comply with all requirements established under this Appendix. Notwithstanding any provisions of this Appendix to the contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Attaching Party under the Agreement, including liability to SBC-13STATE for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such lender or third party succeeds to the rights of Attaching Party under the Agreement, as applicable.

11.1.4 Attaching Party may assign its rights, delegate its benefits, and delegate its duties and obligations under this Appendix, without SBC-13STATE's consent, to any entity controlling, controlled by, or under common control with Attaching Party or which acquires or succeeds to ownership of substantially all of Attaching Party's assets. Attaching Party shall give SBC-13STATE at least thirty (30) days written notice prior to such assignment or transfer of its rights or obligations under this Appendix. Any other assignment or transfer by Attaching Party requires the prior written consent of SBC-13STATE, which consent shall not be unreasonably withheld. No assignment or

transfer by Attaching Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this article, secured SBC-13STATE's prior written consent, (if required) which shall not be unreasonably withheld and given SBC-13STATE notice of the assignment or transfer pursuant to Section 11.3.

- 11.2 Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article.
- 11.3 Assignment Shall Not Relieve Attaching Party of Prior Obligations. Except as otherwise expressly agreed by SBC-13STATE in writing, no assignment permitted by SBC-13STATE under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 8 of this Agreement or the interconnection agreement, if any.
- 11.4 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. SBC-13STATE may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Attaching Party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement.
- 11.5 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting Attaching Party the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or occupancy permits subject to this Agreement to any third party. Except as otherwise expressly permitted in this Agreement, Attaching Party shall not allow third party to attach or place facilities to or in pole or conduit space occupied by or assigned to Attaching Party or to utilize such space.

12. TERMINATION OF AGREEMENT OR OCCUPANCY PERMITS; REMEDIES FOR BREACHES

- 12.1 Termination Due to Non-Use of Facilities or Loss of Required Authority. This Appendix and all occupancy permits subject to this Appendix shall terminate if Attaching Party ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if Attaching Party is cable television system having access to SBC-13STATE's poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in this State (if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in this State), or ceases to make active use of SBC-13STATE's poles, ducts, conduits, and rights-of-way.
- 12.2 Individual occupancy permits subject to this Appendix shall terminate if (a) Attaching Party ceases to utilize the pole attachment or conduit or rights-of-way space subject to such occupancy permit or (b) Attaching Party's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated, or local governmental authority or third-party property owner having authority to revoke, deny, or terminate such use or access.
- 12.3 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Attaching Party's access to SBC-13STATE's Structure shall not materially interfere with or impair service over any facilities of SBC-13STATE or any Other User, cause material damage to SBC-13STATE's plant or the plant of any Other User, impair the privacy of communications carried over the facilities of SBC-13STATE or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of SBC-13STATE's poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, SBC-13STATE may limit, terminate or refuse access if Attaching Party violates this provision.
- 12.4 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either party, the aggrieved party may give written notice of such claimed breach.
- 12.5 The complaining party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given, and

12.5.1 the breaching party fails to cure the breach within thirty (30) days of such notice, if the breach is one which can be cured within thirty (30) days, or

12.5.2 the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than thirty (30) days will be required to affect such cure.

12.6 Remedies for Breach. Subject to the provisions of this article, either party may terminate this Agreement in the event of a material breach by the other party or exercise any other legal or equitable right which such party may have to enforce the provisions of this Agreement. In any action based on an alleged breach of this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred by such party, including but not limited to reasonable attorneys' fees.

13. FAILURE TO ENFORCE

13.1 No Waiver. The failure by either party to take action to enforce compliance with any of the terms or conditions of this Agreement, to give notice of any breach, or to terminate this Agreement or any occupancy permit or authorization subject to this Agreement shall not constitute a waiver or relinquishment of any term or condition of this Agreement, a waiver or relinquishment of the right to give notice of breach, or waiver or relinquishment of any right to terminate this Agreement.

14. CONFIDENTIALITY OF INFORMATION

14.1 Information Provided by Attaching Party to SBC-13STATE. Except as otherwise specifically provided in this Appendix, all company-specific and customer-specific information submitted by Attaching Party to SBC-13STATE in connection with this Appendix (including but not limited to information submitted in connection with Attaching Party's applications for occupancy permit shall be deemed to be "confidential" or "proprietary" information of Attaching Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for or review of records or its inquiry about SBC-13STATE facilities. This article does not limit the use by SBC-13STATE of aggregate information relating to the occupancy and use of SBC-13STATE's Structure by firms other than SBC-13STATE (that is, information submitted by Attaching Party and aggregated by SBC-13STATE in a manner that does not directly or indirectly identify Attaching Party).

14.2 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Attaching Party to SBC-13STATE in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons other than those who have a need to know such information for the limited purposes set forth in Sections 14.3 through 14.6.

14.3 Permitted Uses of Attaching Party's Confidential Information. Notwithstanding the provisions of Sections 14.1 and 14.2 above, SBC-13STATE and persons acting on SBC-13STATE's behalf may utilize Attaching Party's confidential or proprietary information for the following purposes:

14.3.1 posting information, as necessary, to SBC-13STATE's outside plant records;

14.3.2 placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SBC-13STATE's Structure and any SBC-13STATE facilities located on, within, or in the vicinity of such Structure;

14.3.3 performing SBC-13STATE's obligations under this Agreement and similar agreements with third parties;

14.3.4 determining which of SBC-13STATE's Structure are (or may in the future be) available for SBC-13STATE's own use, and making planning, engineering, construction, and budgeting decisions relating to SBC-13STATE's Structure;

14.3.5 preparing cost studies;

- 14.3.6 responding to regulatory requests for information;
- 14.3.7 maintaining SBC-13STATE's financial accounting records; and
- 14.3.8 complying with other legal requirements relating to Structure.

- 14.4 Defense of Claims. In the event of a dispute between SBC-13STATE and any person or entity, including Attaching Party, concerning SBC-13STATE's performance of this Agreement, satisfaction of obligations under similar agreements with third parties, compliance with the Pole Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, SBC-13STATE may utilize confidential or proprietary information submitted by Attaching Party in connection with this Appendix as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that SBC-13STATE shall not disclose Attaching Party's proprietary or confidential information without first, at SBC-13STATE's option:

- 14.4.1 obtaining an agreed protective order or nondisclosure Agreement that preserves the confidential and proprietary nature of Attaching Party's information;
- 14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure Agreement can be obtained; or
- 14.4.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

- 14.5 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding SBC-13STATE from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that SBC-13STATE shall not disclose Attaching Party's proprietary or confidential information without first, at SBC-13STATE's option:

- 14.5.1 obtaining an agreed protective order or nondisclosure Agreement that preserves the confidential and proprietary nature of Attaching Party's information;
- 14.5.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure Agreement can be obtained; or
- 14.5.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

15. ACCESS TO RIGHTS-OF-WAY

- 15.1 To the extent SBC-13STATE has the authority to do so, SBC-13STATE grants Attaching Party a right to use any rights-of-way for SBC-13STATE poles, ducts, or conduits to which Attaching Party may attach its facilities for the purposes of constructing, operating and maintaining such Attaching Party's facilities on SBC-13STATE's poles, ducts or conduits. Notwithstanding the foregoing, Attaching Party shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, right of way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the SBC-13STATE pole, duct or conduit to which Attaching Party seeks to attach its facilities. Attaching Party shall furnish proof of any such easement, rights-of-way, license, permit, permission, certification, or franchise within thirty (30) days of request by SBC-13STATE. SBC-13STATE does not warrant the validity or apportionability of any rights it may hold to place facilities on private property.
- 15.2 Private Rights-of-Way Not Owned or Controlled by Either Party. Neither party shall restrict or interfere with the other party's access to or right to occupy property owned by third-parties which is not subject to the other party's control, including property as to which either party has access subject to non-exclusive rights-of-way. Each party shall make its own, independent legal assessment of its right to enter upon or use the property of third-party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.

- 15.3 Access to Rights-of-Way Generally. At locations where SBC-13STATE has access to third-party property pursuant to non-exclusive rights-of-way, SBC-13STATE shall not interfere with Attaching Party's negotiations with third-party property owners for similar access or with Attaching Party's access to such property pursuant to easements or other rights-of-ways obtained by Attaching Party from the property owner. At locations where SBC-13STATE has obtained exclusive rights-of-way from third-party property owners or otherwise controls the right-of-way, SBC-13STATE shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Attaching Party on a nondiscriminatory basis, provided that the underlying agreement with the property owner permits SBC-13STATE to provide such access and provided further that SBC-13STATE's charges for such access shall include Attaching Party's pro rata portion of the charges, if any, paid by SBC-13STATE to obtain the right-of-way, plus any other documented legal, administrative, and engineering costs incurred by SBC-13STATE in obtaining the right-of-way and processing Attaching Party's request for access.

16. SPECIFICATIONS

- 16.1 Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities attached to SBC-13STATE's poles or occupying space in SBC-13STATE's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Appendix and the Administrative Guide.
- 16.1.1 SBC CALIFORNIA ONLY- In addition to the terms and conditions included in this Appendix, SBC CALIFORNIA shall comply with any requirements set forth in California Public Utility Commission Decision 98-10-058.
- 16.2 Published Standards. Attaching Party's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:
- 16.2.1 the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book;"
- 16.2.2 the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE")
- 16.2.3 the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA");
- 16.2.4 California Public Utility Commission's General Orders 95 and 128 for attachments to Pacific Bell Telephone Company poles, ducts, conduits and rights of way; and,
- 16.2.5 the SBC-13STATE Structure Access Guidelines - these Structure Access Guidelines are on SBC CLEC Online web site. If there is conflicting language this Agreement would prevail.
- 16.3 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of SBC-13STATE's manholes and access to SBC-13STATE's conduit system.
- 16.3.1 Attaching Party will notify SBC-13STATE not less than five (5) business days in advance before entering SBC-13STATE's conduit system to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the parties. The notice shall state the general nature of the work to be performed.
- 16.3.2 An authorized employee or representative of SBC-13STATE may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within SBC-13STATE's conduit system. Attaching Party shall reimburse SBC-13STATE for costs associated with the presence of SBC-13STATE's authorized employee or representative.
- 16.3.3 Each party must obtain any necessary authorization from appropriate authorities to open manholes.

17. ACCESS TO RECORDS

- 17.1 SBC-13STATE will, upon request and at the expense of the Attaching Party, provide Attaching Party access to and copies of redacted maps, records and additional information relating to the location, capacity and utilization of SBC-13STATE's Structure. Upon request, SBC-13STATE will meet with the Attaching Party to clarify matters relating to maps, records or additional information. SBC-13STATE does not warrant the accuracy or completeness of information on any maps or records.
- 17.2 Maps, records or information are and remain the proprietary property of SBC-13STATE, are provided to the Attaching Party solely for the purpose of enabling the Attaching Party to obtain access to SBC-13STATE's Structure, and may not be resold, reproduced or disseminated by the Attaching Party.
- 17.3 SBC-13STATE will provide information currently available on the SBC-13STATE's maps and/or records regarding:
 - 17.3.1 the location of Structure and street addresses for manholes and poles as shown on SBC-13STATE's maps;
 - 17.3.2 the footage between manholes or lateral ducts lengths, as shown on SBC-13STATE's maps;
 - 17.3.3 the footage between poles, if shown on SBC-13STATE's maps;
 - 17.3.4 the total capacity of the Structure
 - 17.3.5 the existing utilization of the Structure.
- 17.4 SBC-13STATE will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by SBC-13STATE.
- 17.5 SBC-13STATE will expunge any confidential or proprietary information from its maps and records prior to providing access to the same to the Attaching Party.

18. APPLICATIONS AND PRE-OCCUPANCY PERMIT SURVEYS

- 18.1 Occupancy Permits Required. Attaching Party shall apply in writing for and receive an occupancy permit before attaching facilities to specified SBC-13STATE poles or placing facilities within specified SBC-13STATE ducts, conduits, or rights-of-way.
- 18.2 Structure Access Request Form. To apply for an occupancy permit under this Appendix, Attaching Party shall submit to SBC-13STATE the appropriate SBC-13STATE request forms. Attaching Party shall promptly withdraw or amend its request if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific SBC-13STATE Structure.
- 18.3 Make-Ready Survey. At Attaching Party's expense, a Make-ready survey must be completed by SBC-13STATE or the Attaching Party before an occupancy permit is issued. The primary purposes of the make-ready survey will be to enable SBC-13STATE to
 - 18.3.1 confirm or determine the modifications, capacity expansion, and make-ready work, if any, necessary to accommodate Attaching Party's attachment of facilities to SBC-13STATE structures;
 - 18.3.2 plan and engineer the facilities' modification, capacity expansion, and make-ready work, if any, required to prepare SBC-13STATE's poles, ducts, conduits, rights-of-way, and associated facilities for Attaching Party's proposed attachments or occupancy; and
 - 18.3.3 estimate the costs associated with such facilities modification, capacity expansion, or make-ready work.

19. POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

- 19.1 Selection of Space. SBC-13STATE will select or approve the Attaching Party's selection of the space Attaching Party will occupy on SBC-13STATE's poles or in SBC-13STATE's conduit systems. Maintenance ducts shall not be considered available for Attaching Party's use except as specifically provided elsewhere in this Appendix. Where required by law or franchise agreement, ducts and attachment space on poles reserved for municipal use shall not be considered available for the Attaching Party's use. All other ducts, inner ducts, space on poles or space in rights-of-ways which are not assigned or occupied shall be deemed

available for use by SBC-13STATE, Attaching Party, and other parties entitled to access under applicable law.

19.2 Pole, Duct, and Conduit Space Assignments

19.2.1 After Attaching Party's application for a pole attachment or conduit occupancy permit has been approved by SBC-13STATE, the pole, duct, and conduit space selected and/or approved by SBC-13STATE in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed twelve (12) months.

19.2.2 SBC CALIFORNIA: The pole, duct, and conduit space selected and/or approved by SBC-13STATE in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed nine (9) months in SBC CALIFORNIA only as detailed by the California Public Utility Commission.

19.2.3 SBC-13STATE may assign space to itself by making appropriate entries in the same records used to log assignments to Attaching Party and third parties. If SBC-13STATE assigns pole, duct, or conduit space to itself, such assignment will automatically lapse twelve (12) months after the date the assignment has been entered into the appropriate SBC-13STATE record if SBC-13STATE has not occupied such assigned space within such twelve (12) month period.

19.2.4 SBC CALIFORNIA: Space assignment is nine (9) months in California.

19.2.5 Notices and applications including assignment requests will be date-and time-stamped on receipt.

20. ISSUANCE OF OCCUPANCY PERMITS (INCLUDING MAKE-READY WORK)

20.1 Response Within 45 Days. Within forty-five (45) days of Attaching Party's submission of a request for access to SBC-13STATE Structure, SBC-13STATE shall provide a written response to the application. The response shall state whether the request is being granted or denied, and if the request is denied, provide the reasons why the request is being denied. If denial of access is proposed, SBC-13STATE will meet with the Attaching Party and explore in good faith reasonable alternatives to accommodate the proposed attachment. The Attaching Party must request such meeting within ten (10) business days of receipt of a notice of denial. SBC-13STATE will schedule the meeting within ten (10) business days of receipt of the Attaching Party's written request for a meeting.

20.2 If access is granted the response will further advise Attaching Party in writing of:

20.2.1 what modifications, capacity expansions, or make-ready work, if any, will be required to prepare SBC-13STATE's Structure, and

20.2.2 an estimate of charges for such modifications, capacity expansions, or make-ready work.

20.3 Make-ready Work. If it is determined that make-ready work will be necessary to accommodate Attaching Party's facilities, Attaching Party shall have forty-five (45) days (the "acceptance period") to either

20.3.1 submit payment for the estimate authorizing SBC-13STATE or its contractor to complete the make-ready work; or

20.3.2 advise SBC-13STATE of its willingness to perform the proposed make-ready work itself if permissible in the application area.

20.4 Make-ready work performed by Attaching Party, or by an authorized contractor selected by Attaching Party, shall be performed in accordance with SBC-13STATE's specifications and in accordance with the same standards and practices which would be followed if such work were being performed by SBC-13STATE or SBC-13STATE's contractors. Neither Attaching Party nor authorized contractors selected by Attaching Party shall conduct such work in any manner which degrades the integrity of SBC-13STATE's Structures or interferes with any existing use of SBC-13STATE's facilities or the facilities of any Other User.

20.5 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. Attaching Party shall make arrangements with the Other Users with facilities attached to SBC-13STATE's poles or occupying space in SBC-13STATE's conduit system regarding reimbursement for any expenses incurred by the Other Users in transferring or rearranging the Other Users' facilities to accommodate the attachment

or placement of Attaching Party's facilities to or in SBC-13STATE's poles, ducts, conduits and rights-of-way.

- 20.6 Reimbursement for the Creation or Use of Additional Capacity. If any additional capacity is created as a result of make-ready work performed to accommodate Attaching Party's facilities, Attaching Party shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to SBC-13STATE for the use of such additional capacity. If SBC-13STATE utilizes additional space or capacity created at Attaching Party's expense, SBC-13STATE will reimburse Attaching Party on a pro-rata basis for SBC-13STATE's share, if any, of Attaching Party's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. SBC-13STATE will notify the Attaching Party if any entity, including SBC-13STATE, attaches facilities to additional capacity on SBC-13STATE's Structure created at the Attaching Party's expense. SBC-13STATE shall not be required to collect or remit any such amounts to Attaching Party, to resolve or adjudicate disputes over reimbursement between Attaching Party and Other Users.
- 20.7 If Attaching Party utilizes space or capacity on any SBC-13STATE Structure created at SBC-13STATE's expense after February of 1996, the Attaching Party will reimburse Attaching Party on a pro-rata basis for the Attaching Party's share, if any, of SBC-13STATE's capacity creation costs.
- 20.8 Occupancy Permit and Attachment. After all required make-ready work is completed, SBC-13STATE will issue an occupancy permit confirming that Attaching Party may attach specified facilities to SBC-13STATE's Structure.
- 20.9 The Attaching Party must occupy the assigned space within a period not to exceed twelve (12) months from the issuance of the occupancy permit. If the Attaching Party does not occupy the assigned space within the twelve (12) month period, the Occupancy Permit will lapse and the space will be considered available for use by SBC-13STATE or Other User.
- *SBC CALIFORNIA only: Space assignment shall not exceed nine (9) months in California.
- 20.10 The Attaching Party's obligation to pay semiannual pole attachment or conduit occupancy fees will commence on the date the Occupancy Permit is provided by SBC-13STATE to the Attaching Party.

21. CONSTRUCTION OF ATTACHING PARTY'S FACILITIES

- 21.1 Responsibility for Attaching and Placing Facilities. The Attaching Party shall be responsible for the actual attachment of its facilities to SBC-13STATE's poles and the placement of such facilities in SBC-13STATE's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities.
- 21.2 Construction Schedule. After the issuance of an occupancy permit, Attaching Party shall provide SBC-13STATE with a construction schedule and thereafter keep SBC-13STATE informed of anticipated changes in the construction schedule.

22. USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY'S FACILITIES

- 22.1 Routine Maintenance of Attaching Party's Facilities. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within SBC-13STATE's poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party's occupancy permit. SBC-13STATE and CLEC further agree that CLEC shall pay to SBC-13STATE a penalty of \$500.00 for each unauthorized entry into the conduit system.
- 22.2 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed 30 days) non-emergency maintenance or repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by SBC-13STATE. A person or entity using the maintenance duct for

non-emergency maintenance or repair activities shall immediately notify SBC-13STATE of such use and must either vacate the maintenance duct within thirty (30) days or, with SBC-13STATE's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within thirty (30) days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies which may occur while the maintenance duct is occupied.

23. MODIFICATION OF ATTACHING PARTY'S FACILITIES

- 23.1 Notification of Planned Modifications. Attaching Party shall notify SBC-13STATE in writing at least thirty (30) days before adding to, relocating, replacing or otherwise modifying its facilities already attached to a SBC-13STATE Structure. The notice shall contain sufficient information to enable SBC-13STATE to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Attaching Party's present occupancy permit or requires a new or amended occupancy permit.
- 23.2 Replacement of Facilities and Overlashing Additional Cables. Attaching Party may replace existing facilities with new facilities occupying the same SBC-13STATE Structure, and may overlash additional cables to its own existing facilities; provided, however, that such activities shall not be considered to be routine maintenance and shall be subject to the requirements of this article.

24. REQUIRED REARRANGEMENTS OF ATTACHING PARTY'S FACILITIES

- 24.1 Required Rearrangement of Attaching Party's Facilities. Attaching Party agrees that Attaching Party will cooperate with SBC-13STATE and other users in making rearrangements to SBC-13STATE Structure as may be necessary, and that costs incurred by Attaching Party in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the parties in accordance with then applicable law.
- 24.2 Whenever feasible, SBC-13STATE shall give Attaching Party not less than thirty (30) sixty (60) days prior written notice of the need for Attaching Party to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Attaching Party shall complete such rearrangements within the time prescribed in the notice. If Attaching Party does not rearrange facilities within noted time, SBC-13STATE will rearrange at Attaching Party's expense.

25. EMERGENCY REPAIRS AND POLE REPLACEMENTS

- 25.1 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such party to make such repairs.
 - 25.1.1 Nothing contained in this Appendix shall be construed as requiring either party to perform any repair or service restoration work of any kind with respect to the other party's facilities or the facilities of joint users.
 - 25.1.2 Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that an entity using the maintenance duct for emergency repair activities will notify SBC-13STATE within twelve (12) hours of the current business day (or first business day following a non-business day) that such entity is entering the SBC-13STATE conduit system and using the maintenance duct for emergency restoral purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance ducts will be used to restore the highest priority services, as defined in Section 2.7, first. Existing spare ducts may be used for restoration purposes providing the spare ducts are restored after restoration work is complete. Any spare ducts not returned will be included be assigned to the user of the duct and an occupancy permit issued.

- 25.1.3 The Attaching Party shall either vacate the maintenance duct within thirty (30) days or, with SBC-13STATE's consent, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner-duct, a suitable replacement inner-duct) is available for use by all occupants in the conduit section within thirty (30) days after such person or entity occupies the maintenance ducts. Entities not vacating the maintenance duct must provide an immediate maintenance duct at the entity's cost.
- 25.2 Designation of Emergency Repair Coordinators and Other Information. For each SBC-13STATE construction district, Attaching Party shall provide SBC-13STATE with the emergency contact number of Attaching Party's designated point of contact for coordinating the handling of emergency repairs of Attaching Party's facilities and shall thereafter notify SBC-13STATE of changes to such information.
- 25.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, SBC-13STATE, Attaching Party, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties present in accordance with the following principles.
- 25.3.1 Emergency service restoration work requirements shall take precedence over other work operations.
- 25.3.2 Except as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, national security and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.
- 25.3.3 SBC-13STATE shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by SBC-13STATE on a nondiscriminatory basis in accordance with the principles set forth in this section.
- 25.4 Emergency Pole Replacements.
- 25.4.1 When emergency pole replacements are required, SBC-13STATE shall promptly make a good faith effort to contact Attaching Party to notify Attaching Party of the emergency and to determine whether Attaching Party will respond to the emergency in a timely manner.
- 25.4.2 If notified by SBC-13STATE that an emergency exists which will require the replacement of a pole, Attaching Party shall transfer its facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to an SBC-13STATE replacement pole, the transfer shall be in accordance with SBC-13STATE's placement instructions.
- 25.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise SBC-13STATE and thereby authorize SBC-13STATE (or any Other User sharing the pole with SBC-13STATE) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on Attaching Party's behalf.
- 25.5 Expenses Associated with Emergency Repairs. Each party shall bear all reasonable expenses arising out of or in connection with emergency repairs of its own facilities and transfers or rearrangements of such facilities associated with emergency pole replacements made in accordance with the provisions of this article.
- 25.5.1 Each party shall be solely responsible for paying all persons and entities who that provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such party's facilities.

25.5.2 Attaching Party shall reimburse SBC-13STATE for the costs incurred by SBC-13STATE for work performed by SBC-13STATE on Attaching Party's behalf in accordance with the provisions of this article.

26. INSPECTION BY SBC OF ATTACHING PARTY'S FACILITIES

- 26.1 **Post-Construction Inspections.** SBC-13STATE will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of facilities to SBC-13STATE's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. SBC-13STATE will provide the Attaching Party advance written notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany SBC-13STATE on the post-construction inspection.
- 26.2 **Right to Make Periodic or Spot Inspections.** SBC-13STATE shall have the right, but not the obligation, to make periodic or spot inspections of all facilities attached to SBC-13STATE's Structure. These inspections will not be made more often than once every two (2) years unless in SBC-13STATE's judgement such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Agreement.
- 26.3 **If Attaching Party's facilities are in compliance with this Appendix,** there will be no charges incurred by the Attaching Party for the periodic or spot inspection. If Attaching Party's facilities are not in compliance with this Appendix, SBC-13STATE may charge Attaching Party for the inspection. The costs of Periodic Inspections will be paid by those Attaching Parties with two percent (2%) or greater of their attachments in violation. The amount paid by the Attaching Party shall be the percentage that their violations bear to the total violations of all Attaching Parties found during the inspection.
- 26.4 **If the inspection reflects that Attaching Party's facilities are not in compliance with the terms of this Appendix,** Attaching Party shall bring its facilities into compliance within thirty (30) days after being notified of such noncompliance. If any make ready or modification work to SBC-13STATE's Structures is required to bring Attaching Party's facilities into compliance, the Attaching Party shall provide notice to SBC-13STATE and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment.

27. TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

- 27.1 **Facilities to Be Marked.** Attaching Party shall tag or otherwise mark all of Attaching Party's facilities placed on or in SBC-13STATE's Structure in a manner sufficient to identify the facilities as those belonging to the Attaching Party.
- 27.2 **Removal of Untagged Facilities.** SBC-13STATE may, without notice to any person or entity, remove from SBC-13STATE's poles or any part of SBC-13STATE's conduit system the Attaching Party's facilities, if SBC-13STATE determines that such facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on SBC-13STATE's poles or in SBC-13STATE's conduit system.
- 27.3 **Notice to Attaching Party.** If any of Attaching Party's facilities for which no occupancy permit is presently in effect are found attached to SBC-13STATE's poles or anchors or within any part of SBC-13STATE's conduit system, SBC-13STATE, without prejudice to other rights or remedies available to SBC-13STATE under this Appendix, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Attaching Party advising Attaching Party that no occupancy permit is presently in effect with respect to the facilities and that Attaching Party must, within thirty (30) days, respond to the notice as provided in Section 27.6 of this Appendix.
- 27.4 **Attaching Party's Response.** Within sixty (60) days after receiving a notice under Section 27.5 of this Appendix, Attaching Party shall acknowledge receipt of the notice and submit to SBC-13STATE, in writing, an application for a new or amended occupancy permit with respect to such facilities.
- 27.5 **Approval of Request and Retroactive Charges.** If SBC-13STATE approves Attaching Party's application for a new or amended occupancy permit, Attaching Party shall be liable to SBC-13STATE for all fees and charges associated with the unauthorized attachments as specified in Section 27.6 of this Appendix. The

issuance of a new or amended occupancy permit as provided by this article shall not operate retroactively or constitute a waiver by SBC-13STATE of any of its rights or privileges under this Appendix or otherwise.

- 27.6 Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from SBC-13STATE's poles, conduit system or rights-of-way or until a new or amended occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party and its predecessors had continuously complied with all applicable SBC-13STATE license requirements. Such fees and charges shall be due and payable thirty (30) days after the date of the bill or invoice stating such fees and charges. In addition, the Attaching Party shall be liable for an unauthorized attachment fee in the amount of five (5) times the annual attachment and occupancy fees in effect on the date Attaching Party is notified by SBC-13STATE of the unauthorized attachment or occupancy. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Attaching Party shall rearrange or remove its unauthorized facilities at SBC-13STATE's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to SBC-13STATE or another Other User, and shall pay SBC-13STATE for all costs incurred by SBC-13STATE in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities.
- 27.7 Removal of Unauthorized Attachments. If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized facilities within the specified period of time, SBC-13STATE shall by written notice advise Attaching Party to remove its unauthorized facilities not less than 60 days from the date of notice and Attaching Party shall remove the facilities within the time specified in the notice. If the facilities have not been removed within the time specified in the notice, SBC-13STATE may, at SBC-13STATE's option, remove Attaching Party's facilities at Attaching Party's expense.
- 27.8 No Ratification of Unpermitted Attachments or Unauthorized Use of SBC-13STATE's Facilities. No act or failure to act by SBC-13STATE with regard to any unauthorized attachment or occupancy or unauthorized use of SBC-13STATE's Structure shall be deemed to constitute a ratification by SBC-13STATE of the unauthorized attachment or occupancy or use, nor shall the payment by Attaching Party of fees and charges for unauthorized pole attachments or conduit occupancy exonerate Attaching Party from liability for any trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities.

28. REMOVAL OF ATTACHING PARTY'S FACILITIES

- 28.1 When Applicant no longer intends to occupy space on a SBC-13STATE pole or in a SBC-13STATE duct or conduit, Applicant will provide written notification to SBC-13STATE that it wishes to terminate the occupancy permit with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Applicant's facilities, the occupancy permit shall terminate and the space shall be available for reassignment.
- 28.1.1 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from SBC-13STATE's Structure.
- 28.1.2 Except as otherwise agreed upon in writing by the parties, Applicant must, after removing its facilities, plug all previously occupied ducts at the entrances to SBC-13STATE's manholes.
- 28.1.3 Applicant shall be solely responsible for the removal of its own facilities from SBC-13STATE's Structure.
- 28.2 At SBC-13STATE's request, Attaching Party shall remove from SBC-13STATE's Structure any of Attaching Party's facilities which are no longer in active use. Upon request, the Attaching Party will provide proof satisfactory to SBC-13STATE that an Attaching Party's facility is in active service. Attaching Party shall not abandon any of its facilities by leaving such facilities on or in SBC-13STATE's Structure.
- 28.3 Removal Following Termination of Occupancy permit. Attaching Party shall remove its facilities from SBC-13STATE's poles, ducts, conduits, or rights-of-way within sixty (60) days after termination of the occupancy permit.

- 28.4 Removal Following Replacement of Facilities. Attaching Party shall remove facilities no longer in service from SBC-13STATE's Structures within sixty (60) days after the date Attaching Party replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit.
- 28.5 Removal to Avoid Forfeiture. If the presence of Attaching Party's facilities on or in SBC-13STATE's Structure would cause a forfeiture of the rights of SBC-13STATE to occupy the property where such Structure is located, SBC-13STATE will promptly notify Attaching Party in writing and Attaching Party shall not, without due cause and justification, refuse to remove its facilities within such time as may be required to prevent such forfeiture. SBC-13STATE will give Attaching Party not less than sixty (60) days from the date of notice to remove Attaching Party's facilities unless prior removal is required to prevent the forfeiture of SBC-13STATE's rights. At Attaching Party's request, the parties will engage in good faith negotiations with each other, with Other Users, and with third-party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of Attaching Party's facilities.
- 28.6 Removal of Facilities by SBC-13STATE; Notice of Intent to Remove. If Attaching Party fails to remove its facilities from SBC-13STATE's Structure in accordance with the provisions of Sections 28.1-28.6 of this Appendix, SBC-13STATE may remove such facilities and store them at Attaching Party's expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to Attaching Party for any injury, loss, or damage resulting from such actions. SBC-13STATE shall give Attaching Party not less than sixty (60) days prior written notice of its intent to remove Attaching Party's facilities pursuant to this section.
- 28.7 Removal of Facilities by SBC-13STATE. If SBC-13STATE removes any of Attaching Party's facilities pursuant to this article, Attaching Party shall reimburse SBC-13STATE for SBC-13STATE's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.

29. RATES, FEES, CHARGES, AND BILLING

- 29.1 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees outlined in this Appendix will be set forth in APPENDIX PRICING as part of the Interconnection Agreement. All rates, charges and fees shall be subject to all applicable federal and state laws, rules, regulations, and commission orders.
- 29.2 Changes to Rates, Charges and Fees. Subject to applicable federal and state laws, rules, regulations and orders, SBC-13STATE shall have the right to change the rates, charges and fees outlined in this Appendix. SBC-13STATE will provide the Attaching Party sixty (60) days written notice, advising the Attaching Party of the specific changes being made and the effective date of the change. If the changes outlined in the notice are not acceptable to the Attaching Party, Attaching Party may either (1) seek renegotiation of this Appendix, (2) terminate this Appendix, or (3) seek relief through the dispute resolution process in the General Terms and Conditions of this Agreement.

30. PERFORMANCE AND PAYMENT BONDS

- 30.1 Bond May Be Required. SBC-13STATE may require Attaching Party, authorized contractors, and other persons acting on Attaching Party's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of the Attaching Party's obligations arising out of or in connection with this Appendix.
- 30.1.1 If a bond or similar form of assurance is required of Attaching Party, an authorized contractor, or other person acting on Attaching Party's behalf, Attaching Party shall promptly submit to SBC-13STATE adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing SBC-13STATE sixty (60) days written notice.
- 30.2 Payment and Performance Bonds in Favor of Contractors and Subcontractors. Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, materialmen and other persons or entities performing work or providing materials in connection with Attaching Party's performance under this Appendix. In the event any lien, claim or demand is made on SBC-13STATE by any such

employee, contractor, subcontractor, mechanic, material man, or other person or entity providing such materials or performing such work, SBC-13STATE may require, in addition to any security provided under Section 30.1 of this Appendix, that Attaching Party execute payment or performance bonds, or provide such other security, as SBC-13STATE may deem reasonable or necessary to protect SBC-13STATE from any such lien, claim or demand.

31. NOTICES

31.1 Notices to Attaching Party. All written notices required to be given to a party shall be delivered or mailed to the party's duly authorized agent or attorney, as designated in this section.

31.1.1 Such notice may be delivered to the party's duly authorized agent or attorney in person or by agent or courier receipted delivery.

31.1.2 Such notice may be mailed to the party's duly authorized agent or attorney by registered or certified mail, return receipt requested. When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three (3) days after the date of deposit.

31.1.3 Notices to a party shall be sent to the authorized agent or attorney designated below:

NOTICE CONTACT	ATTACHING PARTY	SBC-13STATE CONTACT
NAME/TITLE	Transactions & Project Services ATTN: Carrier Contract Services Manager	Contract Management ATTN: Notices Manager
STREET ADDRESS	6391 Sprint Pkwy Mailstop: KSOPHT	311 S. Akard, 9 th Floor Four SBC Plaza
CITY/STATE/ZIP CODE	Overland Park, KS 66251	Dallas, TX 75202-5398
FACSIMILE NUMBER	913-315-3928	214-464-2006

31.2 Changes in Notice Requirements. Either party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other party. Such notice shall state, at a minimum, the name, title, firm, and full address of the new addressee.

**APPENDIX WP
EXHIBIT 1
SBC MISSOURI**

Directory White Page Price Sheet				
Directory			Price Per Single Sided Informational Page	
Kansas City			\$3,191.73	
Springfield			\$3,191.73	
St. Louis			\$3,191.73	
Cape Girardeau			\$168.09	
Chillicothe			\$168.09	
Excelsior Spgs.			\$168.09	
Fulton			\$168.09	
Greater Jeff Cty.			\$168.09	
Hannibal			\$168.09	
Bootheel Area			\$168.09	
Kirksville			\$168.09	
Lake Ozarks			\$168.09	
Marshall			\$168.09	
Mexico			\$168.09	
Moberly			\$168.09	
Nevada			\$168.09	
Perryville			\$168.09	
Poplar Bluff			\$168.09	
Sedalia			\$168.09	
Sikeston			\$168.09	
St. Joseph			\$168.09	
Tri-State			\$168.09	
Washington			\$168.09	
Adrian			\$75.59	
Booneville			\$75.59	
Bowling Green			\$75.59	
Elsberry			\$75.59	
Linn			\$75.59	
MO's Parkland			\$75.59	
Stanberry			\$75.59	

**APPENDIX
(SECTION 251(C)(3) PROVISION OF ACCESS TO
UNBUNDLED NETWORK ELEMENTS)**

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**APPENDIX SECTION 251(C)(3) UNES
(SECTION 251(C)(3) PROVISION OF ACCESS TO
UNBUNDLED NETWORK ELEMENTS)**

1. INTRODUCTION

- 1.1 This Appendix UNES sets forth the terms and conditions under this agreement pursuant to which the applicable SBC Communications Inc. (SBC)-owned Incumbent Local Exchange Carrier (ILEC) agrees to furnish CLEC with access to unbundled network elements as specifically defined in this Appendix UNES for the provision by CLEC of a Telecommunications Service. SBC Missouri will provide Sprint access to unbundled network elements pursuant to Section 251(c)(3) of the Act, and effective FCC rules effective judicial orders. For information regarding deposit, billing, payment, non-payment, disconnect, and dispute resolution, see the General Terms and Conditions of this Agreement.
- 1.2 SBC Communications Inc. (SBC) means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.
- 1.3 SBC-2STATE - As used herein, SBC-2STATE means SBC CALIFORNIA and SBC NEVADA, the applicable SBC-owned ILEC(s) doing business in California and Nevada.
- 1.4 SBC-4STATE - As used herein, SBC-4STATE means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, and SBC Oklahoma the applicable SBC-owned ILEC(s) doing business in Arkansas, Kansas, Missouri and Oklahoma.
- 1.5 SBC-7STATE - As used herein, SBC-7STATE means SBC SOUTHWEST REGION 5-STATE, SBC CALIFORNIA and SBC NEVADA, the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.6 SBC-8STATE - As used herein, SBC-8STATE means SBC SOUTHWEST REGION 5-STATE, SBC CALIFORNIA, SBC NEVADA and SBC CONNECTICUT the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.7 SBC-10STATE - As used herein, SBC-10STATE means SBC SOUTHWEST REGION 5-STATE and SBC MIDWEST REGION 5-STATE and the applicable SBC-owned ILEC(s) doing business in Arkansas, Illinois, Indiana, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas and Wisconsin.
- 1.8 SBC-12STATE - As used herein, SBC-12STATE means SBC SOUTHWEST REGION 5-STATE, SBC MIDWEST REGION 5-STATE and SBC-2STATE the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.9 SBC-13STATE - As used herein, SBC-13STATE means SBC SOUTHWEST REGION 5-STATE, SBC MIDWEST REGION 5-STATE, SBC-2STATE and SBC CONNECTICUT the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.10 SBC ARKANSAS - As used herein, SBC ARKANSAS means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, the applicable SBC-owned ILEC doing business in Arkansas.
- 1.11 SBC CALIFORNIA - As used herein, SBC CALIFORNIA means Pacific Bell Telephone Company d/b/a SBC California, the applicable SBC-owned ILEC doing business in California.

- 1.12 SBC CONNECTICUT - As used herein, SBC CONNECTICUT means The Southern New England Telephone Company d/b/a SBC Connecticut, the applicable above listed ILEC doing business in Connecticut.
- 1.13 SBC KANSAS - As used herein, SBC KANSAS means Southwestern Bell Telephone, L.P. d/b/a SBC Kansas, the applicable SBC-owned ILEC doing business in Kansas.
- 1.14 SBC ILLINOIS - As used herein, SBC ILLINOIS means Illinois Bell Telephone Company d/b/a SBC Illinois, the applicable SBC-owned ILEC doing business in Illinois.
- 1.15 SBC INDIANA - As used herein, SBC INDIANA means Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, the applicable SBC-owned ILEC doing business in Indiana.
- 1.16 SBC MICHIGAN - As used herein, SBC MICHIGAN means Michigan Bell Telephone Company d/b/a SBC Michigan, the applicable SBC-owned ILEC doing business in Michigan.
- 1.17 SBC MIDWEST REGION 5-STATE - As used herein, SBC MIDWEST REGION 5-STATE means Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio and Wisconsin.
- 1.18 SBC MISSOURI - As used herein, SBC MISSOURI means Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, the applicable SBC-owned ILEC doing business in Missouri.
- 1.19 SBC NEVADA - As used herein, SBC NEVADA means Nevada Bell Telephone Company d/b/a SBC Nevada, the applicable SBC-owned ILEC doing business in Nevada.
- 1.20 SBC OHIO - As used herein, SBC OHIO means The Ohio Bell Telephone Company d/b/a SBC Ohio, the applicable SBC-owned ILEC doing business in Ohio.
- 1.21 SBC OKLAHOMA - As used herein, SBC OKLAHOMA means Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma, the applicable SBC-owned ILEC doing business in Oklahoma.
- 1.22 SBC SOUTHWEST REGION 5-STATE - As used herein, SBC SOUTHWEST REGION 5-STATE means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma and Texas.
- 1.23 SBC TEXAS - As used herein, SBC TEXAS means Southwestern Bell Telephone, L.P. d/b/a SBC Texas, the applicable SBC-owned ILEC doing business in Texas.
- 1.24 SBC WISCONSIN - As used herein, SBC WISCONSIN means Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC doing business in Wisconsin.
- 1.25 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 Section 251(c)(3) UNEs and Declassification. This Agreement sets forth the terms and conditions pursuant to which SBC-13STATE will provide CLEC 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 CLEC; 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 under this agreement 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 "Section 251(c)(3) UNEs."

2.1.1 A network element, including a network element referred to as a Section 251(c)(3) UNE under this Agreement, will cease to be a Section 251(c)(3) 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 Section 251(c)(3) UNE that has ceased to be a Section 251(c)(3) UNE may also be referred to as "Declassified."

2.1.2 Without limitation, a network element, including a network element referred to as a Section 251(c)(3) UNE under this Agreement is Declassified, upon or by 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 pursuant to Section 251(d)(2) of the Act without access to a particular network element on an unbundled basis; or the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that an incumbent LEC 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; or (c) the absence, by vacatur or otherwise, of a legally effective FCC rule requiring the provision of the network element on an unbundled basis under Section 251(c)(3). By way of example only, a network element can cease to be a Section 251(c)(3) 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.

2.1.3 It is the Parties' intent that only Section 251(c)(3) UNEs shall be available under this Agreement; accordingly, if this Agreement requires or appears to require Section 251(c)(3) UNE(s) or unbundling without specifically noting that the UNE(s) or unbundling must be "Section 251(c)(3)," the reference shall be deemed to be a reference to Section 251(c)(3) UNE(s) or Section 251(c)(3) unbundling, as defined in this Section 2.1. If an element is not required to be provided under this Appendix Section 251(c)(3) UNE and/or not described in this Appendix Section 251(c)(3) UNE, it is the Parties' intent that the element is not available under this Agreement, notwithstanding any reference to the element elsewhere in the Agreement, including in any other Appendix, Schedule or in the Pricing Appendix.

2.1.3.1 By way of example only, if terms and conditions of this Agreement state that SBC-13STATE is required to provide a Section 251(c)(3) UNE or Section 251(c)(3) UNE combination, and that Section 251(c)(3) UNE or the involved Section 251(c)(3) UNE (if a combination) is Declassified or otherwise no longer constitutes a Section 251(c)(3) UNE, subject to the transition procedure described below in Section 2.5, 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.

2.1.4 If terms and conditions of this Agreement state that SBC-13STATE is required to provide a Section 251(c)(3) UNE or Section 251(c)(3) UNE combination, and that Section 251(c)(3) UNE or the involved Section 251(c)(3) UNE (if a combination) is Declassified pursuant to lawful action by the FCC, the Commission, or judicial action, or otherwise no longer constitutes a Section 251(c)(3) UNE, then SBC-13STATE and Sprint shall incorporate the terms and conditions to amend this agreement reflecting such declassification. The terms and conditions shall, at a minimum, reflect the transition plan, if any, accompanying the declassification. The Parties agree to negotiate a reasonable transition plan should not terms be specified.

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 Section 251(c)(3) 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 (Section 251(c)(3) or otherwise), or commingled with other network elements, UNEs (Section 251(c)(3) 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 Section 251(c)(3) UNEs, or where Section 251(c)(3) 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 Section 251(c)(3) UNE in this Agreement is Declassified or is otherwise no longer a Section 251(c)(3) UNE, then the Transition Procedure defined in Section 2.5, below, shall govern.
- 2.5 Transition Procedure for Elements that are Declassified during the Term of the Agreement.
- 2.5.1 The procedure set forth in Section 2.5 does not apply to the embedded base of declassified unbundled network elements described in the Triennial Review Remand Order Embedded Base Temporary Rider. The terms and conditions for the provision of the embedded base are contained in the rider. The terms and conditions in Section 2.5.2 apply to the Declassification events described in Sections 8.4.1 (Declassification Procedure – DS1 Loops), 8.4.2 (Declassification Procedure – DS3 Loops), 13.5.2 (DS1 Transport Declassification) and 13.5.3 (DS3 Transport Declassification), which set forth the consequences for Declassification of DS1 and DS3 Loops, DS1 and DS3 Transport and Dark Fiber Transport, where Declassification occurs because wire centers/routes meet the criteria set forth in the FCC's TRO Remand Order. The terms in Section 2.5.3 apply where any other Section 251(c)(3) UNE is Declassified in accordance with the terms in Section 2.1. SBC-13STATE shall only be obligated to provide Section 251(c)(3) UNEs under this Agreement.
- 2.5.2 In the event DS1 and DS3 Loops and DS1 and DS3 Transport and Dark Fiber Transport are Declassified because wire centers/routes meet the criteria set forth in the FCC's TRO Remand Order, SBC-13STATE will provide written notice to CLEC of the Declassification of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. Sprint has thirty (30) days after receiving the Declassification notice to dispute SBC MISSOURI's claims pursuant to section 10 of this agreement's General Terms and Conditions. SBC-13STATE agrees to continue providing such element(s) under the terms of this Agreement during this thirty (30) day period and while the Declassification is being disputed. If CLEC does not dispute the Declassification it will cease ordering new elements that are identified as Declassified in the SBC-13STATE notice letter referenced in this Section 2.5 after the initial thirty (30) day period. If the matter is disputed the parties will implement the provisions resulting from such dispute. SBC-13STATE reserves the right to audit the CLEC orders transmitted to SBC-13STATE and to the extent that the CLEC has processed orders and such orders are provisioned after this 30 day 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. The transitional period for Declassified unbundled network elements and pricing for such unbundled network elements shall be consistent with those established in the TRO Remand Order. CLEC shall have twelve (12) months to transition DS1 and DS3 Loops and DS1 and DS3 Transport and 18 months for Dark Fiber Transport. Pricing for the Declassified unbundled network elements will be 115% of the rate being paid at the time of notice. During such transition period, the following options are available to CLEC 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) CLEC 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 CLEC 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 the transition period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a) above, and if CLEC 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, 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.

- 2.5.3 In the event a Section 251(c)(3) UNE not included in 2.5.1 is Declassified the Parties will negotiate an amendment to effectuate such change in law and discontinuance in accordance with Section 21 of the General Terms and Conditions. Said change in law negotiation shall also include a negotiation of the transition period.
- 2.6 SBC-13STATE will provide access to Section 251(c)(3) UNES for the provision by CLEC of a Telecommunications Service. (Act, Section 251(c)(3)).
- 2.7 SBC-13STATE will provide CLEC nondiscriminatory access to Section 251(c)(3) UNES (Act, Section 251(c)(347 C.F.R. § 51.307- § 51.315) including but not limited to:
- 2.7.1 At any technically feasible point (Act, Section 251(c)(3); 47 C.F.R. § 51.307(a));
- 2.7.2 At the rates, terms, and conditions which are just, reasonable, and nondiscriminatory (Act, Section 251(c)(3); 47 C.F.R. § 51.307(a));
- 2.7.3 In a manner that allows CLEC to provide a Telecommunications Service that may be offered by means of that Section 251(c)(3) UNE (Act, Section 251(c)(3); 47 C.F.R. § 51.307 (c));
- 2.7.4 In a manner that allows access to the facility or functionality of a requested Section 251(c)(3) UNE to be provided separately from access to other elements, and for a separate charge (47 C.F.R. § 51.307(d));
- 2.7.5 With technical information regarding SBC-13STATE's network facilities to enable CLEC to achieve access to Section 251(c)(3) UNES (47 C.F.R. § 51.307(e));
- 2.7.6 Intentionally Left Blank
- 2.7.7 Where applicable; terms and conditions of access to Section 251(c)(3) UNES shall be no less favorable than terms and conditions under which SBC-13STATE provides such elements to itself (47 C.F.R. § 51.313(b));
- 2.7.8 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)); 2.7.9 Except upon request of CLEC, SBC-13STATE shall not separate CLEC-requested Section 251(c)(3) UNES that SBC-13STATE currently combines (47 C.F.R. § 51.315(b)) SBC-13STATE is not prohibited from or otherwise limited in separating any Section 251(c)(3) UNES not requested by CLEC or a Telecommunications Carrier, including without limitation in order to provide a Section 251(c)(3) UNE(s) or other SBC-13STATE offering(s).
- 2.7.9 Except upon request of CLEC, SBC-13STATE shall not separate CLEC-requested Section 251(c)(3) UNES that SBC-13STATE currently combines (47 C.F.R. § 51.315(b)). SBC-13STATE is not prohibited from or otherwise limited in separating any Section 251(c)(3) UNES not requested by CLEC or a Telecommunications Carrier, including without limitation in order to provide a Section 251(c)(3) UNE(s) or other SBC-13STATE offering(s).
- 2.7.10 Intentionally Left Blank
- 2.7.11 Subject to Section 2.17, upon CLEC's request, SBC-13STATE will perform the functions necessary to commingle UNES or combinations of UNES with wholesale services obtained from SBC-13STATE. (47 C.F.R. § 51.309(f)).
- 2.7.12 SBC-13STATE shall not deny access to an unbundled network element or a combination of unbundled network elements on the grounds that one or more of the elements: (1) is connected to,

attached to, linked to, or combined with, a facility or service obtained from an incumbent LEC; or (2) Shares part of the incumbent LEC's network with access services or inputs for mobile wireless services and/or interexchange services. (47.C.F.R. §51.309(g)).

- 2.8 As provided for herein, SBC-13STATE will permit CLEC exclusive use of a Section 251(c)(3) UNE facility for a period of time, and when CLEC 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 C.F.R. § 51.309(c)).
- 2.9 SBC-13STATE will maintain, repair, or replace Section 251(c)(3) UNES (47 C.F.R. § 51.309(c)) as provided for in this Agreement.
- 2.10 To the extent technically feasible, the quality of the Section 251(c)(3) UNE and access to such Section 251(c)(3) UNE shall be at least equal to what SBC-13STATE provides other telecommunications carriers requesting access to the Section 251(c)(3) UNE (47 C.F.R. § 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 Section 251(c)(3) UNES provided to CLEC under the provisions of this Appendix shall remain the property of SBC-13STATE.
- 2.13 Performance of Section 251(c)(3) UNES
 - 2.13.1 Each Section 251(c)(3) 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 CLEC written notice of any upgrades in its network which will materially impact CLEC's service consistent with 47 C.F.R. § 51.325 - § 51.335. SBC-13STATE's engineering policies, practices, and procedures for local loops will be consistent with 47 C.F.R. § 51.319(a)(9). This does not prohibit or limit SBC-13STATE's ability to modify or augment its network as provided for in the Act and FCC's rules including, without limitation, SBC-13STATE's ability to overbuild existing loop facilities with FTTH or FTTC loops."
 - 2.13.3 SBC-13STATE may elect to conduct conversions for the improvement of its network. During such conversions, CLEC orders for Section 251(c)(3) UNES from 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 CLEC 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.
 - 2.13.5 SBC-13STATE will provide UNES consistent with the performance standards established in each state;
- 2.14 Conditions for Access to Section 251(c)(3) UNES
 - 2.14.1 In order to access and use Section 251(c)(3) UNES, CLEC must be a Telecommunications Carrier (Section 251(c)(3), and must use the Section 251(c)(3) UNE(s) for the provision of a Telecommunications Service (Section 251(c)(3)). Together, these conditions are the "Statutory Conditions" for access to Section 251(c)(3) UNES. Accordingly, CLEC 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.
 - 2.14.1.1 By way of example, use of a Section 251(c)(3) UNE (whether on a stand-alone basis, in combination with other Section 251(c)(3) UNES with a network element possessed by

CLEC, or otherwise) to provide service to CLEC or for other administrative purpose(s) does not constitute using a Section 251(c)(3) UNE pursuant to the Statutory Conditions.

2.14.1.2 By way of further example, CLEC may not access Section 251(c)(3) UNEs for the exclusive provision of mobile wireless services, or long distance services or interexchange services (telecommunications service between different stations in different exchange areas).

2.14.1.2 CLEC may use a UNE to provide a non-telecommunications service to the extent it is using the same UNE to provide a telecommunications service. For example, a CLEC may use a single UNE loop to provide both xDSL service and Internet access.

2.14.2 Other conditions to accessing and using any Section 251(c)(3) UNE (whether on a stand-alone basis or in combination with other network Section 251(c)(3) UNEs) may be applicable under lawful and effective FCC rules and associated lawful and effective FCC and judicial orders and will also apply.

2.15 New Combinations Involving Section 251(c)(3) UNEs

2.15.1 Subject to the provisions hereof and upon CLEC request, SBC-13STATE shall meet its combining obligations involving Section 251(c)(3) UNEs as and to the extent required by FCC rules and orders, including but not limited to 47 C.F.R. § 51.315, 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.

2.15.1.1 Any combining obligation is limited solely to combining of Section 251(c)(3) UNEs as defined herein; accordingly, no other facilities, services or functionalities are subject to combining, including but not limited to facilities, services or functionalities that SBC-13STATE might offer pursuant to Section 271 of the Act.

2.15.2 In the event that SBC-13STATE denies a request to perform the functions necessary to combine Section 251(c)(3) UNEs or to perform the functions necessary to combine Section 251(c)(3) UNEs with elements possessed by CLEC, SBC-13STATE shall provide written notice to CLEC of such denial and the basis thereof. Any 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 2.15 of this Appendix.

2.15.3 In accordance with and subject to the provisions of this Section 2.15, including Sections 2.15.3.2 and 2.15.5, the new Section 251(c)(3) UNE combinations, if any, set forth in the Schedule(s) – Section 251(c)(3) UNE Combinations attached and incorporated into this Appendix shall be made available to CLEC as specified in the specific Schedule for a particular State.

2.15.3.1 SBC-13STATE is willing to perform the actions necessary to also complete the actual physical combination for those new Section 251(c)(3) UNE combinations, if any, set forth in the Schedule(s) – Section 251(c)(3) UNE Combinations to this Appendix, subject to the following:

2.15.3.1.1 Section 2.15, 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 Section 251(c)(3) UNEs or any issue or subject addressed or related thereto.

- 2.15.3.1.2 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 the Parties agree to negotiate an amendment to this Agreement to effectuate such change in law pursuant to Section 21 of the General Terms and Conditions of this Agreement.
- 2.15.3.2 A new Section 251(c)(3) UNE combination, if any, listed on a Schedule – Section 251(c)(3) UNE Combinations does not imply or otherwise indicate the availability of related support system capabilities, including without limitation, whether electronic ordering is available for any particular included new Section 251(c)(3) UNE combination in one or more States. Where electronic ordering is not available, manual ordering shall be used.
- 2.15.3.3 For a new Section 251(c)(3) UNE combination, if any, listed on a Schedule – Section 251(c)(3) UNE Combinations, CLEC shall issue appropriate service requests. These requests will be processed by SBC-13STATE, and CLEC will be charged the applicable Section 251(c)(3) UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual Section 251(c)(3) UNE and cross connect ordered.
- 2.15.3.4 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 Section 251(c)(3) UNE combinations, if any, set forth in Schedule(s) – Section 251(c)(3) UNE Combinations, which work is not covered by the charges applicable per Section 2.16.3.3. For any such work done by SBC-13STATE under Section 2.16.1, any such fee(s) shall be a reasonable cost-based fee (TELRIC), 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.
- 2.15.4 In accordance with and subject to the provisions of this Section 2.15, any request not included in Section 2.15.3 in which CLEC wants SBC-13STATE to perform the functions necessary to combine Section 251(c)(3) UNEs or to perform the functions necessary to combine Section 251(c)(3) UNEs with elements possessed by CLEC (as well as requests where CLEC also wants SBC-13STATE to complete the actual combination), shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Agreement.
- 2.15.4.1 In any such BFR, CLEC must designate among other things the Section 251(c)(3) UNE(s) sought to be combined and the needed location(s), the order in which the Section 251(c)(3) UNEs and any CLEC elements are to be connected, and how each connection (e.g., cross-connected) is to be made between an SBC-13STATE Section 251(c)(3) UNE and the lawful network element(s) possessed by CLEC.
- 2.15.4.2 In addition to any other applicable charges, CLEC shall be charged a reasonable cost-based fee for any combining work done by SBC-13STATE under Section 2.15.1. 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 CLEC requests SBC-13STATE to perform work not required by Section 2.15.1, CLEC shall be charged a market-based rate for any such work.
- 2.15.5 Without affecting the other provisions hereof, the Section 251(c)(3) UNE combining obligations referenced in this Section 2.16 apply only in situations where each of the following is met:

2.15.5.1 it is technically feasible, including that network reliability and security would not be impaired;

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

2.15.5.3 it would not undermine the ability of other Telecommunications Carriers to obtain access to Section 251(c)(3) UNEs or to Interconnect with SBC-13STATE's network;

2.16 Conversion of Wholesale Services to Section 251(c)(3) UNEs

2.16.1 Upon request, SBC-13STATE shall convert a wholesale service, or group of wholesale services, to the equivalent Section 251(c)(3) UNE, or combination of Section 251(c)(3) UNEs, that is available to CLEC under terms and conditions set forth in this Appendix, so long as the CLEC and the wholesale service, or group of wholesale services, and the Section 251(c)(3) UNEs, or combination of Section 251(c)(3) UNEs, that would result from the conversion meets the eligibility criteria that may be applicable for such conversion. (By way of example only, the statutory conditions would constitute one such eligibility criterion.)

2.16.2 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 any applicable Change Management guidelines.

2.16.3 Except as agreed to by the Parties or otherwise provided hereunder, SBC-13STATE shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and a UNE or combination of UNEs. SBC-13STATE's may charge applicable service order charges and record change charges.

2.16.4 This Section 2.16 only applies to situations where the wholesale service, or group of wholesale services, is comprised solely of Section 251(c)(3) UNEs offered or otherwise provided for in this Appendix. Commingling is covered in the following section.

2.16.5 If CLEC 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 Section 251(c)(3) UNE, or combination of Section 251(c)(3) UNEs, CLEC shall not request such conversion or continue using such the Section 251(c)(3) UNE or Section 251(c)(3) UNEs that result from such conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a Section 251(c)(3) UNE or combination of Section 251(c)(3) UNEs, CLEC agrees to convert the Section 251(c)(3) UNE or Section 251(c)(3) UNE combination, to the equivalent wholesale service, or group of wholesale services, upon written notice to CLEC.

2.16.5.1 This Section 2.16.5 applies to any Section 251(c)(3) UNE or combination of Section 251(c)(3) UNEs, including whether or not such Section 251(c)(3) UNE or combination of Section 251(c)(3) UNEs had been previously converted from an SBC-13STATE service.

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

2.16.6 In requesting a conversion of an SBC-13STATE service, CLEC 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.

2.16.7 Nothing contained in this Appendix or Agreement provides CLEC 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.

2.17 Commingling

2.17.1 "Commingling" means the connecting, attaching, or otherwise linking of a Section 251(c)(3) UNE, or a combination of Section 251(c)(3) UNEs, to one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE, or the combining of a Section 251(c)(3) UNE, or a combination of Section 251(c)(3) UNEs, with one or more such facilities or services. "Commingle" means the act of commingling.

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

2.17.1.2 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 Section 251(c)(3) UNE under 47 U.S.C. § 251(c)(3) and § 251(d)(2).

2.17.1.3 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.

2.17.1.4 Any commingling obligation is limited solely to commingling of one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE with Section 251(c)(3) 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.

2.17.2 Except as provided in Section 2 and, further, subject to the other provisions of this Agreement, SBC-13STATE shall permit CLEC to Commingle a Section 251(c)(3) UNE or a combination of Section 251(c)(3) UNEs with facilities or services obtained at wholesale from SBC-13STATE to the extent required by FCC by lawful and effective rules including without limitation, (47 C.F.R. Part 51) and associated lawful and effective FCC and judicial orders.

2.17.3 Upon request, and subject to this Section 2, SBC-13STATE shall perform the functions necessary to Commingle a Section 251(c)(3) UNE or a combination of Section 251(c)(3) UNEs with one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE (as well as requests where CLEC 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) it is not technically feasible, including that network reliability and security would be impaired; or (ii) SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (iii) it would undermine the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with SBC-13STATE's network.

2.17.4 SBC-13STATE is developing a list of Commingled Arrangements that will be available for ordering, which list will be made available in the CLEC Handbook and posted on "CLEC Online." Once that list is included in the CLEC Handbook or posted, whichever is earlier, CLEC will be able to submit orders for any Commingled Arrangement on that list. The list may be modified, from time to time.

2.17.4.1 Any CLEC request for a Commingled Arrangement not found on the then-existing list of orderable Commingled Arrangements must be submitted via the bona fide request (BFR) process. In any such BFR, CLEC must designate among other things the Section 251(c)(3) UNE(s), combination of Section 251(c)(3) UNEs, and the facilities or services that CLEC has obtained at wholesale from SBC-13STATE sought to be Commingled and the needed location(s), the order in which such Section 251(c)(3) UNEs, such combinations of Section 251(c)(3) UNEs, and such facilities and services are to be Commingled, and how each connection (e.g., cross-connected) is to be made between them.

2.17.4.2 In addition to any other applicable charges, CLEC shall be charged a reasonable fee for any Commingling work done by SBC-13STATE under this Section 2.17 (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 CLEC requests SBC-13STATE to perform work not required by this Section 2.17.4, CLEC shall be charged a market-based rate for any such work.

2.17.5 SBC-13STATE 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 Section 251(c)(3) UNES (or Section 251(c)(3) 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.

2.17.6 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 CLEC 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 Section 251(c)(3) UNES, or where Section 251(c)(3) UNES are not requested for permissible purposes. If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Section 251(c)(3) UNE involved or to be involved in a Commingled Arrangement, CLEC shall not request such Commingled Arrangement or continue using such Commingled Arrangement.

2.17.7 In the event that Commingling involves SBC-13STATE performing the functions necessary to combine Section 251(c)(3) UNES (e.g., make a new combination of Section 251(c)(3) UNES), and including making the actual Section 251(c)(3) UNE combination, then Section 2.16 shall govern with respect to that Section 251(c)(3) UNE combining aspect of that particular Commingling and/or Commingled Arrangement.

2.17.8 Subject to this 2.17, SBC-13STATE shall not deny access to a Section 251(c)(3) UNE or a combination of Section 251(c)(3) UNES on the grounds that one or more of the Section 251(c)(3) UNES is connected to, attached to, linked to, or combined with, a facility or service obtained at wholesale from SBC-13STATE.

2.17.9 Commingling in its entirety (including its definition, the ability of CLEC 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 Section 251(c)(3) UNES under 47 U.S.C. § 251(c)(3).

2.18 Mandatory Eligibility Criteria for Access to Certain Section 251(c)(3)

2.18.1 Except as provided below in this Section 2.18 or elsewhere in the Agreement and subject to this Section and Section 2.16, Conversion of Wholesale Services to UNES, of this Appendix, SBC-13STATE shall provide access to UNES and combinations of UNES without regard to whether the CLEC seeks access to the UNES to establish a new circuit or to convert an existing circuit from a service to UNES.

2.18.1.1 "Enhanced Extended Link" or "EEL" means a UNE combination consisting of an unbundled loop(s) and Unbundled Dedicated Transport, together with any facilities, equipment, or functions necessary to combine those UNES (including, for example, multiplexing capabilities). An DS1 or higher EEL is required to terminate in a collocation arrangement that meets the requirements of Section 2.18.3 of this Appendix (e.g., the end of the

Unbundled Dedicated Transport that is opposite the end connected to the UNE local loop, must be accessed by CLEC at such a CLEC collocation arrangement via a cross-connect).

2.18.2 SBC-13STATE is not obligated, and shall not, provide access to (1) an unbundled DS1 loop in combination, or Commingled, with a dedicated DS1 transport facility or service or a dedicated DS3 transport facility or service, or an unbundled DS3 loop in combination, or Commingled, with a dedicated DS3 transport facility or service, or (2) an unbundled dedicated DS1 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled dedicated DS3 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled DS3 loop or a DS3 channel termination service (collectively, the "Included Arrangements"), unless CLEC certifies that all of the following conditions are met with respect to the arrangement being sought:

2.18.2.1 CLEC (directly and not via an Affiliate) has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

2.18.2.2 The following criteria are satisfied for each Included Arrangement, including without limitation each DS1 circuit, each DS1 EEL and each DS1 equivalent circuit on a DS3 EEL:

2.18.2.2.1 Each circuit to be provided to each End User will be assigned a local telephone number (NPA-NXX-XXXX) that is associated with local service provided within an SBC-13STATE local service area and within the LATA where the circuit is located ("Local Telephone Number"), prior to the provision of service over that circuit (and for each circuit, CLEC will provide the corresponding Local Telephone Number(s) as part of the required certification); and

2.18.2.2.2 Each DS1-equivalent circuit on a DS3 EEL must have its own Local Telephone Number assignment, so that each DS3 must have at least 28 Local voice Telephone Numbers assigned to it; and

2.18.2.2.3 Each circuit to be provided to each End User will have 911 or E911 capability prior to the provision of service over that circuit; and

2.18.2.2.4 Each circuit to be provided to each End User will terminate in a collocation arrangement that meets the requirements of Section 2.18.3 of this Appendix Section 251(c)(3) UNE; and

2.18.2.2.5 Each circuit to be provided to each End User will be served by an interconnection trunk that meets the requirements of Section 2.18.4 of this Appendix Section 251(c)(3) UNE; and

2.18.2.2.6 For each 24 DS1 EELs, or other facilities having equivalent capacity, CLEC will have at least one active DS1 local service interconnection trunk that meets the requirements of Section 2.18.4 of this Appendix; and

2.18.2.2.7 Each circuit to be provided to each End User will be served by a switch capable of providing local voice traffic.

By way of example only, the application of the foregoing conditions means that included arrangements cannot qualify for at least the reason that the UNE local loop-Unbundled Dedicated Transport combination included within that service/circuit does not terminate to a collocation arrangement. Accordingly, SBC-13STATE shall not be required to provide, and shall not provide, any UNE combination of a UNE local loop and Unbundled Dedicated Transport at DS1 or higher (whether as a UNE combination by themselves, with a network element possessed by CLEC, or pursuant to Commingling, or whether as a new arrangement or from a conversion of an existing service/circuit) that does not terminate to a collocation arrangement that meets the requirements of Section 2.18.3 of this Appendix Section 251(c)(3) UNE.

2.18.3A collocation arrangement meets the requirements of Section 2.18 of this Appendix Section 251(c)(3) UNE if it is:

2.18.3.1 Established pursuant to Section 251(c)(6) of the Act and located at SBC-13STATE's premises within the same LATA as the End User's premises, when SBC-13STATE is not the collocater; or

2.18.3.2 Located at a third party's premises within the same LATA as the End User's premises, when SBC-13STATE is the collocater.

2.18.4 An interconnection trunk meets the requirements of Sections 2.18.2.2.5 and 2.18.2.2.6 of this Appendix Section 251(c)(3) UNE if CLEC will transmit the calling party's Local Telephone Number in connection with calls exchanged over the trunk, and the trunk is located in the same LATA as the End User premises served by the Included Arrangement.

2.18.5 For a new circuit to which Section 2.18.2 applies, CLEC may initiate the ordering process if CLEC certifies that it will not begin to provide any service over that circuit until a Local Telephone Number is assigned and 911/E911 capability is provided, as required by Section 2.18.2.2.1 and Section 2.18.2.2.3, respectively. In such case, CLEC shall satisfy Section 2.18.2.2.1 and/or Section 2.18.2.2.3 if it assigns the required Local Telephone Number(s), and implements 911/E911 capability, within 30 days after SBC-13STATE provisions such new circuit. CLEC must provide SBC-13STATE with sufficient proof that such assignment and/or implementation has occurred by the end of such 30th day.

2.18.5.1 Section 2.18.5 does not apply to existing circuits to which Section 2.18.2 applies, including conversions or migrations (e.g., CLEC shall not be excused from meeting the Section 2.18.2.2.1 and Section 2.18.2.2.3 requirements for existing circuits at the time it initiates the ordering process).

2.18.6 CLEC must provide the certification required by Section 2.18 on a form provided by SBC-13STATE, on a circuit-by-circuit/service-by-service/Included Arrangement-by-Included Arrangement basis.

2.18.6.1 If the information previously provided in a certification is inaccurate (or ceases to be accurate), CLEC shall update such certification promptly with SBC-13STATE.

2.18.7 In addition to any other audit rights provided for this Agreement and those allowed by law, SBC-13STATE may obtain and pay for an independent auditor to audit CLEC, on an annual basis, applied on a State-by-State basis, for compliance with this Section 2.18. For purposes of calculating and applying an "annual basis," it means for a State a consecutive 12-month period, beginning upon SBC-13STATE's written notice that an audit will be performed for that State, subject to Section 2.18.7.4 of this Section.

2.18.7.1 Unless otherwise agreed by the Parties (including at the time of the audit), the independent auditor shall perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the qualifying service eligibility criteria.

2.18.7.2 The independent auditor's report will conclude whether CLEC complied in all material respects with this Section 2.18.

2.18.7.3 Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.

2.18.7.4 To the extent the independent auditor's report concludes that CLEC failed to comply with this Section 2.18, CLEC must true-up any difference in payments beginning from the date that the non-compliant circuit was determined to be non-compliant as a UNE/UNE combination, in whole or in part (notwithstanding any other provision hereof), CLEC must convert the UNE or UNE combination, or Commingled Arrangement, to an equivalent or

substantially similar wholesale service, or group of wholesale services and CLEC shall timely make the correct payments on a going-forward basis, and all applicable remedies for failure to make such payments shall be available to SBC-13STATE. In no event shall rates set under Section 252(d)(1) of the Act apply for the use of any UNE for any period in which CLEC does not meet the conditions set forth in this Section 2.18 for that UNE, arrangement, or circuit, as the case may be. Also, the "annual basis" calculation and application shall be immediately reset, e.g., SBC-13STATE shall not have to wait the remaining part of the consecutive 12-month period before it is permitted to audit again in that State.

2.18.7.4.1 To the extent that the independent auditor's report concludes that CLEC failed to comply in all material respects with this Section 2.18, CLEC must reimburse SBC-13STATE for the cost of the independent auditor and for SBC-13STATE's costs in the same manner and using the same methodology and rates that SBC-13STATE is required to pay CLEC's costs under Section 2.18.7.4.2.

2.18.7.4.2 To the extent the independent auditor's report concludes that the CLEC complied in all material respects with this Section 2.18, SBC-13STATE must reimburse CLEC for its reasonable staff time and other reasonable costs associated in responding to the audit (e.g., collecting data in response to the auditor's inquiries, meeting for interviews, etc.).

2.18.7.5 CLEC will maintain the appropriate documentation to support its eligibility certifications, including without limitation call detail records, Local Telephone Number assignment documentation, and switch assignment documentation.

2.18.8 Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, CLEC shall fully comply with this Section 2.18 in all cases and, further, the failure of SBC-13STATE to require such compliance, including if SBC-13STATE provides a circuit(s), an EEL(s), or a Commingled circuit, that does not meet any eligibility criteria, including those in this Section 2.18, 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.

2.18 Where processes for any Section 251(c)(3) 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.

2.19 SBC-13STATE will combine Section 251(c)(3) UNES, combine Section 251(c)(3) UNE(s) with network elements possessed by CLEC, and/or Commingle only as set forth in this Appendix Section 251(c)(3) UNES.

2.20 The Parties intend that this Appendix Section 251(c)(3) UNES contains the sole and exclusive terms and conditions by which CLEC will obtain Section 251(c)(3) UNES from SBC-13STATE pursuant to Sections 251(c)(3) and 252(d)(2). The Parties acknowledge that this Appendix UNES does not contain the terms and conditions under which CLEC will obtain access to network elements from SBC-13STATE pursuant to § 271 of the Act but is limited to access to UNES pursuant to § 251(d)(2) of the Act. 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, Section 251(c)(3) 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 CLEC, 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 CLEC.

3. ACCESS TO SECTION 251(C)(3) UNE CONNECTION METHODS

3.1 Subject to Section 2 of this Appendix Section 251(c)(3) UNEs, SBC-13STATE shall provide Access to Section 251(c)(3) UNE Connection Methods under the following terms and conditions.

3.2 This Section describes the connection methods under which SBC-13STATE agrees to provide CLECs with access to Section 251(c)(3) UNEs under this Appendix Section 251(c)(3) UNEs and the conditions under which SBC-13STATE makes these methods available. These methods provide CLEC access to multiple SBC-13STATE Section 251(c)(3) UNEs that the CLEC may then combine. The methods listed below provide CLEC with access to Section 251(c)(3) 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, CLEC may use the methods listed below to access and combine Section 251(c)(3) UNE Local Loops within a requested SBC-13STATE Central Office.

3.2.1.1 (Method 1)

SBC-13STATE will extend SBC-13STATE Section 251(c)(3) UNEs requiring cross connection to the CLEC's Physical or Virtual Collocation Point of Termination (POT) when the CLEC is Physically Collocated, in a caged, cageless or shared cage arrangement or Virtually Collocated, within the same Central Office where the Section 251(c)(3) UNEs which are to be combined are located. Sprint may also utilize other carrier collocation arrangements where Sprint is purchasing wholesale services as long as the UNEs meet the use restrictions contained herein. 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 Section 251(c)(3) UNEs that require cross connection to the CLEC's Section 251(c)(3) UNE frame located in the common room space, other than the Collocation common area, within the same Central Office where the Section 251(c)(3) UNEs which are to be combined are located.

3.2.1.3 (Method 3)

SBC-13STATE will extend SBC-13STATE Section 251(c)(3) UNEs to the CLEC's Section 251(c)(3) UNE frame that is located outside the SBC-13STATE Central Office where the Section 251(c)(3) 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 Section 251(c)(3) UNEs pursuant to Sections 3.2.1. 2 and 3.2.1.3:

3.3.1 The CLEC 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 CLEC shall be responsible for initial testing and trouble sectionalization of facilities containing CLEC installed cross connects.

3.3.3 CLEC shall refer trouble sectionalized in the SBC-13STATE Section 251(c)(3) UNE to SBC-13STATE.

3.3.4 Prior to SBC-13STATE providing access to Section 251(c)(3) UNEs under this Appendix, CLEC and SBC-13STATE shall provide each other with a point of contact for overall coordination.

3.3.5 CLEC shall provide all tools and materials required to place and remove the cross connects necessary to combine and disconnect Section 251(c)(3) UNEs when CLEC combines or disconnects Section 251(c)(3) UNEs.

- 3.3.6 CLEC shall designate each Section 251(c)(3) UNE being ordered from SBC-13STATE. CLEC shall provide an interface to receive assignment information from SBC-13STATE regarding location of the affected Section 251(c)(3) UNEs. This interface may be manual or mechanized.
- 3.3.7 SBC-13STATE will provide CLEC 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 Section 251(c)(3) UNEs.
 - 3.3.8.1 Where applicable, costs for modifying a building or preparing the premises for access to SBC-13STATE Section 251(c)(3) 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 Section 251(c)(3) 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 Section 251(c)(3) UNEs. This Section also provides the conditions in which SBC CALIFORNIA offers the Adjacent Location Method.
- 4.3* The Adjacent Location Method allows a CLEC to access loops for a CLEC location adjacent to a SBC CALIFORNIA Central Office as identified by SBC CALIFORNIA. Under this method SBC CALIFORNIA Section 251(c)(3) UNEs will be extended to the adjacent location, via copper cabling provided by the CLEC, which the CLEC can then utilize to provide Telecommunications Service.
- 4.4* This method requires the CLEC to provide copper cable, greater than 600 pairs, to the last manhole outside the SBC CALIFORNIA Central Office. The CLEC 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* The CLEC 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 The CLEC 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. The CLEC 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* The CLEC will provide the excess cable length necessary to reach the SBC CALIFORNIA IDF in the SBC CALIFORNIA Central Office where CLEC requests connection.
- 4.9* The CLEC will be responsible for testing and sectionalization of facilities from the End User's location to the entrance manhole.
- 4.10* The CLEC should refer any sectionalized trouble determined to be in SBC CALIFORNIA's facilities to SBC CALIFORNIA.
- 4.11* The CLEC's employees, agents and contractors will be permitted to have access to the CLEC's cable where it is delivered to SBC CALIFORNIA (outside the entrance manhole). The CLEC is only able to enter the entrance manhole to splice under a duct lease agreement. If the CLEC leases ducts to get to the Central Office then CLEC has the right to splice the manholes on the route, including the entrance manhole.

* Section 4 is available only in the state of California. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS, Paragraph 2.10.1

- 4.12* In order for SBC CALIFORNIA to identify the entrance manhole for the CLEC, the CLEC 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, the CLEC will pay for the construction on an Outside Plant Custom Work Order.
- 4.13* The CLEC 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* The CLEC will pay Time and Materials charges when SBC CALIFORNIA dispatches personnel and failure is in the CLEC'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 the CLEC. SBC CALIFORNIA limits each CLEC to two building entrances. Two entrances allow for CLEC growth or a diverse path.
- 4.16* Prior to SBC CALIFORNIA providing the Adjacent Location Method in this Appendix, the CLEC and SBC CALIFORNIA shall provide each other with a single point of contact for overall coordination.
- 4.17* The Adjacent Location Method of Accessing Section 251(c)(3) UNEs only allows for copper cable termination.

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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 CLEC 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 CLEC may request SBC-10STATE, SBC NEVADA to provide CLEC access to an additional or new, undefined Section 251(c)(3) UNE, Section 251(c)(3) UNE Combination and/or Section 251(c)(3) Commingling requests that constitute or involve a Section 251(c)(3) UNE required to be provided by SBC-10STATE, SBC NEVADA but that is not available under this Agreement at the time of CLEC'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 CLEC shall provide a technical description of each requested Section 251(c)(3) 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 CLEC is responsible for all costs incurred by SBC-10STATE, SBC NEVADA to review, analyze and process a BFR. When submitting a BFR Application Form, CLEC 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 not charge CLEC in excess of \$2,000 to complete the Preliminary Analysis; or
- 6.3.4.2 Not make the \$2,000 deposit, in which case CLEC 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 CLEC 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 CLEC. 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 CLEC, either be refunded or credited toward additional developmental costs authorized by CLEC.
- 6.3.6 Upon written notice, CLEC 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 CLEC, and the reasonable and demonstrable costs are less than \$2,000, the remaining balance of the deposit will be, at the option of the CLEC, either returned to CLEC or credited toward additional developmental costs authorized by CLEC.
- 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 CLEC of the need for any further information needed to process the Request. CLEC 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 CLEC 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 CLEC or (ii) advise CLEC 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 Section 251(c)(3) 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, CLEC 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. CLEC's written authorization to develop the BFR Quote must be received by SBC-10STATE, SBC NEVADA within thirty (30) calendar days of CLEC'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 CLEC will pay to SBC-10STATE, SBC NEVADA all demonstrable costs as set forth above. Any request by CLEC for SBC-10STATE, SBC NEVADA to proceed with a Request received after the thirty (30) calendar day window will require CLEC 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 CLEC a BFR Quote.
- 6.3.11 Within thirty (30) calendar days of its receipt of the BFR Quote, CLEC 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. CLEC 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 CLEC).
- 6.3.12 Unless CLEC 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

- 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 CLEC may submit a BFR to request new Section 251(c)(3) UNEs, provided the request is not covered by one of the following conditions:
- 6.4.2.1 The Section 251(c)(3) UNEs requested have not previously been identified or defined by the Department of Public Utility Control (DPUC), the Federal Communications Commission, the CLEC'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 Section 251(c)(3) 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 Section 251(c)(3) 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 CLEC but before CLEC's request for the BFR Quote. Cancellation charges will apply after CLEC submits its request for SBC CONNECTICUT to provide a BFR Quote, but before the BFR Quote is provided to CLEC. CLEC 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 CLEC. However, if SBC CONNECTICUT receives notification from CLEC for cancellation of the BFR after receipt by CLEC of the BFR Quote, the cancellation

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

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 CLEC of the need for any further information needed to process the Request. CLEC 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 CLEC may request SBC CALIFORNIA to provide CLEC access to an additional or new, undefined Section 251(c)(3) 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 CLEC'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 CLEC 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. CLEC 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 CLEC 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 Section 251(c)(3) UNE, interconnection or other arrangement required by law.
- 6.5.7 If SBC CALIFORNIA refers CLEC 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 CLEC to submit the application for the alternate process.

7. NETWORK INTERFACE DEVICE

- 7.1 Subject to Section 2 of this Appendix Section 251(c)(3) UNE, SBC-13STATE shall provide Section 251(c)(3) UNE Network Interface Device under the following terms and conditions in this subsection.
- 7.2 The Section 251(c)(3) 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 Section 251(c)(3) UNE NID often establishes the final network demarcation point between the loop and the End User's inside wire. (47 C.F.R. § 68.3 and § 68.105). Maintenance and control of the End User's inside wiring (on the End User's side of the Section 251(c)(3) UNE NID) is generally under the control of the End User. Conflicts between telephone service providers for access to the End User's inside wire, where the End User maintains control of the inside wire, must be resolved by the End User. SBC-13STATE will provide CLEC access to any inside wire that it owns or controls as specified in 47 C.F.R. § 51.319(a) and § 51.319(b). Pursuant to applicable FCC rules (47 C.F.R. § 51.319(c)), SBC-13STATE offers nondiscriminatory access to the Section 251(c)(3) UNE NID on an unbundled basis to CLEC for the provision of a Telecommunications Service. CLEC access to the Section 251(c)(3) UNE NID is offered as specified below (SBC-12STATE) or by tariff (SBC CONNECTICUT).
- 7.3 SBC-12STATE will permit CLEC to connect its local loop facilities to End Users' premises wiring through SBC-12STATE's Section 251(c)(3) UNE NID, or at any other technically feasible point.
- 7.4 CLEC may connect to the End User's premises wiring through the SBC-12STATE Section 251(c)(3) UNE NID, as is, or at any other technically feasible point. Any repairs, upgrade and rearrangements to the Section 251(c)(3) UNE NID required by CLEC will be performed by SBC-12STATE based on Time and Material charges. SBC-12STATE, at the request of CLEC, will disconnect the SBC-12STATE local loop from the Section 251(c)(3) UNE NID, at charges reflected in the state specific Appendix Pricing.
- 7.5 With respect to multiple dwelling units or multiple-unit business premises, CLEC will connect directly with the End User's premises wire, or may connect with the End User's premises wire via SBC-12STATE's Section 251(c)(3) UNE NID where necessary.
- 7.6 The SBC-12STATE Section 251(c)(3) UNE NIDs that CLEC uses under this Appendix will be existing Section 251(c)(3) UNE NIDs installed by SBC-12STATE to serve its End Users.
- 7.7 CLEC shall not attach to or disconnect SBC-12STATE's ground. CLEC shall not cut or disconnect SBC-12STATE's loop from the Section 251(c)(3) UNE NID and/or its protector. CLEC shall not cut any other leads in the Section 251(c)(3) UNE NID.
- 7.8 CLEC, who has constructed its own NID at a premises and needs only to make contact with SBC-12STATE's Section 251(c)(3) UNE NID, can disconnect the End User's wiring from SBC-12STATE's Section 251(c)(3) UNE NID and reconnect it to the CLEC's NID.
- 7.9 If CLEC requests a different type of Section 251(c)(3) UNE NID not included with the loop, SBC-12STATE will consider the requested type of Section 251(c)(3) UNE NID to be facilitated via the Bona Fide Request (BFR) Process.
- 7.10 SBC-13STATE will provide the NID functionality as part of UNE Local Loop or UNE Sub-loop or as a standalone UNE.

8. SECTION 251(c)(3) UNE LOCAL LOOP

- 8.1 Subject to Section 2 of this Appendix, SBC-13STATE shall provide Section 251(c)(3) UNE Local Loop under the following terms and conditions in this subsection.

8.2 Pursuant to applicable FCC rules, a Section 251(c)(3) 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. Therefore, consistent with the applicable FCC rules, SBC-13STATE will make available the Section 251(c)(3) 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 Section 251(c)(3) 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 Section 251(c)(3) 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 or controlled by SBC-13STATE. The Section 251(c)(3) 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 CLEC requested line conditioning (subject to applicable charges in Appendix Pricing) for purposes of the deployment of xDSL-based technologies as more specifically provided in the xDSL-Line Splitting Appendix to, or elsewhere in, this Agreement. Section 251(c)(3) UNE Local Loops includes, but is not limited to 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 CLEC request and subject to charges, to transmit the digital signals needed to provide digital subscriber line services) xDSL loops are not covered under this Appendix. Section 251(c)(3) UNEs Section 251(c)(3) UNE DS1 Digital Loops (where they have not been Declassified and subject to caps set forth in Section 8.3.4.4.1) and Section 251(c)(3) UNE DS3 Digital Loops (where they have not been Declassified and subject to caps set forth in Section 8.3.5.4.1), where such loops are deployed and available in SBC-13STATE wire centers.. CLEC agrees to operate each Section 251(c)(3) UNE Local Loop type within applicable technical standards and parameters.

8.2.1 When a Section 251(c)(3) UNE Local Loop is ordered to a high voltage area, the Parties understand and agree that the Section 251(c)(3) UNE Local Loop will require a 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 the CLEC's End User. Therefore, any request by CLEC for a Section 251(c)(3) UNE Local Loop to a high voltage area will be submitted by CLEC to SBC-13STATE via the BFR process set forth in Section 6 "Bona Fide Request," and CLEC shall be required to pay SBC-13STATE for any HVPE that is provisioned by SBC-13STATE to CLEC in connection with the CLEC's Section 251(c)(3) UNE Local Loop order to the high voltage area.

8.3 The following types of Section 251(c)(3) 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 2-Wire Analog Section 251(c)(3) UNE Local Loop

8.3.1.1 A 2-Wire analog loop is a transmission facility which supports analog voice frequency, voice band services with loop start signaling within the frequency spectrum of approximately 300 Hz and 3000 Hz.

8.3.1.2 If CLEC requests one or more Section 251(c)(3) UNE Local Loops serviced by hybrid facilities, including Integrated Digital Loop Carrier (IDLC) SBC-12STATE will, where available, move the requested Section 251(c)(3) UNE Local Loop(s) to a spare, existing all-copper or universal digital loop carrier, or equivalent non-packetized narrowband transmission path for the provision of voice grade services using time division multiplexing (TDM) technology at no additional charge to CLEC. If, however, no spare Section 251(c)(3) UNE Local Loop is available, as defined above, SBC-12STATE will within two (2) business days of CLEC's request, notify CLEC of the lack of available facilities. Hybrid facilities are as defined in 47 C.F.R. § 51.319(a)(2).

8.3.2 4-Wire Analog Section 251(c)(3) UNE Local Loop

8.3.2.1 A 4-Wire analog loop is a transmission facility that provides a non-signaling voice band frequency spectrum of approximately 300 Hz to 3000 Hz. The 4-Wire analog loop provides separate transmit and receive paths. SBC-13STATE will follow the terms in 8.3.1.2 above when hybrid facilities are involved.

8.3.3 2-Wire Digital Section 251(c)(3) UNE Local Loop

8.3.3.1 A 2-Wire 160 Kbps digital loop is a transmission facility which supports Basic Rate ISDN (BRI) digital exchange services. The 2-Wire digital loop 160 Kbps supports usable bandwidth up to 160 Kbps, including overhead.

8.3.4 DS1 Digital Loop

8.3.4.1 A DS1 Digital Loop (DS1) is a transmission facility that will support DS1 service including Primary Rate ISDN (PRI). The DS1 Digital Loop supports usable bandwidth up to 1.544 Mbps.

8.3.4.2 DS1 Section 251(c)(3) UNE Digital Loops will be offered and/or provided only where such Loops have not been Declassified.

8.3.4.3 The procedures set forth in Section 8.4, below will apply in the event DS1 Digital Loops (DS1) are or have been Declassified.

8.3.4.4 DS1 Loop "Caps"

8.3.4.4.1 SBC 13-STATE is not obligated to provide to CLEC more than ten (10) DS1 Section 251(c)(3) UNE loops per requesting carrier to any single building in which DS1 Loops have not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Loops once CLEC has already obtained ten DS1 Section 251(c)(3) UNE Loops at the same building. If, notwithstanding this Section, CLEC submits such an order, at SBC-13STATE's option it may accept the order, but convert any requested DS1 Section 251(c)(3) UNE Loop(s) in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS1 Loop(s) as of the date of provisioning.

8.3.5 DS3 Digital Loop

8.3.5.1 The DS3 loop provides a digital, 45 Mbps transmission facility from the SBC-13STATE Central Office to the end user premises.

8.3.5.2 DS3 Section 251(c)(3) UNE loops will be offered and/or provided only where such Loops have not been Declassified.

8.3.5.3 The procedures set forth in Section 8.4, below will apply in the event DS3 Digital Loops are or have been Declassified.

8.3.5.4 DS3 Loop "Caps"

8.3.5.4.1 SBC 13-STATE is not obligated to provide to CLEC more than one (1) DS3 Section 251(c)(3) UNE loop per requesting carrier to any single building in which DS3 Loops have not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Loops once CLEC has already obtained one DS3 Section 251(c)(3) UNE loop to the same building. If, notwithstanding this Section, CLEC submits such an order, at SBC-13STATE's option it may accept the order, but convert any requested DS3 Section 251(c)(3) UNE Loop(s) in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS3 Loop(s) as of the date of provisioning.

8.4 Declassification Procedure

- 8.4.1 DS1. Subject to the cap described in Section 8.3.4.4.1, SBC-13STATE shall provide CLEC with access to a DS1 Section 251(c)(3) UNE Digital Loop, where available, to any building *not* served by a wire center with 60,000 or more business lines and four or more (4) fiber-based collocators. Once a wire center exceeds these thresholds, SBC Missouri will follow the Notice and Transition Procedure in Section 2.5 for declassifying unbundled network elements. If Sprint does not dispute the Declassification, thirty (30) days after receiving the notice, Sprint will cease ordering DS1 Digital Loops for that wire center. No future DS1 Digital Loop unbundling will be required in that wire center, or any buildings served by that wire center, and DS1 Digital Loops in that wire center, or any buildings served by that wire center, shall be Declassified and no longer available as Section 251(c)(3) UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS1 Section 251(c)(3) UNE Digital Loops in such wire center(s), or any buildings served by such wire center(s).
- 8.4.2 DS3. Subject to the cap described in Section 8.3.5.4.1, SBC-13STATE shall provide CLEC with access to a DS3 Section 251(c)(3) UNE Digital Loop, where available, to any building *not* served by a wire center with at least 38,000 business lines and at least four (4) fiber-based collocators. Once a wire center exceeds these thresholds, SBC Missouri will follow the Notice and Transition Procedure in Section 2.5 for declassifying unbundled network elements. If Sprint does not dispute the Declassification, thirty (30) days after receiving the notice, Sprint will cease ordering DS3 Digital Loops for that wire center. No future DS3 Digital Loop unbundling will be required in that wire center, or any buildings served by that wire center, and DS3 Digital Loops in that wire center, or any buildings served by that wire center, shall be Declassified, and no longer available as Section 251(c)(3) UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS3 Section 251(c)(3) UNE Digital Loops in such wire center(s), or any buildings served by such wire center(s).
- 8.4.3 Upon Declassification of DS1 Digital Loops or DS3 Digital Loops already purchased by CLEC as Section 251(c)(3) UNEs under this Agreement, SBC-13STATE will provide written notice to CLEC of such Declassification, and proceed in accordance with Section 2.5 "Notice and Transition Procedure."
- 8.4.3.1 Products provided by SBC-13STATE in conjunction with such Loops (e.g. Cross-Connects) shall also be subject to re-pricing under this Section and Section 2.5 "Notice and Transition Procedure" where such Loops are Declassified.
- 8.4.4 The Parties agree that activity by SBC-13STATE under this Section 8.4 shall not be subject to the Network Disclosure Rules.

8.5 Fiber loops.

8.5.1 Definitions.

- (A) Fiber-to-the-home loops. A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, serving an end user's customer premises or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the multiunit premises' minimum point of entry (MPOE).
- (B) Fiber-to-the-curb loops. A fiber-to-the-curb loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant that is not more than 500 feet from the customer's premises or, in the case of predominantly residential MDUs, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a fiber-to-the-curb loop must connect to a copper distribution plant at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective customer's premises.

- 8.5.2 New builds. SBC MISSOURI is not required to provide nondiscriminatory access to a fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when SBC MISSOURI deploys such a loop to a residential unit that previously has not been served by any loop facility.

8.5.3 Overbuilds. SBC MISSOURI is not required to provide nondiscriminatory access to fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when SBC MISSOURI has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:

- (A) SBC MISSOURI must maintain the existing copper loop connected to the particular customer premises after deploying the fiber-to-the-home loop or the fiber-to-the-curb loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless SBC MISSOURI retires the copper loops pursuant to paragraph (a)(3)(iii) of this section.
- (B) When SBC MISSOURI maintains the existing copper loops pursuant to paragraph (a)(3)(ii)(A) of this section, SBC MISSOURI need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to that paragraph, in which case SBC MISSOURI shall restore the copper loop to serviceable condition upon request.
- (C) When SBC MISSOURI retires the copper loop pursuant to paragraph (a)(3)(iii) of this section, SBC MISSOURI shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop or fiber-to-the-curb loop on an unbundled basis.

8.5.4 Retirement of copper loops or copper subloops. Prior to retiring any copper loop or copper subloop that has been replaced with a fiber-to-the-home loop or a fiber-to-the-curb loop, SBC MISSOURI must comply with:

- (A) The network disclosure requirements set forth in section 251(c)(5) of the Act and in § 51.325 through § 51.335; and
- (B) Any applicable state requirements.

8.6 Routine Network Modifications – Section 251(c)(3) UNE Local Loops

8.6.1 SBC-13STATE shall make routine network modifications to Section 251(c)(3) UNE Local Loop facilities used by requesting telecommunications carriers where the requested Section 251(c)(3) UNE Local Loop facility has already been constructed. SBC-13STATE shall perform routine network modifications to Section 251(c)(3) UNE Local Loop facilities in a nondiscriminatory fashion, without regard to whether the Section 251(c)(3) UNE Local Loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

8.6.2 A routine network modification is an activity that SBC-13STATE regularly undertakes for its own retail customers. 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 loops for its own retail customers, under the same conditions and in the same manner that SBC-13STATE does for its own retail customers. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. SBC-13STATE will place drops in the same manner as it does for its own customers.

8.6.3 Routine network modifications do not include constructing new Section 251(c)(3) UNE loops; installing new cable; securing permits, rights-of-way, or building access arrangements; constructing and/or placing new manholes, or conduits; installing new terminals; removing or reconfiguring packetized transmission facility. SBC-13STATE is not obligated to perform those activities for a requesting telecommunications carrier.

8.6.4 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.

8.6.5 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 that never had

TDM capability or to build time division multiplexing capability into new packet-based networks; 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; to deploy TDM voice grade transmission capacity into new or existing networks that never had TDM capability; 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); § 51.319(a)(3)(iv); § 51.325 - § 51.335.

- 8.6.6 Notwithstanding anything to the contrary herein, SBC-13STATE's obligations with respect to routine network modifications apply only where the loop transmission facilities are subject to unbundling and, as to access to the TDM capabilities of SBC-13STATE's hybrid loops, only with respect to any existing capabilities of SBC-13STATE's hybrid loops. SBC-13STATE has no obligation to perform routine network modifications in connection with FTTH loops or FTTC loops.
- 8.6.7 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). A rate for any routine network modification shown as "ICB" in Appendix Pricing or the applicable tariff indicates that the Parties have not negotiated, and/or that the State Commission has not reviewed and approved, a specific rate for that routine network modification. The ICB rate shall be determined on an individual case basis and shall reflect an engineering estimate of the actual costs of time and materials required to perform the routine network modification; provided, however, that the ICB rate shall not include any costs already recovered through existing, applicable recurring and non-recurring charges. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates for such routine network modifications or specific rates are otherwise established for such routine network modifications.
- 8.7 Section 251(c)(3) UNE DS1 and DS3 Loops may not be employed in combination with transport facilities to replace Special Access services or facilities, except consistently with the other terms and conditions of this Agreement, including but not limited to, Section 2.16 of this Appendix.
- 8.8 xDSL Subloop is as defined in the xDSL and Line Splitting Appendix, if any, and will be available to CLEC in the SBC-12STATE states in those instances where CLEC has an approved and effective xDSL and Line Splitting Appendix as a part of this Agreement. In addition to the provisions set forth in the xDSL and Line Splitting Appendix, the xDSL Subloop is subject to the subloop terms and conditions set forth in this Section 9, the collocation provisions set forth elsewhere in this Agreement and the rates set forth in the Appendix Pricing. If there is any conflict between the provisions set forth in the xDSL and Line Splitting Appendix as to the xDSL Subloop and the subloop provisions set forth in this Section 9, the subloop provisions set forth in Section 9 shall control.

9. SECTION 251(C)(3) UNE SUBLOOPS

- 9.1 Subject to the other terms and conditions of this Appendix, SBC-12STATE shall provide Section 251(c)(3) UNE Subloops under the following terms and conditions in this subsection.
- 9.2 SBC-12STATE will provide Section 251(c)(3) UNE Subloops as set forth in this Appendix. Other than as specifically set out elsewhere in this Agreement, SBC CONNECTICUT does not offer Section 251(c)(3) UNE Subloops under this Agreement. Rather, Section 251(c)(3) UNE Subloops are available as described in Section 18 of the Connecticut Service Tariff.
- 9.2.1 A Section 251(c)(3) UNE Subloop is a smaller included segment of SBC-12STATE's Section 251(c)(3) UNE local loop plant, i.e., a portion of the Section 251(c)(3) UNE Loop from some technically accessible terminal beyond SBC-12STATE's central office and the network demarcation point, including that portion of the Section 251(c)(3) UNE Loop, if any, which SBC-12STATE's owns and controls inside the End User premises. There are two basic types of subloops, copper subloops

(47 C.F.R. § 51.319(b)(1)) and subloops accessing multiunit premises wiring (47 C.F.R. § 51.319(b)(2)).

9.3 Definitions pertaining to the Section 251(c)(3) UNE Subloop

- 9.3.1 Accessible terminals are any location in SBC-12STATE's outside plant where a technician can access the copper wire within a cable without removing a splice case.
- 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 Section 251(c)(3) 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 Section 251(c)(3) 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 Section 251(c)(3) 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 Section 251(c)(3) UNE Subloop" is that portion of the Section 251(c)(3) UNE Loop from the SAI/FDI to an accessible terminal.
- 9.3.9 "SAI/FDI-to-NID Section 251(c)(3) UNE Subloop" is that portion of the Section 251(c)(3) UNE Loop from the SAI/FDI to the Network Interface Device (NID), which is located on an end user's premise.
- 9.3.10 "SPOI" is defined as a Single Point of Interconnection. At the request of CLEC, 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 CLEC indicates that it will place an order for a Section 251(c)(3) 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 Section 251(c)(3) UNE Subloop" is that portion of the Section 251(c)(3) UNE Loop from an accessible terminal to the NID, which is located at an end user's premise. Term-to-NID Section 251(c)(3) UNE Subloop includes use of the Network Terminating Wire (NTW).

9.4 SBC-12STATE will offer the following Section 251(c)(3) UNE Subloop types:

- 9.4.1 2-Wire Analog Section 251(c)(3) 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 Section 251(c)(3) 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 Section 251(c)(3) UNE xDSL Subloop is as defined in the Line Splitting and xDSL Appendix and will be available to CLEC in the SBC-12STATE states in those instances where CLEC has an approved and effective Line Splitting and xDSL Appendix as a part of this Agreement. In addition to the provisions set forth in the Line Splitting and xDSL Appendix, the Section 251(c)(3) UNE xDSL Subloop is subject to the Section 251(c)(3) UNE subloop terms and conditions set forth in this Appendix, the collocation provisions set forth elsewhere in this Agreement and the rates set forth in the Appendix Pricing. If there is any conflict between the provisions set forth in the Line Splitting and xDSL Appendix as to the Section 251(c)(3) UNE xDSL Subloop and the Section 251(c)(3) UNE subloop provisions set forth in this Appendix, the Section 251(c)(3) UNE subloop provisions set forth in this Appendix shall control.

9.4.4 As no other type of Subloop constitutes a Section 251(c)(3) UNE subloop, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any other type of subloop. CLEC shall not request such subloops under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC 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 CLEC, discontinue providing such subloop(s) (including any combination(s) including that subloop) 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 such subloop(s) (whether on a stand-alone basis, in combination with UNEs (Section 251(c)(3) 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.

9.5 Intentionally Left Blank

9.6 Section 251(c)(3) UNE Subloops are provided "as is" unless CLEC requests loop conditioning on Section 251(c)(3) UNE xDSL Subloops for the purpose of offering advanced services. Section 251(c)(3) 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 Section 251(c)(3) UNE Subloop has been disconnected and thus an end-user is no longer receiving service via that Section 251(c)(3) UNE Subloop, and such Section 251(c)(3) UNE Subloop has been determined to be a non-defective pair, then that Section 251(c)(3) UNE Subloop would be considered an existing spare portion of the loop, based on a first come first served basis.

9.8 Copper Section 251(c)(3) UNE Subloops

9.8.1 Access to terminals for copper Section 251(c)(3) UNE Subloops is defined to include, but not limited to:

- 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 subscriber's meet,
- the Terminal (underground or aerial).

9.9 CLEC may request access to the following copper Section 251(c)(3) UNE Subloop segments:

FROM:

TO:

1. Serving Area Interface or
Feeder Distribution Interface
2. Serving Area Interface or
Feeder Distribution Interface
3. Terminal
4. NID

Terminal
Network Interface Device
Network Interface Device
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 Section 251(c)(3) UNE Subloop circuit(s).
- 9.10.2 Spare Section 251(c)(3) UNE Subloop(s) will be assigned to CLEC 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 Section 251(c)(3) UNE Subloop from the SBC-12STATE switch/testing equipment will be lost.
- 9.11.2 CLEC shall isolate trouble to the SBC-12STATE Section 251(c)(3) UNE Subloop portion of the CLEC's service before reporting trouble to SBC-12STATE.
- 9.11.3 SBC-12STATE shall charge the CLEC a Maintenance of Service Charge (MSC) when CLEC dispatches SBC-12STATE on a trouble report and the fault is determined to be in the CLEC's portion of the loop. Such charges may be found in the individual state pricing appendices or tariffs.
- 9.11.4 Once all Section 251(c)(3) UNE Subloop access arrangements have been completed and balance of payment due SBC-12STATE is received, the CLEC may place a LSR for Subloops at this location. Prices at which SBC-12STATE agrees to provide CLEC with Section 251(c)(3) 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 CLEC 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 the CLEC cabling require replacement, SBC-12STATE will provide prompt notification to CLEC for CLEC to provide the replacement cable to be terminated as necessary.

9.12 Section 251(c)(3) UNE Subloop Access Arrangements

- 9.12.1 Prior to ordering Section 251(c)(3) UNE Subloop facilities, CLEC will establish Collocation using the Collocation process as set forth in the Collocation Appendix, or will establish a Section 251(c)(3) UNE Subloop Access Arrangement utilizing the Special Construction Arrangement (SCA), either of which are necessary to interconnect to the SBC-12STATE Section 251(c)(3) UNE Subloop network.
- 9.12.2 The space available for collocating or obtaining various Section 251(c)(3) UNE Subloop Access Arrangements will vary depending on the existing plant at a particular location. The CLEC will initiate an SCA by submitting a Section 251(c)(3) UNE Subloop Access Arrangement Application.
- 9.12.3 Upon receipt of a complete and correct application, SBC-12STATE will provide to CLEC 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 CLEC submits a request to provide a written estimate for Section 251(c)(3) UNE Subloop access, appropriate rates for the engineering and other associated costs performed will be charged.
- 9.12.4 The assignment of Section 251(c)(3) 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 Section 251(c)(3) UNE Subloop facilities.
- 9.12.5 Subloop inquiries do not serve to reserve Section 251(c)(3) UNE Subloops.

- 9.12.6 Several options exist for Collocation or Section 251(c)(3) 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 CLEC 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 Section 251(c)(3) UNE Subloop Access Arrangement Application for SCA, the CLEC should have the "Collocation" and "Poles, Conduit, and Row" appendices in the Agreement to provide the guidelines for both CLEC and ILEC to successfully implement Section 251(c)(3) 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 Section 251(c)(3) UNE Subloop Access Arrangement shall be completed within 90 days of CLEC 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 the CLEC has provided proof that it has obtained necessary rights of way as defined in Section 9.12.7. In the event CLEC 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 CLEC of notice of the dispute and not less than fifty percent (50%) of the total estimated costs, with the balance payable by CLEC 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.
- 9.12.10 Upon completion of the construction activity, the CLEC will be allowed to test the installation with a SBC-12STATE technician. If the CLEC desires test access to the SAA, the CLEC 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 CLEC forecast shall be required as a part of the request for SAA, identifying the Section 251(c)(3) 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 the CLEC expects to use.
- 9.12.12 In order to maximize the availability of terminations for all CLECs, the CLEC shall provide CFA for their Section 251(c)(3) UNE Subloop pairs utilizing the same 25-pair binder group. The CLEC would begin utilizing the second 25-pair binder group once the first 25-pair binder group reached its capacity.
- 9.12.13 Unused CLEC 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 CLEC expense.
- 9.12.14 In the event a CLEC elects to discontinue use of an existing SAA, or abandons such arrangement, CLEC shall pay SBC-12STATE for removal of their facilities from the SAA.
- 9.13 Section 251(c)(3) UNE Subloop Access Arrangement (SAA) Access Points
 - 9.13.1 SAI/FDI, ECS, SPOI, or Terminal
 - 9.13.1.1 CLEC 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. CLEC's Aerial cables should be aircore.
 - 9.13.1.2 The CLEC 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 The CLEC 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 CLEC 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 the CLEC will be charged a portion of the expense to be determined with the engineer, for the purpose of allowing the CLEC 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 the CLEC facilities for which the CLEC will be charged.
- 9.14 Relocation of Existing ILEC/CLEC Facilities involved in a SAA at a RT/ECS, SAI/FDI, SPOI, Terminal or NID
- 9.14.1 SBC-12STATE shall notify CLEC of pending relocation as soon as SBC-12STATE receives such notice.
- 9.14.2 CLEC shall notify SBC-12STATE of its intentions to remain, or not, in the SAA by way of a new Section 251(c)(3) UNE Subloop Access Arrangement Application for a new SCA.
- 9.14.3 SBC-12STATE shall then provide the CLEC 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 CLEC and SBC-12STATE engineer.
- 9.14.4 CLEC 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, CLEC 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 CLEC decide not to continue the SAA, CLEC will notify SBC-12STATE as to the date that SBC-12STATE may remove CLEC's facilities from that SAA. CLEC will pay SBC-12STATE for all costs associated with the removal of the CLEC's SAA.
- 9.14.7 In the event that CLEC does not respond to SBC-12STATE in time to have their facilities relocated, SBC-12STATE shall move CLEC facilities and submit a bill for payment to the CLEC for the costs associated with the relocation. Should CLEC elect not pay this bill, then CLEC facilities will be removed from the site upon 30 days notice to the CLEC.
- 9.15 Establishment of Intermediary Box for CLEC Access to Term to NID MTE Section 251(c)(3) UNE Subloop Segment
- 9.15.1 As an alternative to the establishment of a Section 251(c)(3) UNE Subloop Access Arrangement in those instances where CLEC wishes to access/lease SBC-12STATE Term to NID Section 251(c)(3) UNE Subloop segments in order to serve its End Users at MTEs in SBC-12STATE ("Term to NID MTE Section 251(c)(3) UNE Subloop Segments"), CLEC may place, own and manage, for its own use, an intermediary box, which would provide CLEC with access to a Term to NID MTE Section 251(c)(3) 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 Section 251(c)(3) UNE Subloop Segments). In the event CLEC wishes to access SBC-12STATE Term to NID MTE Section 251(c)(3) UNE Subloop Segments via the establishment of an intermediary box, the following rates, terms and conditions shall apply:

- 9.15.1.1 CLEC would manage the process for placing its own intermediary box, including, without limitation, coordination with the property owner and/or management. CLEC may, at its discretion, choose to retain ownership in whole or to share ownership of the intermediary box with other CLECs. 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 CLEC'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 CLEC's intermediary box, in order for CLEC to access SBC-12STATE Term to NID MTE Section 251(c)(3) 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 the CLEC's intermediary box.
- 9.15.1.4 CLEC must have in place Connecting Facility Arrangement (CFA) assignments prior to ordering and assigning specific Term to NID MTE Section 251(c)(3) UNE Subloop Segments from SBC-12STATE.
- 9.15.1.5 Following CLEC's provisioning, placement, and completion of Connecting Facility Arrangement Assignments ("CFA") data submission to SBC-12STATE associated with the intermediary box, CLEC would place orders and schedule activities related to access to the Term to NID MTE Section 251(c)(3) UNE Subloop Segment including, without limitation: transferring the End User's service from SBC-12STATE to CLEC, providing SBC-12STATE with CFA prior to ordering and the assigning of a specific Term to NID MTE Section 251(c)(3) UNE Subloop Segment(s).
- 9.15.1.6 The ordering procedures for the Term to NID MTE Section 251(c)(3) UNE Subloop Segment will be the same as those that apply to Section 251(c)(3) UNE Subloop today and shall be submitted to SBC-12STATE by CLEC via a Local Service Request ("LSR").
- 9.15.1.7 SBC-12STATE will upon receipt of the LSR from CLEC for a Term to NID MTE Section 251(c)(3) UNE Subloop Segment, process the order and place the jumper/cross connect to the CFA provided by the CLEC on the LSR, from the SBC-12STATE terminal to the CLEC 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 CLEC access to Term to NID MTE Section 251(c)(3) UNE Subloop Segments in SBC-12STATE only, CLEC may elect to lease from SBC-12STATE Term to NID MTE Section 251(c)(3) 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 Section 251(c)(3) UNE Subloop Segment." In the event CLEC wishes to lease the Term to NID MTE Section 251(c)(3) UNE Subloop Segment from SBC-12STATE in lieu of SBC-12STATE's standard Term to NID Section 251(c)(3) UNE Subloop segment addressed in this 9.15.2, CLEC understands and agrees no performance measures and/or remedies shall apply to the Term to NID MTE Section 251(c)(3) UNE Subloop Segment as a result of the elimination of associated testing and reduction in functionality associated with the Term to NID MTE Section 251(c)(3) UNE Subloop Segment.
- 9.16 Establishment of Term to NID MTE Section 251(c)(3) UNE Subloop Segment When no Intermediary Box is Installed
 - 9.16.1 In those instances where CLEC elects not to install an intermediary box or to have SBC-12STATE install an intermediary box pursuant to the SAA process outlined herein above, the CLEC may still lease from SBC-12STATE Term to NID MTE Section 251(c)(3) 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 Section 251(c)(3) UNE Subloop Segment." In the event CLEC wishes to lease the Term to NID MTE Section 251(c)(3) UNE Subloop Segment from SBC-12STATE in lieu of SBC-12STATE's standard Term to NID Section 251(c)(3) UNE Subloop segment addressed in Section 9.15.2 above, CLEC understands and agrees no performance measures and/or remedies shall apply to the Term to NID MTE Section 251(c)(3) UNE Subloop Segment as a result of the elimination of associated testing and reduction in functionality associated with the Term to NID MTE Section 251(c)(3) UNE Subloop Segment. In such cases, SBC-12STATE will provide CLEC with access to the Term To NID MTE Section 251(c)(3) 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 CLEC technician in the CLEC terminal, at a time of CLEC'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 CLEC's terminal.

9.16.2 If CLEC elects this option to obtain access to the Term To NID Section 251(c)(3) UNE Subloop in an MTE Environment, neither the SBC-12STATE SAA process nor the intermediary box option would be required. Because the CLEC would have full responsibility for terminating the SBC-12STATE cross- connect, SBC-12STATE could not require any CFA information from CLEC.

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 SBC-12STATE will also make available an Engineering Controlled Splice (ECS), which will be owned by SBC-12STATE, for CLECs to gain access to Section 251(c)(3) UNE Subloops at or near remote terminals.

10.3 The ECS shall be made available for Section 251(c)(3) UNE Subloop Access Arrangements (SAA) utilizing the Special Construction Arrangement (SCA).

10.3.1 CLEC 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 Section 251(c)(3) 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, CLEC will not be liable for such extra costs.

10.3.2 CLEC 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-12STATE 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 may be owned by SBC-12STATE or the CLEC (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 Section 251(c)(3) 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 the CLEC has provided proof that it has obtained the necessary rights of way as defined in Section 9.12.7. In the event CLEC 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 CLEC of notice of the dispute and not less than fifty percent (50%) of the total estimated costs, with the balance payable by CLEC 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 CLECs 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 CLEC may request SBC-12STATE splice the existing cabling between the ECS and the SAI to the CLEC's SAA facility. This facility will be "dedicated" to the CLEC for subsequent Section 251(c)(3) UNE Subloop orders.

10.4.1.2 CLEC must designate the quantity of Section 251(c)(3) UNE Subloops they desire to access via this spliced, dedicated facility, specified by subtending SAI.

10.4.1.3 CLECs will compensate SBC-12STATE for each of the dedicated Section 251(c)(3) UNE Subloop facilities, based on recurring Section 251(c)(3) UNE Subloop charges, for the quantity of Section 251(c)(3) UNE Subloops dedicated to the CLEC between the ECS and the SAI.

10.4.2 Cross-connected Facility Option (CFO)

10.4.2.1 CLEC may request SBC-12STATE build an ECS cross-connect junction on which to terminate CLEC'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 CLEC must designate the quantity of Section 251(c)(3) UNE Subloops they desire to access via this cross-connectable, dedicated facility, specified by subtending SAI.

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

- 10.5 The introduction of an ECS creates the following additional copper Section 251(c)(3) UNE Subloop segments:

FROM:

1. RT
2. RT
3. RT

TO:

Serving Area Interface or Feeder Distribution Interface
Terminal
NID

11. LOCAL SWITCHING (ULS), SHARED TRANSPORT AND CALL RELATED DATABASES

- 11.1 SBC-13STATE will continue to provide ULS shared transport and call related databases to Sprint for its embedded base of customers which were in service prior to March 11, 2005 for a period of twelve (12) months ending March 11, 2006.

12. INTENTIONALLY LEFT BLANK

13. DS1 AND DS3 DEDICATED TRANSPORT

13.1 Subject to Section 2 of this Appendix Section 251(c)(3) UNEs, SBC-13STATE shall provide Section 251(c)(3) UNE DS1/DS3 Dedicated Transport under the following terms and conditions in this subsection.

13.2 For purposes of this Agreement, the following definitions apply:

13.2.1 "Dedicated Transport" is defined as SBC-13STATE interoffice transmission facilities between wire centers or switches owned by SBC-13STATE, or between wire centers or switches owned by SBC-13STATE and switches owned by requesting telecommunications carriers, dedicated to a particular customer or carrier.

13.2.1.1 SBC-13STATE is not obligated to provide CLEC with unbundled access to Dedicated Transport that does not connect a pair of SBC-13STATE wire centers.

13.2.2 A "route" is defined as a transmission path between one of SBC-13STATE's wire centers or switches and another of SBC-13STATE's wire centers or switches. A route between two points (e.g., wire center of switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g. wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.

13.3 SBC-13STATE will be responsible for the engineering, provisioning, maintenance of the underlying equipment and facilities that are used to provide Section 251(c)(3) UNE DS1/DS3 Dedicated Transport.

13.3.1 Subject to the caps set forth in Sections 13.3.5 and 13.3.6, Section 251(c)(3) UNE DS1/DS3 Dedicated Transport will be provided only where such facilities exist at the time of CLEC request, and only over routes that are not or have not been Declassified.

13.3.2 Other than as specifically set forth elsewhere in this Agreement, SBC CONNECTICUT does not offer Section 251(c)(3) UNE DS1/DS3 Dedicated Transport under this Agreement. Rather, it is available as described in Section 18 of the Connecticut Access Service Tariff.

13.3.3 SBC-13STATE will provide Section 251(c)(3) UNE DS1 and DS3 Transport to a requesting CLEC only at the following speeds: DS1 (1.544 Mbps) and DS3 (44.736 Mbps).

13.3.4 Section 251(c)(3) UNE DS1 and DS3 Transport includes, as follows:

13.3.4.1 Multiplexing – an option ordered in conjunction with Section 251(c)(3) UNE DS1 or DS3 Dedicated Transport which converts a circuit from higher to lower bandwidth, or from digital to voice grade. Multiplexing is only available when ordered at the same time as Section 251(c)(3) UNE DS1 or DS3 Dedicated Transport.

13.3.4.2 Other Optional features are outlined in Appendix Pricing.

13.3.5 DS3 Transport "Caps"

13.3.5.1 SBC 13-STATE is not obligated to provide to CLEC more than twelve(12) DS3 Section 251(c)(3) UNE Dedicated Transport circuits on each route on which DS3 Dedicated Transport has not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Dedicated Transport once CLEC has already obtained twelve DS3 Section 251(c)(3) UNE Dedicated Transport circuits on the same route. If, notwithstanding this Section, CLEC submits such an order, at SBC-13STATE's option it may accept the order, but convert any requested DS3 Section 251(c)(3) UNE Dedicated Transport in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS3 Dedicated Transport circuits as of the date of provisioning.

13.3.6 DS1 Transport "Caps"

13.3.6.1 SBC 13-STATE is not obligated to provide to CLEC more than ten (10) DS1 Section 251(c)(3) UNE Dedicated Transport circuits on each route on which DS1 Dedicated

Transport has not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Dedicated Transport once CLEC has already obtained ten DS1 Section 251(c)(3) UNE Dedicated Transport circuits on the same route. If, notwithstanding this Section, CLEC submits such an order, at SBC-13STATE's option it may accept the order, but convert any requested DS1 Section 251(c)(3) UNE Dedicated Transport in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS1 Dedicated Transport circuits as of the date of provisioning

13.4 Diversity

13.4.1 When requested by CLEC, and subject to all applicable terms, conditions, and applicable charges, and only where such interoffice facilities exist at the time of CLEC request, Physical diversity shall be provided for Section 251(c)(3) UNE Dedicated Transport. Physical diversity means that two circuits are provisioned in such a way that no single failure of facilities or equipment will cause a failure on both circuits.

13.4.2 SBC-12STATE shall provide the Physical separation between intra-office and inter-office transmission paths when technically and economically feasible. Physical diversity requested by the CLEC shall be subject to additional charges. When additional costs are incurred by SBC-12STATE for CLEC specific diversity. SBC-12STATE will advise CLEC of the applicable additional charges. SBC-12STATE will not process the request for diversity until CLEC accepts such charges. Any applicable performance measures will be abated from the time diversity is requested until CLEC accepts the additional charges.

13.5 Declassification Procedure

13.5.1 Wire Center "Tiers" -- For purposes of this Section 13.5 (and Section 14 related to Dark Fiber), wire centers are classified into three "tiers," as follows:

- (i) Tier 1 Wire Centers are those ILEC wire centers that contain at least four fiber-based collocators, at least 38,000 business lines, or both. Tier 1 Wire Centers also are those ILEC tandem switching locations that have no line-side switching facilities, but nevertheless serve as a point of traffic aggregation accessible by CLECs. Once a wire center is determined to be a Tier 1 Wire Center, that wire center is not subject to later reclassification as a Tier 2 or Tier 3 Wire Center.
- (ii) Tier 2 Wire Centers are those ILEC wire centers that are not Tier 1 Wire Centers, but contain at least 3 fiber-based collocators, at least 24,000 business lines, or both. Once a wire center is determined to be a Tier 2 Wire Center, that Wire Center is not subject to later reclassification as a Tier 3 Wire Center.
- (iii) Tier 3 Wire Centers are those ILEC wire centers that do not meet the criteria for Tier 1 or Tier 2 Wire Centers.

13.5.2 DS1 Transport Declassification

13.5.2.1 Subject to the cap described in Section 13.3.6, SBC-13STATE shall provide CLEC with access to Section 251(c)(3) UNE DS1 Dedicated Transport on routes, except routes where both wire centers defining the route are Tier 1 Wire Centers. As such SBC-13STATE must provide Section 251(c)(3) UNE DS1 Dedicated Transport under this Agreement only if a wire center at either end of a requested route is not a Tier 1 Wire Center, or if neither is a Tier 1 Wire Center. As Tier 1 Wire Centers are identified in the future and DS1 Dedicated Transport circuits are Declassified the Declassification is subject to the Notification and Transition Procedure in Section 2.5. If Sprint does not dispute the Declassification, thirty (30) days after receiving the notice, Sprint will cease ordering DS1 Dedicated Transport for the impacted routes. Such DS1 Dedicated Transport Declassified and no longer available as Section 251(c)(3) UNEs under this Agreement. Accordingly, CLEC may not order or

otherwise obtain, and CLEC will cease ordering DS1 Section 251(c)(3) UNE Dedicated Transport on such route(s).

13.5.3 DS3 Transport Declassification

13.5.3.1 Subject to the cap described in Section 13.3.5, SBC-13STATE shall provide CLEC with access to Section 251(c)(3) UNE DS3 Dedicated Transport, except on routes where both wire centers defining the route are either Tier 1 or Tier 2 Wire Centers. As such SBC-13STATE must provide Section 251(c)(3) UNE DS3 Dedicated Transport under this Agreement only if a wire center on either end of the requested route is a Tier 3 Wire Center. If both wire centers defining a requested route are either Tier 1 or Tier 2 Wire Centers, then DS3 Dedicated Transport circuits on such routes is not available as an Unbundled Network Element. As Tier 1 and/or Tier 2 Wire Centers are identified in the future and DS3 Dedicated Transport circuits are Declassified the Declassification is subject to the Notification and Transition Procedure in Section 2.5. If Sprint does not dispute the Declassification, thirty (30) days after receiving the notice, Sprint will cease ordering DS3 Dedicated Transport for the impacted routes. Such DS3 Dedicated Transport is Declassified and no longer available as Section 251(c)(3) UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS3 Section 251(c)(3) UNE Dedicated Transport on such route(s).

13.5.4 Upon Declassification of DS1 Dedicated Transport or DS3 Dedicated Transport already purchased by CLEC as Section 251(c)(3) UNEs under this Agreement, SBC-13STATE will provide written notice to CLEC of such Declassification, and proceed in accordance with Section 2.5 "Notice and Transition Procedure."

13.5.5 Products provided by SBC-13STATE in conjunction with Section 251(c)(3) UNE DS1 or DS3 Dedicated Transport (e.g. Cross-Connects) shall also be subject to re-pricing under this Section and Section 2.5 "Notice and Transition Procedure" where such Transport is Declassified.

13.6 The Parties agree that activity by SBC-13STATE under this Section 13.5 shall not be subject to the Network Disclosure Rules.

13.7 Routine Network Modifications – Section 251(c)(3) UNE Dedicated Transport

13.7.1 SBC-13STATE shall make routine network modifications to Section 251(c)(3) UNE Dedicated Transport facilities used by requesting telecommunications carriers where the requested Section 251(c)(3) UNE Dedicated Transport facilities have already been constructed. SBC-13STATE shall perform routine network modifications to Section 251(c)(3) UNE Dedicated Transport facilities in a nondiscriminatory fashion, without regard to whether the Section 251(c)(3) UNE Dedicated Transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

13.7.2 A routine network modification is an activity that SBC-13STATE regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of 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. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier, and SBC-13STATE is not obligated to perform those activities for a requesting telecommunications carrier.

13.7.3 Routine network modifications do not include constructing new Section 251(c)(3) UNE Dedicated Transport; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; or installing new terminals. SBC-13STATE is not obligated to perform those activities for a requesting telecommunications carrier.

- 13.7.4 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.
- 13.7.5 Notwithstanding anything to the contrary herein, SBC-13STATE's obligations with respect to routine network modifications apply only where the dedicated transport transmission facilities are subject to unbundling.
- 13.7.6 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, as such tariff may be modified from time to time (SBC CONNECTICUT). A rate for any routine network modification shown as "ICB" in Appendix Pricing or the applicable tariff indicates that the Parties have not negotiated, and/or that the State Commission has not reviewed and approved, a specific rate for that routine network modification. The ICB rate shall be determined on an individual case basis and shall reflect an engineering estimate of the actual costs of time and materials required to perform the routine network modification; provided, however, that the ICB rate shall not include any costs already recovered through existing, applicable recurring and non-recurring charges. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates for such routine network modifications or specific rates are otherwise established for such routine network modifications.

14. DARK FIBER DEDICATED TRANSPORT

- 14.1 Subject to Section 2 of this Appendix Section 251(c)(3) UNEs, SBC-12STATE shall provide Section 251(c)(3) UNE Dedicated Transport Dark Fiber under the following terms and conditions in this subsection. SBC-13STATE is not required to provide Loop Dark Fiber on an unbundled basis. (For definitional purposes only, Loop Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications service.)
- 14.2 In SBC-12STATE, Dedicated Transport Dark Fiber is deployed, unlit optical fiber within SBC-12STATE's network. Dedicated Transport Dark Fiber consists of unactivated optical interoffice transmission facilities. Other than as specifically set out elsewhere in this Agreement, SBC CONNECTICUT does not offer dedicated transport dark fiber under this Agreement; rather, unbundled dedicated transport dark fiber is available to CLECs as described in Section 18.2.1N of the Connecticut Service Tariff.
- 14.3 Section 251(c)(3) UNE Dedicated Transport Dark Fiber
- 14.3.1 At dedicated transport dark fiber segments in routes that have not been Declassified, SBC-12STATE will provide a Section 251(c)(3) UNE Dedicated Transport Dark Fiber segment that is considered "spare" as defined in Sections 14.6 and 14.7 below. Section 251(c)(3) UNE Dedicated Transport Dark Fiber is defined as SBC-12STATE dark fiber interoffice transmission facilities dedicated to a particular CLEC that are within SBC-12STATE's network, connecting SBC-12STATE switches or wire centers within a LATA. SBC-12STATE is not obligated to provide CLEC with unbundled access to Dedicated Transport that does not connect a pair of SBC-12STATE wire centers. SBC-12STATE will offer Section 251(c)(3) UNE Dedicated Transport Dark Fiber to CLEC when CLEC has collocation space in each SBC-12STATE CO where the requested Section 251(c)(3) UNE Dedicated Transport Dark Fiber(s) terminate.
- 14.4 A "route" is defined as a transmission path between one of SBC-12STATE's wire centers or switches and another of SBC-12STATE's wire centers or switches. A route between two points (e.g., wire center of switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g. wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.

14.5 Spare Fiber Inventory Availability and Condition

14.5.1 All available spare Section 251(c)(3) UNE Dedicated Transport Dark Fiber will be provided as is. No conditioning will be offered. Spare dedicated transport dark fiber is fiber that can be spliced in all segments, point to point but not assigned, and spare dedicated transport dark fiber does not include maintenance spares, fibers set aside and documented for SBC-12STATE's forecasted growth, defective fibers, or fibers subscribed to by other Telecommunications Carriers. CLEC will not obtain any more than 25% of the spare Section 251(c)(3) UNE Dedicated Transport Dark Fiber contained in the requested segment during any two-year period.

14.6 Determining Spare Fibers

14.6.1 SBC-12STATE will inventory dedicated transport dark fiber. Spare dedicated transport dark fiber does not include the following:

14.6.1.1 Maintenance spares. Maintenance spares shall be kept in inventory like a working fiber. Spare maintenance fibers are assigned as follows:

14.6.1.1.1 Cables with 24 fibers and less: two maintenance spare fibers

14.6.1.1.2 Cables with 36 and 48 fibers: four maintenance spare fibers

14.6.1.1.3 Cables with 72 and 96 fibers: eight maintenance spare fibers

14.6.1.1.4 Cables with 144 fibers: twelve maintenance spare fibers

14.6.1.1.5 Cables with 216 fibers: 18 maintenance spares

14.6.1.1.6 Cables with 288 fibers: 24 maintenance spares

14.6.1.1.7 Cables with 432 fibers: 36 maintenance spares

14.6.1.1.8 Cables with 864 fibers: 72 maintenance spares.

14.6.1.2 Defective fibers. Defective fibers, if any, will be deducted from the total number of spare dedicated transport dark fiber that would otherwise be available.

14.6.1.3 SBC-12STATE growth fibers. Fibers documented as reserved by SBC-12STATE for utilization for growth within the 12 month-period following the carrier's request.

14.6.2 The appropriate SBC-12STATE engineering organization will maintain records on each fiber optic cable for which CLECs request Section 251(c)(3) UNE Dedicated Transport Dark Fiber.

14.7 Quantities and Time Frames for ordering Section 251(c)(3) UNE Dedicated Transport Dark Fiber

14.7.1 The minimum number of Section 251(c)(3) UNE Dedicated Transport Dark Fiber strands that CLEC can order is one, and such strands must be ordered on a strand-by-strand basis. The maximum number of such strands that CLEC can order is no greater than 25% of the spare dedicated transport dark fiber in the segment requested. Should spare dedicated transport dark fiber fall below 8 strands in a given location, SBC-12STATE will provide no more than a quantity of 2 strands. (See definition of spare set forth in Section 14.6 above.)

14.7.2 If CLEC wishes to request Section 251(c)(3) UNE Dedicated Transport Dark Fiber, it must submit a dark fiber facility inquiry, providing CLEC's specific point to point (A to Z) dark fiber requirements. When CLEC submits a dark fiber facility inquiry appropriate rates for the inquiry will be charged as outlined in state specific Appendix Pricing.

14.7.2.1 If spare Section 251(c)(3) UNE Dedicated Transport Dark Fiber is available, as determined under this Agreement, SBC-12STATE will notify CLEC and CLEC may place an Access Service Request (ASR) for such fiber.

14.7.3 Section 251(c)(3) UNE Dedicated Transport Dark Fiber will be assigned to CLEC only when an ASR is processed. ASRs will be processed on a first-come-first-served basis. Inquiry facility checks do not serve to reserve Section 251(c)(3) UNE Dedicated Transport Dark Fiber. When CLEC submits the ASR, the ASR will be processed and the Section 251(c)(3) UNE Dedicated Transport Dark Fiber facilities will be assigned. The charges which will be established as set forth in Appendix Pricing will be applied.

14.8 Right of Revocation of Access to Section 251(c)(3) UNE Dedicated Transport Dark Fiber

14.8.1 Right of revocation of access to Section 251(c)(3) UNE Dedicated Transport Dark Fiber is distinguishable from Declassification as defined in Section 5 of this Appendix. For clarification purposes, SBC-12STATE's right of revocation of access under this Section 14.9 applies even when the affected dedicated transport dark fiber remains a Section 251(c)(3) UNE, subject to unbundling obligations under Section 251(c)(3) of the Act, in which case CLEC's rights to the affected network element may be revoked as provided in this Section 14.8.

14.8.2 Should CLEC not utilize the fiber strand(s) subscribed to within the 12-month period following the date SBC-12STATE provided the fiber(s), SBC-12STATE may revoke CLEC's access to the Section 251(c)(3) UNE Dedicated Transport Dark Fiber and recover those fiber facilities and return them to SBC-12STATE inventory.

14.8.3 SBC-12STATE may reclaim from the CLEC the right to use Section 251(c)(3) UNE Dedicated Transport Dark Fiber, whether or not such fiber is being utilized by CLEC, upon twelve (12) months written notice to the CLEC. If the reclaimed Section 251(c)(3) UNE Dedicated Transport Dark Fiber is not otherwise Declassified during the notice period, SBC-12STATE will provide an alternative facility for the CLEC with the same bandwidth the CLEC was using prior to reclaiming the facility. SBC-12STATE must also demonstrate to the CLEC that the reclaimed dedicated transport dark fiber will be needed to meet SBC-12STATE's bandwidth requirements within the 12 months following the revocation.

14.9 Access Methods specific to Section 251(c)(3) UNE Dedicated Transport Dark Fiber

14.9.1 The demarcation point for Section 251(c)(3) UNE Dedicated Transport Dark Fiber at Central Offices and End User premises will be in an SBC-12STATE approved splitter shelf. This arrangement allows for non-intrusive testing.

14.9.2 At CO's, Section 251(c)(3) UNE Dedicated Transport Dark Fiber terminates on a fiber distribution frame, or equivalent in the CO. CLEC access is provided via collocation.

14.10 Installation and Maintenance for Section 251(c)(3) UNE Dedicated Transport Dark Fiber

14.10.1 SBC-12STATE will install demarcations and place the fiber jumpers from the fiber optic terminals to the demarcation point. CLEC will run its fiber jumpers from the demarcation point (1x2, 90-10 optical splitter) to the CLEC or End User equipment.

14.11 Dark Fiber Transport Declassification

14.11.1 SBC-13STATE shall provide CLEC with access to Section 251(c)(3) UNE Dedicated Transport Dark Fiber, except on routes where both wire centers defining the route are either Tier 1 or Tier 2 Wire Centers. As such SBC-13STATE must provide Section 251(c)(3) UNE Dedicated Transport Dark Fiber under this Agreement only if a wire center on either end of the requested route is a Tier 3 Wire Center. If both wire centers defining a requested route are either Tier 1 or Tier 2 Wire Centers, then Dedicated Transport Dark Fiber circuits on such routes not available as an Unbundled Network Element. As Tier 1 and/or Tier 2 Wire Centers are identified in the future and Dark Fiber Dedicated Transport circuits are Declassified the Declassification is subject to the Notification and Transition Procedure in Section 2.5. If Sprint does not dispute the Declassification, thirty (30) days after receiving the notice, Sprint will cease ordering Dark Fiber Dedicated Transport for the impacted routes. Such Dark Fiber Dedicated Transport is Declassified and no longer available as Section 251(c)(3) UNES under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering Section 251(c)(3) UNE Dedicated Transport Dark Fiber on such route(s).

14.11.2 Upon Declassification of Dedicated Transport Dark Fiber already purchased by CLEC as Section 251(c)(3) UNES under this Agreement, SBC-13STATE will provide written notice to CLEC of such Declassification, and proceed in accordance with Section 2.5.

14.11.3 Products provided by SBC-12STATE in conjunction with Section 251(c)(3) UNE Dedicated Transport Dark Fiber, if any, shall also be subject to termination under this Section 14.11 where such fiber is Declassified.

14.11.4 The Parties agree that activity by SBC-12STATE under this Section 14.11 shall not be subject to the Network Disclosure Rules.

14.12 Routine Network Modifications

14.12.1 SBC-12STATE shall make routine network modifications to Section 251(c)(3) UNE Dedicated Transport Dark Fiber used by requesting Telecommunications Carriers for the provision of Telecommunication Services where the requested Section 251(c)(3) UNE Dedicated Transport Dark Fiber facilities have already been constructed. SBC-12STATE shall perform routine network modifications to Section 251(c)(3) UNE Dedicated Transport Dark Fiber in a nondiscriminatory fashion, without regard to whether such fiber being accessed was constructed on behalf, or in accordance with the specifications, of any Telecommunications Carrier.

14.12.2 A routine network modification is an activity that SBC-12STATE regularly undertakes for its own customers. Routine network modifications for dark fiber transport, do not include the installation of fiber for a requesting Telecommunications Carrier, nor do routine network modifications include the provision of electronics for the purpose of lighting dark fiber (i.e., optronics), and SBC-12STATE is not obligated to perform those activities for a requesting Telecommunications Carrier.

14.12.3 Routine network modifications do not include constructing new Section 251(c)(3) UNE Dedicated Transport Dark Fiber; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; or installing new terminals. SBC-13STATE is not obligated to perform those activities for a requesting telecommunications carrier.

14.12.4 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.

14.12.5 Notwithstanding anything to the contrary herein, SBC-13STATE's obligations with respect to routine network modifications apply only where the dark fiber transport transmission facilities are subject to unbundling.

14.12.6 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, as such tariff may be modified from time to time (SBC CONNECTICUT). A rate for any routine network modification shown as "ICB" in Appendix Pricing or the applicable tariff indicates that the Parties have not negotiated, and/or that the State Commission has not reviewed and approved, a specific rate for that routine network modification. The ICB rate shall be determined on an individual case basis and shall reflect an engineering estimate of the actual costs of time and materials required to perform the routine network modification; provided, however, that the ICB rate shall not include any costs already recovered through existing, applicable recurring and non-recurring charges. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates for such routine network modifications or specific rates are otherwise established for such routine network modifications.

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16. 911 OR E911 DATABASE

16.1 Access to the SBC-13STATE 911 or E911 call related databases will be provided as described in the Section 251(c)(3) 911 and E911 Appendix.

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 CLEC 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 CLEC to connect SBC-13STATE Section 251(c)(3) UNE(s) to other Section 251(c)(3) UNE(s) or to CLEC's own facilities.
- 18.2 The cross connect is the media between the SBC-7STATE Section 251(c)(3) UNE and a CLEC designated point of access as described in various sections of this Appendix, or the media between a SBC-7STATE Section 251(c)(3) UNE and a Collocation area for the purpose of permitting the CLEC to connect the SBC-7STATE Section 251(c)(3) UNE to other Section 251(c)(3) UNEs or to the CLEC's own facilities. Where SBC-7STATE has otherwise committed to connect one Section 251(c)(3) UNE to another Section 251(c)(3) UNE on behalf of CLEC, or to leave connected one Section 251(c)(3) UNE to another Section 251(c)(3) UNE on behalf of CLEC the cross connect is the media between one SBC-7STATE Section 251(c)(3) UNE and another SBC-7STATE Section 251(c)(3) UNE. Nothing in this section is a commitment to connect or leave connected any two or more Section 251(c)(3) 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 Section 251(c)(3) UNE Loop cross connects to point of access for the purpose of CLEC combining a SBC-13STATE Section 251(c)(3) UNE Loop with another SBC-13STATE Section 251(c)(3) UNE are as follows:
- 18.4.1 2-Wire Analog Loop to Section 251(c)(3) UNE Connection Methods point of access
 - 18.4.2 4-Wire Analog Loop to Section 251(c)(3) UNE Connection Methods point of access
 - 18.4.3 2-Wire Digital Loop to Section 251(c)(3) UNE Connection Methods point of access
- 18.5 The applicable Loop cross connects for the purpose of CLEC connecting a SBC SOUTHWEST REGION 5-STATE and SBC NEVADA Section 251(c)(3) UNE Loop to a CLEC's Collocated facilities are as follows:
- 18.5.1 2-Wire Analog Loop to Collocation
 - 18.5.2 2-Wire Analog Loop to Collocation (without testing)
 - 18.5.3 4-Wire Analog Loop to Collocation
 - 18.5.4 4-Wire Analog Loop to Collocation (without testing)
 - 18.5.5 2-Wire Digital Loop to Collocation
 - 18.5.6 2-Wire Digital Loop to Collocation (without testing)
 - 18.5.7 2-Wire DSL Shielded Cross Connect to Collocation
 - 18.5.8 4-Wire DSL Shielded Cross Connect to Collocation
 - 18.5.9 2-Wire DSL non-shielded Cross Connect to Collocation
 - 18.5.10 4-Wire DSL non-shielded Cross Connect to Collocation
- 18.6 The applicable cross connect for SBC MIDWEST REGION 5-STATE Section 251(c)(3) UNE Loop is as follows:
- 18.6.1 2-Wire Analog

- 18.6.2 4-Wire Analog
- 18.6.3 DS1
- 18.6.4 DS3
- 18.6.5 DS-3 Loop to Collocation
- 18.6.6 2-Wire Digital
- 18.7 The applicable Section 251(c)(3) UNE Loop cross connects to the Adjacent Location Method of Accessing UNES for the purpose of a CLEC combining a SBC CALIFORNIA Section 251(c)(3) UNE Loop with a CLEC's own facilities are as follows:
 - 18.7.1 2-Wire Analog Loop to Adjacent Location Method point of access
 - 18.7.2 4-Wire Analog Loop to Adjacent Location Method point of access
 - 18.7.3 2-Wire Digital Loop to Adjacent Location Method point of access
 - 18.7.4 DSL shielded Cross Connect to Adjacent Location point of access
- 18.8 The applicable cross connects for the purpose of a CLEC connecting a SBC CALIFORNIA Section 251(c)(3) UNE Loop to a CLEC's Collocated facility are as follows:
 - 18.8.1 Voice Grade/ISDN EISCC
 - 18.8.2 DS-0 EISCC
 - 18.8.3 DSL Shielded Cross Connect to Collocation
 - 18.8.4 DS-1 EISCC
 - 18.8.5 DS-3 EISCC
- 18.9 The applicable cross connect for SBC MIDWEST REGION 5-STATE Section 251(c)(3) UNE Dedicated Transport is as follows:
 - 18.9.1 DS-1
 - 18.9.2 DS-3
- 18.9 The applicable dedicated transport cross connects for the purpose of CLEC connecting an SBC SOUTHWEST REGION 5-STATE and SBC NEVADA dedicated transport UNE to a CLEC's Collocated facilities are as follows:
 - 18.7.1 DS-1 to Collocation
 - 18.7.2 DS-3 Collocation

19. PROVISIONING/MAINTENANCE OF SECTION 251(c)(3) UNES

- 19.1 Access to Section 251(c)(3) 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 Section 251(c)(3) UNES consistent with the terms and conditions contained above and where technically feasible. Where facilities and equipment are not available, SBC-13STATE shall not be required to provide Section 251(c)(3) UNES unless the addition of facilities and equipment is a routine network modification. However, CLEC may request and, to the extent required by law, SBC-13STATE may agree to provide Section 251(c)(3) 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 Section 251(c)(3) UNES it provides. SBC-13STATE is not otherwise responsible for the Telecommunications Services provided by CLEC through the use of those Section 251(c)(3) UNES.

- 19.3 Where Section 251(c)(3) UNES provided to CLEC are dedicated to a single End User, if such Section 251(c)(3) UNES are for any reason disconnected they shall be made available to SBC-13STATE for future provisioning needs, unless such Section 251(c)(3) UNE is disconnected in error. The CLEC agrees to relinquish control of any such Section 251(c)(3) UNE concurrent with the disconnection of a CLEC's End User's service.
- 19.4 CLEC shall make available at mutually agreeable times the Section 251(c)(3) UNES provided pursuant to this Appendix in order to permit SBC-13STATE to test and make adjustments appropriate for maintaining the Section 251(c)(3) UNES in satisfactory operating condition. No credit will be allowed for any interruptions involved during such testing and adjustments.
- 19.5 CLEC's use of any SBC-13STATE Section 251(c)(3) UNE, or of its own equipment or facilities in conjunction with any SBC-13STATE Section 251(c)(3) 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 CLEC violates this provision, provided that such termination of service will be limited to CLEC's use of the Section 251(c)(3) UNE(s) causing the violation.
- 19.6 When a SBC-13STATE provided tariffed or resold service is replaced by CLEC's facility-based service using any SBC-13STATE provided Section 251(c)(3) UNE(s), CLEC shall issue appropriate service requests, to both disconnect the existing service and order Section 251(c)(3) UNES. These requests will be processed by SBC-13STATE, and CLEC will be charged the applicable Section 251(c)(3) UNE service order charge(s), in addition to the applicable recurring and nonrecurring charges for each individual Section 251(c)(3) UNE and cross connect ordered, except in those cases covered 2.16 above. Similarly, when an End User is served by one CLEC using SBC-13STATE provided Section 251(c)(3) UNES is converted to a different CLEC's service which also uses any SBC-13STATE provided Section 251(c)(3) UNE, the requesting CLEC shall issue appropriate service requests to both disconnect the existing service and connect new service to the requesting CLEC's End User. These requests will be processed by SBC-13STATE and the CLEC will be charged the applicable service order charge(s), in addition to the applicable recurring and nonrecurring charges for each individual Section 251(c)(3) UNE and cross connect ordered.
- 19.7 CLEC shall connect equipment and facilities that are compatible with the SBC-13STATE Section 251(c)(3) UNES, and shall use Section 251(c)(3) UNES in accordance with the applicable regulatory standards and requirements referenced in this Agreement.
- 19.8 CLEC shall not combine or use Section 251(c)(3) UNES in a manner that will undermine the ability of other Telecommunications Carriers to obtain access to lawful unbundled network elements or to interconnect with SBC-13STATE's network.
 - 19.8.1 SBC-13STATE shall charge the CLEC a Maintenance of Service Charge (MSC) when CLEC reports a suspected failure of a Section 251(c)(3) 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 materials will include all technicians dispatched, including technicians dispatched to other locations for purposes of testing.
- 19.9 CLEC 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 CLEC 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 CLEC 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 CLEC requests or approves an SBC-13STATE technician to perform services in excess of or not otherwise contemplated by the nonrecurring charges herein, CLEC 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 Section 251(c)(3) UNEs provided by SBC-13STATE, CLEC will first determine whether the trouble is in CLEC's own equipment and/or facilities or those of the End User. If CLEC determines the trouble is in SBC-13STATE's equipment and/or facilities, CLEC will issue a trouble report to SBC-13STATE.

- 19.13.2 CLEC shall pay Time and Material charges (maintenance of service charges/additional labor charges) when CLEC reports a suspected failure of a Section 251(c)(3) 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.

Account Name	Account Type	Account Number	Account Balance	Account Status	Account Balance	Account Balance	Account Balance
Active Subs and charges / balances - Disconnect subs, clear balance and stop billing							
NONE							

No active Subs, but has balance or charges - Clear balances and stop billing

EMBARQ_PREPAID	A	0	6111102684	20090128	0.02	0.02	Wait to bill, then s/b \$0.02
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No active sub, charges on latest bill or balances - Stop billing.

VISAGE	A	0	6100880186	20090128	0	0	0	Set status to F - Needed?
PHONECO	A	0	500002121	20090208	0	0	0	Set status to F
QWEST_PREPAID	A	0	6100241628	20090213	0	0	0	Set status to F
HELIO	A	0	6104519367	20090218	0	0	0	Set status to F
TMNG	A	0	6100351084	20090218	0	0	0	Set status to F - Needed?
COX WIRELESS	A	0	6122982176	20090221	0	0	0	Set status to F - Needed?
ISOCHRON	A	0	6122023381	20090221	0	0	0	Set status to F

Deposit accounts - Manully converting (no active subs on deposit accounts)

ARC DEPOSIT ACCT	A	0	6123352771	20090218	300000	300000	0
BOOMERANG DEPOSIT	A	0	6121164356	20090208	134000	0	0
PLATINUMTEL DEP	A	0	6122420024	20090208	1582918	1582918	0

No longer billing - No action

AMDOCS TEST	F	0	NA				
UPHONIA	F	0	6101077810	20070608	0	0	0
DISNEY PREPAID	F	0	61111120764	20080213	0	0	0
ESPN	F	0	6100000225	20080221	0	0	0
EXCEL	F	0	8	20080228	0	0	0
DISNEY	F	0	6100040242	20080318	0	0	0

AMAZON.COM HOST	F	0	6118190161	20090121	0	0	0	Stopped ~2/17, not on 2/22 rpt
SPRINT PREPAID	F	0	6105565554	20090128	0	0	0	Stopped ~2/17
TOSHIBA	F	0	6101071210	20090208	0	0	0	Stopped ~2/17, but billed after that?
DOS	F	0	500001140	20090218	0	0	0	Stopped ~2/17, but billed after that?
HARRIS CENSUS	F	0	6113937680	20090221	0	0	0	Stopped ~2/17, but billed after that?

REMAND ORDER EMBEDDED BASE TEMPORARY RIDER

This is a Remand Order Embedded Base Temporary Rider (the "Embedded Base Rider") to the Interconnection Agreement by and between one or more of the SBC Communications Inc. owned ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin, ("SBC" or "SBC ILEC") and CLEC (collectively referred to as "the Parties") ("Agreement") previously entered into by and between the Parties pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act").

WHEREAS, the Federal Communications Commission ("FCC") released on August 21, 2003 a "Report and Order on Remand and Further Notice of Proposed Rulemaking" in CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rd 16978 (as corrected by the Errata, 18 FCC Rd 19020, and as modified by Order on Reconsideration (rel. August 9, 2004) (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003; and

WHEREAS, by its TRO, the FCC ruled that certain network elements were not required to be provided as unbundled network elements under Section 251(c)(3) of the Telecommunications Act of 1996 ("Act"), and therefore, SBC MISSOURI was no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law; and

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in *United States Telecom Ass'n v. F.C.C.*, 359 F3d 554 (D.C. Cir. 2004) ("USTA II") on March 2, 2004 and its associated mandate on June 16, 2004; and

WHEREAS, the USTA II decision vacated certain of the FCC rules and parts of the TRO requiring the provision of certain unbundled network elements under Section 251(c)(3) of the Act, and therefore, SBC MISSOURI was no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law; and

WHEREAS, the FCC issued its Order on Remand, including related unbundling rules,¹ on February 4, 2005 ("TRO Remand Order"), holding that an incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers (CLECs) for the purpose of serving end-user customers using DSO capacity loops ("mass market unbundled local circuit switching" or "Mass Market ULS" or access to certain high-capacity loop and certain dedicated transport on an unbundled basis to CLECs; and

WHEREAS, the FCC, in its TRO Remand Order, instituted transition periods and pricing to apply to CLEC's embedded base of the affected elements; and

WHEREAS, as of the date the parties executed the Agreement to which this Temporary Rider is attached, CLEC has an embedded base of one or more of the affected elements, and the transition periods applicable to one or more of the elements had not yet expired;

NOW, THEREFORE, the Parties attach the following temporary terms and conditions to the Agreement to apply only to the embedded base of the affected elements, as set forth below:

¹ Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, (FCC released Feb. 4, 2005).

1. TRO Remand-Declassified Loop-Transport Elements. Notwithstanding anything in the Agreement, pursuant to Rule 51.319(a) and Rule 51.319(e) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain the following new unbundled high-capacity loop and dedicated transport elements, either alone or in combination:

Dark Fiber Loops;

DS1/DS3 Loops in excess of the caps or to any building served by a wire center described in Rule 51.319(a)(4) or 51.319(a)(5), as applicable;

DS1/DS3 Transport in excess of the caps or between any pair of wire centers as described in Rule 51.319(e)(2)(ii) or 51.319(e)(2)(iii), as applicable; or

Dark Fiber Transport, between any pair of wire centers as described in Rule 51.319(e)(2)(iv).

The above-listed element(s) are referred to herein as the "Affected Loop-Transport Element(s)."

- 1.1 Transitional Provision of Embedded Base. As to each Affected Loop-Transport Element, after March 11, 2005, pursuant to Rules 51.319(a) and (e), as set forth in the TRO Remand Order, SBC MISSOURI shall continue to provide access to CLEC's embedded base of Affected Loop-Transport Element(s) (i.e. only Affected Loop-Transport Elements ordered by CLEC before March 11, 2005), in accordance with and only to the extent permitted by the terms and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], for a transitional period of time, ending upon the earlier of:

- (a) CLEC's disconnection or other discontinuance of use of one or more of the Affected Element(s);
- (b) CLEC's transition of an Affected Element(s) to an alternative arrangement; or
- (c) March 11, 2006 (for Affected DS1 and DS3 Loops and Transport) or September 11, 2006 (for Dark Fiber Loops and Affected Dark Fiber Transport).

SBC MISSOURI's transitional provision of embedded base Affected Element(s) under this Section 1.1 shall be on an "as is" basis. Upon the earlier of the above three events occurring, as applicable, SBC MISSOURI may, without further notice or liability, cease providing the Affected Element(s).

- 1.2 Transitional Pricing for Embedded Base. Notwithstanding anything in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], during the applicable transitional period of time, the price for the embedded base Affected Loop-Transport Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Loop-Transport Element(s) as of June 15, 2004 plus 15% or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Loop-Transport Element(s), plus 15%.

- 1.2.1 Regardless of the execution or effective date of this Embedded Base Rider or the underlying Agreement, CLEC will be liable to pay the Transitional Pricing for all Affected Loop-Transport Element(s), beginning March 11, 2005.
- 1.2.2 CLEC shall be fully liable to SBC to pay such Transitional Pricing under the Agreement, effective as of March 11, 2005, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms.

- 1.3 End of Transitional Period. CLEC will complete the transition of embedded base Affected Loop-Transport Elements to an alternative arrangement by the end of the transitional period of time defined in the TRO Remand Order (as set forth in Sections 1.3.1 and 1.3.2, below). For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to SBC by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements.
- 1.3.1 For Dark Fiber Loops and Affected Dark Fiber Transport, the transition period shall end on September 11, 2006.
- 1.3.2 For Affected DS1 and DS3 Loops and Transport, the transition period shall end on March 11, 2006.
- 1.3.3 To the extent that there are CLEC embedded base Affected DS1 and DS3 Loops or Transport in place on March 11, 2006, SBC MISSOURI without further notice or liability, will convert them to a Special Access month-to-month service under the applicable access tariffs.
2. TRO Remand-Declassified Switching and UNE-P. Notwithstanding anything in the Agreement, pursuant to Rule 51.319(d) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain new Mass Market ULS, whether alone, in combination (as in with "UNE-P"), or otherwise. For purposes of this Section, "Mass Market" shall mean 1 - 23 lines, inclusive (i.e. less than a DS1 or "Enterprise" level.)
- 2.1 Transitional Provision of Embedded Base. As to each Mass Market ULS or Mass Market UNE-P, after March 11, 2005, pursuant to Rules 51.319(d), as set forth in the TRO Remand Order, SBC MISSOURI shall continue to provide access to CLEC's embedded base of Mass Market ULS Element or Mass Market UNE-P (i.e. only Mass Market ULS Elements or Mass Market UNE-P ordered by CLEC before March 11, 2005), in accordance with and only to the extent permitted by the terms and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], for a transitional period of time, ending upon the earlier of:
- (a) CLEC's disconnection or other discontinuance [except Suspend/Restore] of use of one or more of the Mass Market ULS Element(s) or Mass Market UNE-P;
 - (b) CLEC's transition of a Mass Market ULS Element(s) or Mass Market UNE-P to an alternative arrangement; or
 - (c) March 11, 2006.
- SBC MISSOURI's transitional provision of embedded base Mass Market ULS or Mass Market UNE-P under this Section 2.1 shall be on an "as is" basis, except that CLEC may continue to submit orders to add, change or delete features on the embedded base Mass Market ULS or Mass Market UNE-P, or may re-configure to permit or eliminate line splitting. Upon the earlier of the above three events occurring, as applicable, SBC MISSOURI may, without further notice or liability, cease providing the Mass Market ULS Element(s) or Mass Market UNE-P.
- 2.1.1 Concurrently with its provision of embedded base Mass Market ULS or Mass Market UNE-P pursuant to this Embedded Base Rider, and subject to this Section 2, and subject to the conditions set forth in Section 2.1.1.1 below, SBC MISSOURI shall also continue to

provide access to call-related databases, SS7 call setup, ULS shared transport and other switch-based features in accordance with and only to the extent permitted by the terms and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], and only to the extent such items were already being provided before March 11, 2005, in conjunction with the embedded base Mass Market ULS or Mass Market UNE-P.

2.1.1.1 The [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX] must contain the appropriate related terms and conditions, including pricing; and the features must be "loaded" and "activated" in the switch.

2.2 Transitional Pricing for Embedded Base. Notwithstanding anything in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], during the applicable transitional period of time, the price for the embedded base Mass Market ULS or Mass Market UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market ULS/UNE-P on June 15, 2004 plus one dollar, or (B) the rate the applicable state commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market ULS/UNE-P, plus one dollar. CLEC shall be fully liable to SBC to pay such pricing under the Agreement, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.

2.2.1 Regardless of the execution or effective date of this Embedded Base Rider or the underlying Agreement, CLEC will be liable to pay the Transitional Pricing for Mass Market ULS Element(s) and Mass Market UNE-P, beginning March 11, 2005.

2.2.2 CLEC shall be fully liable to SBC to pay such Transitional Pricing under the Agreement, effective as of March 11, 2005, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms.

2.3 End of Transitional Period. CLEC will complete the transition of embedded base Mass Market ULS and Mass Market UNE-P to an alternative arrangement by the end of the transitional period of time defined in the TRO Remand Order (March 11, 2006).

2.3.1 To the extent that there are CLEC embedded base Mass Market ULS or UNE-P [and related items, such as those referenced in Section 2.1.1, above] in place on March 11, 2006, SBC MISSOURI, without further notice or liability, will re-price such arrangements to a market-based rate.

3. Sections 1 and 2, above, apply and are operative regardless of whether CLEC is requesting the Affected Element(s), Mass Market ULS or Mass Market UNE-P under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

4. In entering into this Embedded Base Rider, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Embedded Base Rider) with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review: *Verizon v. FCC*, et. al, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*")

and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"); the FCC's 2003 Triennial Review Order and 2005 Triennial Review Remand Order; 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).

5. Except to the extent of the very limited purposes and time periods set forth in this Embedded Base Rider, this Embedded Base Rider, does not, in any way, extend the rates, terms or conditions of the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX] beyond its term.
6. In all states other than Ohio, the Parties acknowledge and agree that this Embedded Base Rider shall be filed with, and is subject to approval by the applicable state commission and shall become effective ten (10) days following the date upon which such state commission approves this Embedded Base Rider under Section 252(e) of the Act or, absent such state commission approval, the date this Embedded Base Rider is deemed approved by operation of law. In the state of Ohio only, the Parties acknowledge and agree that this Embedded Base Rider shall be filed with, and is subject to approval by the Public Utilities Commission of Ohio ("PUCO"). Based upon PUCO practice, this Embedded Base Rider shall be effective upon filing and will be deemed approved by operation of law on the 31st day after filing.

APPENDIX WHITE PAGES

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APPENDIX WHITE PAGES (WHITE PAGES DIRECTORY)

1. INTRODUCTION

- 1.1 This Appendix sets forth terms and conditions that shall apply to switched-based CLECs or CLECs leasing unbundled switched ports for End User Listings in White Page directories provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and CLEC.
- 1.2 SBC Communications Inc. (SBC) means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.
- 1.3 SBC-2STATE - As used herein, SBC-2STATE means SBC CALIFORNIA and SBC NEVADA, the applicable SBC-owned ILEC(s) doing business in California and Nevada.
- 1.4 SBC-4STATE - As used herein, SBC-4STATE means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, and SBC Oklahoma the applicable SBC-owned ILEC(s) doing business in Arkansas, Kansas, Missouri and Oklahoma.
- 1.5 SBC-7STATE - As used herein, SBC-7STATE means SBC SOUTHWEST REGION 5-STATE, SBC CALIFORNIA and SBC NEVADA, the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.6 SBC-8STATE - As used herein, SBC-8STATE means SBC SOUTHWEST REGION 5-STATE, SBC CALIFORNIA, SBC NEVADA, and SBC CONNECTICUT the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.7 SBC-10STATE - As used herein, SBC-10STATE means SBC SOUTHWEST REGION 5-STATE and SBC MIDWEST REGION 5-STATE and the applicable SBC-owned ILEC(s) doing business in Arkansas, Illinois, Indiana, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas and Wisconsin.
- 1.8 SBC-12STATE - As used herein, SBC-12STATE means SBC SOUTHWEST REGION 5-STATE, SBC MIDWEST REGION 5-STATE and SBC-2STATE the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.9 SBC-13STATE - As used herein, SBC-13STATE means SBC SOUTHWEST REGION 5-STATE, SBC MIDWEST REGION 5-STATE, SBC-2STATE and SBC CONNECTICUT the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.10 SBC ARKANSAS - As used herein, SBC ARKANSAS means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, the applicable SBC-owned ILEC doing business in Arkansas.
- 1.11 SBC CALIFORNIA - As used herein, SBC CALIFORNIA means Pacific Bell Telephone Company d/b/a SBC California, the applicable SBC-owned ILEC doing business in California.
- 1.12 SBC CONNECTICUT - As used herein, SBC CONNECTICUT means The Southern New England Telephone Company d/b/a SBC Connecticut, the applicable above listed ILEC doing business in Connecticut.
- 1.13 SBC KANSAS - As used herein, SBC KANSAS means Southwestern Bell Telephone, L.P. d/b/a SBC Kansas, the applicable SBC-owned ILEC doing business in Kansas.

- 1.14 SBC ILLINOIS - As used herein, SBC ILLINOIS means Illinois Bell Telephone Company d/b/a SBC Illinois, the applicable SBC-owned ILEC doing business in Illinois.
- 1.15 SBC INDIANA - As used herein, SBC INDIANA means Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, the applicable SBC-owned ILEC doing business in Indiana.
- 1.16 SBC MICHIGAN - As used herein, SBC MICHIGAN means Michigan Bell Telephone Company d/b/a SBC Michigan, the applicable SBC-owned doing business in Michigan.
- 1.17 SBC MIDWEST REGION 5-STATE - As used herein, SBC MIDWEST REGION 5-STATE means Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio and Wisconsin.
- 1.18 SBC MISSOURI - As used herein, SBC MISSOURI means Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, the applicable SBC-owned ILEC doing business in Missouri.
- 1.19 SBC NEVADA - As used herein, SBC NEVADA means Nevada Bell Telephone Company d/b/a SBC Nevada, the applicable SBC-owned ILEC doing business in Nevada.
- 1.20 SBC OHIO - As used herein, SBC OHIO means The Ohio Bell Telephone Company d/b/a SBC Ohio, the applicable SBC-owned ILEC doing business in Ohio.
- 1.21 SBC OKLAHOMA - As used herein, SBC OKLAHOMA means Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma, the applicable SBC-owned ILEC doing business in Oklahoma.
- 1.22 SBC SOUTHWEST REGION 5-STATE - As used herein, SBC SOUTHWEST REGION 5-STATE means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma and Texas.
- 1.23 SBC TEXAS - As used herein, SBC TEXAS means Southwestern Bell Telephone, L.P. d/b/a SBC Texas, the applicable SBC-owned ILEC doing business in Texas.
- 1.24 SBC WISCONSIN - As used herein, SBC WISCONSIN means Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC doing business in Wisconsin.

2. SERVICE PROVIDED

- 2.1 SBC-13STATE publishes alphabetical White Pages directories for its geographic local service areas. CLEC provides local exchange telephone service in the same area(s) and CLEC wishes to include listing information for its End Users in the appropriate SBC-13STATE White Pages directories.
- 2.2 CLEC also desires distribution to its End Users of the White Pages directories that include listings of CLEC's End Users.
- 2.3 SBC-13STATE will make available to CLEC, for CLEC End Users, non discriminatory access to White Pages directory listings, as described in Section 2 of this Attachment.
- 2.4 Subject to SBC-13STATE's practices, as well as the rules and regulations applicable to the provision of White Pages directories, SBC-13STATE will include in appropriate White Pages directories the primary alphabetical listings of all CLEC End Users located within the local directory scope. The rules, regulations and SBC-13STATE practices are subject to change from time to time. When CLEC provides its subscriber listing information to SBC-13STATE listings database, CLEC will receive for its End User, one primary listing in SBC-13STATE White Pages directory and a listing in SBC-13STATE's directory assistance database.
 - 2.4.1 Where a CLEC End User requires foreign, enhanced or other listings in addition to the primary listing to appear in the White Pages directory, SBC-13STATE will assess CLEC a monthly charge for such listings at SBC-13STATE tariff rates. An additional monthly charge at SBC-13STATE's tariff rate

applies when CLEC wishes to list an End User in SBC-13STATE's Directory Assistance database but does not wish to have its End User listed in SBC-13STATE's White Pages directory. In addition, CLEC may elect to have its End User unlisted and the listing not published in SBC-13STATE's White Pages directory for a monthly charge at SBC-13STATE's tariff rate for those non-published, non-listed services.

2.4.1.1 In SBC SOUTHWEST REGION 5-STATE switch-based CLECs are billed at the retail tariff rate for a twelve (12) month period at the time the directory is published for additional, foreign, and enhanced listings, as well as Non-Published service. CLECs will be notified via Accessible Letter should the billing process change.

2.5 CLEC shall furnish to SBC-13STATE, in a form acceptable to both Parties, subscriber listing information pertaining to CLEC End Users located within the local directory scope, along with such additional information as SBC-13STATE may require to prepare and print the alphabetical listings of said directory.

2.6 CLEC will provide accurate subscriber listing information of its subscribers to SBC-13STATE via a mechanical or manual feed of the directory listing information to SBC-13STATE's Directory Listing database. CLEC agrees to submit all listing information via a mechanized process within six (6) months of the effective date of this Appendix, or upon CLEC reaching a volume of two hundred listing updates per day, whichever comes first. CLECs' subscriber listings will be interfiled (interspersed) in the directory among SBC-13STATE's subscriber listing information. CLEC shall furnish to SBC-13STATE, in a form acceptable to both Parties, subscriber listing information pertaining to CLEC End Users located within the local directory scope, along with such additional information as SBC-13STATE may require to prepare and print the alphabetical listings of said directory. See CLEC Online web site for methods, procedures, and ordering information. CLEC will submit listing information within one (1) Business Day of installation, disconnection or other change in service (including change of non-listed or non-published status) affecting the Directory Assistance database or the directory listing of a CLEC End User. CLEC must submit all listing information intended for publication by the directory close date.

2.6.1 Upon CLEC request, sixty (60) calendar days prior to the directory close date for a particular directory, SBC-8STATE shall make available to CLEC, via the applicable electronic listing verification tool, its subscriber listings as such listings are to appear in the directory. CLEC shall review this listing information and shall submit to SBC-8STATE any necessary additions, deletions or modifications at least thirty (30) calendar days prior to the directory close date.

2.6.2 Upon CLEC request, sixty (60) calendar days prior to the directory close date for particular directory, SBC MIDWEST REGION 5-STATE shall make available to CLEC forty-five (45) calendar days prior to directory close date for that directory, either electronically or manually, its subscriber listings as such listings are to appear in the directory. CLEC shall review this listing information and shall submit to SBC MIDWEST REGION 5-STATE any necessary additions, deletions or modifications prior to the directory close date.

2.7 Directories

2.7.1 In SBC-8STATE, each CLEC subscriber will receive one copy per primary End User listing, as provided by CLEC, of SBC-8STATE's White Pages directory in the same manner and at the same time that they are delivered to SBC-8STATE's subscribers during the annual delivery of newly published directories.

2.7.1.1 SBC-7STATE has no obligation to provide any additional White Page directories above the directories provided to CLEC End Users after each annual distribution of newly published White Pages.

2.7.1.2 SBC CONNECTICUT White Page directories will be provided in accordance to state and/or local regulations and orders governing White Page directory distribution.

2.7.2 SBC MIDWEST REGION 5-STATE shall direct its directory publishing affiliate to offer delivery of newly published White Pages directories to CLEC's End Users pursuant to terms and conditions agreed to by the publishing affiliate and CLEC.

- 2.7.3 SBC-13STATE shall not be required to deliver a directory to a CLEC End User until new White Page directories are published for that End User's location.
- 2.7.4 CLEC may arrange for additional directory distribution and other services with SBC-13STATE's directory publishing affiliate pursuant to terms and conditions agreed to by the publishing affiliate and CLEC.
- 2.8 SBC-8STATE will provide CLEC with 1/8th page, or the equivalent size as other local service providers listed on the same page, in each directory (where the CLEC has or plans to have local telephone exchange customers) for the CLEC to include CLEC specific information (i.e., business office, residence office, repair bureau, etc.) in the White Pages directory on an "Index-type" informational page. No advertising will be permitted on such informational page. This page will also include specific information pertaining to other CLECs. At its option, no less than sixty (60) days prior to the directory close date, CLEC shall provide SBC-8STATE the information to be published on the information page according to the instructions provided on SBC CLEC Online web site. The content of CLEC's camera-ready copy shall be subject to SBC-8STATE approval. In those directories in which SBC-8STATE includes Spanish Customer Guide Pages, this informational page will also be provided in Spanish at CLEC's request, subject to the guidelines set forth above.
- 2.8.1 SBC MIDWEST REGION 5-STATE shall direct its directory publishing affiliate to offer CLEC the opportunity to include in the "Information Pages", or comparable section of its White Pages directories (covering the territory where CLEC is certified to provide local service), information provided by CLEC for CLEC's installation, repair, customer service and local sales office information and, where required by regulatory bodies, payment address. Such information shall appear in the same manner as such information appears for SBC MIDWEST REGION 5-STATE and other LECs. SBC MIDWEST REGION 5-STATE's directory publishing will include such CLEC information in the "Information Pages" pursuant to terms and conditions agreed to by the publishing affiliate and CLEC and will administer the charges, if any, for the inclusion of such information, which will be calculated on the same basis as the charges, if any, charged to SBC MIDWEST REGION 5-STATE.
- 2.9 At its request, CLEC may purchase one (1) one-sided "Informational Page" in the informational section of the White Pages directory covering a geographic area, at the prices set forth in the attached, state-specific Exhibit 1 to this Appendix, where CLEC provides local Telecommunications Exchange Service. Such page shall be no different in style, size, color and format than SBC SOUTHWEST REGION 5-STATE "Informational Pages". Sixty (60) calendar days prior to the directory close date, the CLEC shall provide to SBC SOUTHWEST REGION 5-STATE the "Informational Page" in the form of camera-ready copy.

3. USE OF SUBSCRIBER LISTING INFORMATION

- 3.1 SBC-13STATE agrees to serve as the single point of contact for all independent and Third Party directory publishers who seek to include CLEC's subscriber listing information in an area directory, and to handle the CLEC's subscriber listing information in the same manner as SBC-13STATE's subscriber listing information. In exchange for SBC-13STATE serving as the single point of contact and handling all subscriber listing information equally, CLEC authorizes SBC-13STATE to include and use the CLEC subscriber listing information provided to SBC-13STATE pursuant to this Appendix in SBC-13STATE's White Pages directory, SBC-13STATE's directory assistance databases, and to provide CLEC subscriber listing information to directory publishers. Included in this authorization is release of CLEC listings to requesting competing carriers as required by Section 271(c)(2)(B)(vii)(II) and Section 251(b)(3) and any applicable state regulations and orders. Also included in this authorization is SBC-13STATE's use of CLEC's subscriber listing information in SBC-13STATE's directory assistance, directory assistance related products and services, and directory publishing products and services.
- 3.2 SBC-13STATE further agrees not to charge CLEC for serving as the single point of contact with independent and Third Party directory publishers, no matter what number or type of requests are fielded. In exchange for the handling of CLEC Name's subscriber list information to directory publishers, CLEC agrees that it will receive no compensation for SBC-13STATE's receipt of the subscriber list information or for the subsequent release of this information to directory publishers. Such CLEC subscriber list

information shall be intermingled with SBC-13STATE's subscriber list information and the subscriber list information of other companies that have authorized a similar release of their subscriber list information by SBC-13STATE.

4. PRICING

- 4.1 SBC-7STATE will deliver one copy per primary End User listing of SBC-7STATE White Pages, as described in Section 2.7 above, at no charge. SBC-7STATE has no obligation to warehouse White Pages directories for CLEC or provide White Pages directories to CLEC's End Users subsequent to the annual distribution of newly published directories.
 - 4.1.1 The rates, if any, for SBC CONNECTICUT White Pages directories will be in accordance to any applicable tariffs, state and/or local regulations or orders governing the rates for White Pages directories.
 - 4.1.2 SBC MIDWEST REGION 5-STATE - The rates, if any, for SBC MIDWEST REGION 5-STATE White Page directories will be in accordance with a separate directory services agreement with SBC MIDWEST REGION 5-STATE's directory publishing affiliate.

5. LIABILITY

- 5.1 CLEC hereby releases SBC-13STATE from any and all liability for damages due to errors or omissions in CLEC's subscriber listing information as provided to SBC-13STATE under this Appendix, and/or CLEC's subscriber listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, consequential, punitive or incidental damages.
- 5.2 CLEC shall indemnify, protect, save harmless and defend SBC-13STATE (and/or SBC-13STATE's officers, employees, agents, assigns and representatives) from and against any and all losses, liability, damages and expense arising out of any demand, claim, suit or judgment by a Third Party in any way related to any error or omission in CLEC's subscriber listing information, including any error or omission related to non-published or non-listed subscriber listing information. CLEC shall so indemnify regardless of whether the demand, claim or suit by the Third Party is brought jointly against CLEC and SBC-13STATE, and/or against SBC-13STATE alone. However, if such demand, claim or suit specifically alleges that an error or omission appears in CLEC's subscriber listing information in the White Pages directory, SBC-13STATE may, at its option, assume and undertake its own defense, or assist in the defense of the CLEC, in which event the CLEC shall reimburse SBC-13STATE for reasonable attorney's fees and other expenses incurred by SBC-13STATE in handling and defending such demand, claim and/or suit.
- 5.3 CLEC further agrees to pay all costs incurred by SBC-13STATE and/or its affiliates as a result of CLEC not complying with the terms of this Appendix.
- 5.4 This Appendix shall not establish, be interpreted as establishing, or be used by either Party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party shall have any authority to bind the other nor to act as an agent for the other unless written authority, separate from this Appendix, is provided. Nothing in the Appendix shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties. Nothing herein shall be construed as making either Party responsible or liable for the obligations and undertakings of the other Party.

6. BREACH OF CONTRACT

- 6.1 If either Party is found to have materially breached this Appendix, the non-breaching Party may terminate the Appendix by providing written notice to the breaching Party, whereupon this Appendix shall be null and void with respect to any issue of SBC-13STATE's White Pages directory published sixty (60) or more calendar days after the date of receipt of such written notice.

APPENDIX CH

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APPENDIX CLEARINGHOUSE (CH)

1. INTRODUCTION

- 1.1 This Appendix sets forth the rates, terms, and conditions, which are made available for CLECs by SBC-12STATE to participate in the Clearinghouse (CH).
- 1.2 SBC Communications Inc. (SBC) means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.
- 1.3 SBC-2STATE - As used herein, SBC-2STATE means SBC CALIFORNIA and SBC NEVADA, the applicable SBC-owned ILEC(s) doing business in California and Nevada.
- 1.4 SBC-4STATE - As used herein, SBC-4STATE means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, and SBC Oklahoma the applicable SBC-owned ILEC(s) doing business in Arkansas, Kansas, Missouri and Oklahoma.
- 1.5 SBC-7STATE - As used herein, SBC-7STATE means SBC SOUTHWEST REGION 5-STATE, SBC CALIFORNIA and SBC NEVADA, the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.6 SBC-8STATE - As used herein, SBC-8STATE means SBC SOUTHWEST REGION 5-STATE, SBC CALIFORNIA, SBC NEVADA, and SBC CONNECTICUT the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.7 SBC-10STATE - As used herein, SBC-10STATE means SBC SOUTHWEST REGION 5-STATE and SBC MIDWEST REGION 5-STATE the applicable SBC-owned ILEC(s) doing business in Arkansas, Illinois, Indiana, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas and Wisconsin.
- 1.8 SBC-12STATE - As used herein, SBC-12STATE means SBC SOUTHWEST REGION 5-STATE, SBC MIDWEST REGION 5-STATE and SBC-2STATE the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.9 SBC-13STATE - As used herein, SBC-13STATE means SBC SOUTHWEST REGION 5-STATE, SBC MIDWEST REGION 5-STATE, SBC-2STATE and SBC CONNECTICUT the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.10 SBC ARKANSAS - As used herein, SBC ARKANSAS means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, the applicable SBC-owned ILEC doing business in Arkansas.
- 1.11 SBC CALIFORNIA - As used herein, SBC CALIFORNIA means Pacific Bell Telephone Company d/b/a SBC California, the applicable SBC-owned ILEC doing business in California.
- 1.12 SBC CONNECTICUT - As used herein, SBC CONNECTICUT means The Southern New England Telephone Company d/b/a SBC Connecticut, the applicable above listed ILEC doing business in Connecticut.
- 1.13 SBC KANSAS - As used herein, SBC KANSAS means Southwestern Bell Telephone, L.P. d/b/a SBC Kansas, the applicable SBC-owned ILEC doing business in Kansas.
- 1.14 SBC ILLINOIS - As used herein, SBC ILLINOIS means Illinois Bell Telephone Company d/b/a SBC Illinois, the applicable SBC-owned ILEC doing business in Illinois.

- 1.15 SBC INDIANA - As used herein, SBC INDIANA means Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, the applicable SBC-owned ILEC doing business in Indiana.
- 1.16 SBC MICHIGAN - As used herein, SBC MICHIGAN means Michigan Bell Telephone Company d/b/a SBC Michigan, the applicable SBC-owned doing business in Michigan.
- 1.17 SBC MIDWEST REGION 5-STATE - As used herein, SBC MIDWEST REGION 5-STATE means Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.
- 1.18 SBC MISSOURI - As used herein, SBC MISSOURI means Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, the applicable SBC-owned ILEC doing business in Missouri.
- 1.19 SBC NEVADA - As used herein, SBC NEVADA means Nevada Bell Telephone Company d/b/a SBC Nevada, the applicable SBC-owned ILEC doing business in Nevada.
- 1.20 SBC OHIO - As used herein, SBC OHIO means The Ohio Bell Telephone Company d/b/a SBC Ohio, the applicable SBC-owned ILEC doing business in Ohio.
- 1.21 SBC OKLAHOMA - As used herein, SBC OKLAHOMA means Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma, the applicable SBC-owned ILEC doing business in Oklahoma.
- 1.22 SBC SOUTHWEST REGION 5-STATE - As used herein, SBC SOUTHWEST REGION 5-STATE means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.
- 1.23 SBC TEXAS - As used herein, SBC TEXAS means Southwestern Bell Telephone, L.P. d/b/a SBC Texas, the applicable SBC-owned ILEC doing business in Texas.
- 1.24 SBC WISCONSIN - As used herein, SBC WISCONSIN means Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC doing business in Wisconsin.
- 1.25 In SBC MIDWEST REGION 5-STATE, the exchange of certain alternately billed intrastate intraLATA message toll call records and the reporting of appropriate settlement revenues owed by and among participating LECs, CLECs, and SBC MIDWEST REGION 5-STATE is facilitated via the existing LEC Settlement process in each state.
- 1.26 In SBC-2STATE, the exchange of certain alternately billed intrastate intraLATA message toll call records and the reporting of appropriate settlement revenues owed by and among participating LECs, CLECs and SBC-2STATE is facilitated via the Message Exchange Appendix.
- 1.27 The exchange of certain alternately billed intrastate intraLATA message toll call records and the reporting of appropriate settlement revenues owed by and among participating LECs, CLECs and SBC CONNECTICUT, is technically infeasible in SBC CONNECTICUT.

2. CLEARINGHOUSE DESCRIPTION

- 2.1 SBC SOUTHWEST REGION 5-STATE operates a CH for the purpose of facilitating the exchange of certain alternatively billed intrastate intraLATA message toll call records and the reporting of settlement revenues owed by and among participating LECs and CLECs, including SBC SOUTHWEST REGION 5-STATE and CLEC.

3. QUALIFYING MESSAGE CRITERIA

- 3.1 The only toll call messages that qualify for submission to SBC SOUTHWEST REGION 5-STATE for CH processing are: (a) intrastate intraLATA sent collect (including calling card, collect and third number) messages which are originated in one LEC or CLEC exchange, exclusively carried by a LEC or CLEC over LEC or CLEC facilities and billed to a customer located in a second LEC's or CLEC exchange within the

same state; or (b) intrastate intraLATA sent collect (but limited to calling card and third number) messages originated in one of SBC SOUTHWEST REGION 5-STATE's operating areas (located in parts of Texas, Arkansas, Kansas, Missouri or Oklahoma), exclusively carried by a LEC or CLEC over LEC or CLEC facilities, and billed to a customer located in a second LEC's or CLEC exchange and not in the originating State.

4. RESPONSIBILITIES OF THE PARTIES

- 4.1 CLEC agrees that it will provide SBC SOUTHWEST REGION 5-STATE with billing records for CH processing that are in an industry standard format acceptable to SBC SOUTHWEST REGION 5-STATE and at a minimum will display the telephone number of the end user to whom the call is to be billed, and data about the call sufficient for a carrier to comply with all applicable state regulatory requirements. For purposes of this Attachment, these records ("CH Records") will detail intraLATA toll calls which were originated by use of the single digit access code (i.e., 0+ and 0-) in one LEC or CLEC exchange but are to be billed to an end user in a second LEC's or CLEC exchange. Such records are referred to as category ninety-two (92) records for CH processing purposes. The term "CH Record" will mean the call detail attributed to a single completed toll message.
- 4.2 CLEC agrees that all CH Records it generates will display indicators denoting whether category ninety-two (92) Records should be forwarded to SBC SOUTHWEST REGION 5-STATE's CH. CLEC will retain its originating records for ninety (90) days such that the category ninety-two (92) Records can be retransmitted to SBC SOUTHWEST REGION 5-STATE for CH processing, if needed.
- 4.3 SBC SOUTHWEST REGION 5-STATE will provide and maintain such systems as it believes are required to furnish the CH service described herein. SBC SOUTHWEST REGION 5-STATE, in its capacity as operator of the CH, agrees to retain all CH Records processed through the CH for two (2) years.
- 4.4 CLEC will timely furnish to SBC SOUTHWEST REGION 5-STATE all CH Records required by SBC SOUTHWEST REGION 5-STATE to provide the CH service in accordance with the Technical Exhibit Settlement Procedures (TESP) dated DD/MM/YEAR, or as otherwise mutually agreed upon by the Parties. SBC SOUTHWEST REGION 5-STATE will provide the CH service in accordance with the TESP, and such modifications as are subsequently agreed upon.
- 4.5 Presently, in operating the CH, SBC SOUTHWEST REGION 5-STATE relies upon NXX codes to identify messages for transmission to participating billing companies. To the extent any subprocesses are required to settle CH messages due to the use of ported numbers, such subprocessing will be the responsibility of the porting entity.

5. PROCESSING CHARGE

- 5.1 CLEC agrees to pay SBC SOUTHWEST REGION 5-STATE a processing charge in consideration of SBC SOUTHWEST REGION 5-STATE's performance of CH services. This charge is located in Appendix Pricing under "Other" listed as CH Processing Charge.

6. BILLING CHARGE

- 6.1 CLEC agrees to pay a per message charge to the CLEC responsible for billing the message, including SBC SOUTHWEST REGION 5-STATE, when SBC SOUTHWEST REGION 5-STATE bills the message. This charge is located in Appendix Pricing under "Other" listed as Billing Charge.

7. SETTLEMENT REPORT

- 7.1 SBC SOUTHWEST REGION 5-STATE will issue monthly reports containing the results of the processing of CH Records to each participating LEC and CLEC. These reports list the: (a) amounts owed by CLEC for billing messages originated by others; (b) amounts due to CLEC for CLEC originated messages billed by others; (c) applicable billing charges; and (d) processing charges.

8. RETROACTIVE AND LOST MESSAGES

- 8.1 The Parties agree that processing of retroactive messages through the CH is acceptable, if such messages utilize the industry standard format for call records, pursuant to Section III of this Attachment. The Parties agree that lost messages are the complete responsibility of the originating LEC or CLEC. If messages are lost by any Party, and cannot be recreated or retransmitted, the originating LEC or CLEC will estimate messages, minutes, and associated revenues based on the best available data. No estimate will be made for messages, which are more than two years old at the time the estimate is made. The estimates will be off-line calculations (i.e., not part of the routine CH processing) and will be included as a supplement to the monthly settlement report.

9. LIMITATION OF LIABILITY

- 9.1 By agreeing to operate the CH, SBC SOUTHWEST REGION 5-STATE assumes no liability for any LEC's or CLEC's receipt of appropriate revenues due to it from any other entity. CLEC agrees that SBC SOUTHWEST REGION 5-STATE will not be liable to it for damages (including, but not limited to, lost profits and exemplary damages) which may be owed to it as a result of any inaccurate or insufficient information resulting from any entity's actions, omissions, mistakes, or negligence and upon which SBC SOUTHWEST REGION 5-STATE may have relied in preparing settlement reports or performing any other act under this Attachment.
- 9.2 CLEC agrees to indemnify and hold SBC SOUTHWEST REGION 5-STATE harmless against and with respect to any and all third party claims, demands, liabilities or court actions arising from any of its actions, omissions, mistakes or negligence occurring during the course of SBC SOUTHWEST REGION 5-STATE's performance of CH processing pursuant to this Attachment.
- 9.3 SBC SOUTHWEST REGION 5-STATE will not be liable for any losses or damages arising out of errors, interruptions, defects, failures, or malfunction of the CH services provided pursuant to this Attachment, including those arising from associated equipment and data processing systems, except such losses or damages caused by the sole negligence of SBC SOUTHWEST REGION 5-STATE. Any losses or damage for which SBC SOUTHWEST REGION 5-STATE is held liable under this Attachment will in no event exceed the amount of processing charges incurred by CLEC for the CH services provided hereunder during the period beginning at the time SBC SOUTHWEST REGION 5-STATE receives notice of the error, interruption, defect, failure or malfunction, to the time service is restored.

10. DISCLAIMER OF WARRANTIES

- 10.1 SBC SOUTHWEST REGION 5-STATE 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, SBC SOUTHWEST REGION 5-STATE assumes no responsibility with regard to the correctness of the data supplied by CLEC when this data is accessed and used by a third party.

**XDSL AND LINE SPLITTING APPENDIX
TO INTERCONNECTION AGREEMENT**

xDSL Loops and xDSL Subloops and Line Splitting: SBC-12STATE will make available xDSL loops and xDSL subloops for the provision of xDSL-based services, and xDSL loops for purposes of line splitting, in accordance with the FCC's *Triennial Review Order* and associated lawful and effective implementing rules, 47 C.F.R. §51.319(a)(1)(i)-(iv) and (b)(1), as such rules may be modified from time to time.

The Parties agree that in the event that additions or modifications to SBC MISSOURI Line Splitting processes and procedures result from final outcomes of the SBC 13-STATE Line Splitting Collaborative or any applicable state commission collaborative or the Change Management Process, SBC MISSOURI and CLEC will use such modified or additional processes or procedures thereafter under this Agreement, and the Parties will negotiate in good faith to arrive at an agreement on conforming modifications to this Appendix Line Splitting, if necessary.

1.0 General:

1.1 Deployment of xDSL Technologies: SBC-12STATE will provide xDSL loops and xDSL subloops for CLEC to deploy xDSL technologies presumed acceptable for deployment or non-standard xDSL technologies as defined in this Agreement and as provided for under the applicable lawful and effective FCC rules, 47 C.F.R. §51.230, as such rule may be modified from time to time.

1.2 SBC-12STATE will not guarantee that an xDSL loop or xDSL subloop ordered by CLEC will perform as desired by CLEC for xDSL-based services, but will guarantee that loops will be provisioned to meet basic metallic loop parameters, including continuity and pair balance. CLEC shall designate on its LSR, at CLEC's sole option, what loop conditioning SBC-12STATE is to perform in provisioning the order.

2.0 Loop Makeup Information and Ordering: SBC-12STATE will provide CLEC with nondiscriminatory access to its loop makeup information set forth originally in SBC-12STATE's Advanced Service OSS Plan of Record via: (i) a mechanized loop qualification for real-time access to data available electronically in SBC-12STATE's databases; or (ii) manual loop qualification for information not available electronically (which will carry an interval of 3-5 business days or the interval provided to SBC-12STATE's advanced services affiliate). CLEC will be given nondiscriminatory access to the same loop makeup information that SBC-12STATE is providing to any other CLEC, SBC-12STATE's retail operations and/or its advanced services affiliate. SBC-12STATE's uniform GUI and application to application OSS interfaces allow CLEC, SBC-12STATE's retail operations and/or its advanced services affiliate, to have real time electronic access as a preordering function to the loop makeup information.

3.0 Provisioning Intervals: SBC-12STATE's provisioning intervals per order per end-user location shall be the intervals set forth below or the associated interval applicable to SBC-12STATE's advanced services affiliate, whichever is less.

3.1 Where no conditioning or outside plant rearrangements necessary:

3.1.1 xDSL Loops (i.e., 2-wire xDSL Loop, 4-wire xDSL Loop and IDSL Loop – collectively xDSL Loops): five (5) business days. xDSL Subloops shall have the same provisioning interval as the xDSL Loops following completion of the Subloop Access Arrangement (SAA).

3.1.2 With conditioning or outside plant rearrangements - xDSL Loops: ten (10) business days. xDSL Subloops shall have the same provisioning interval following completion of the SAA.

4.0 Loop Conditioning:

4.1 SBC-12STATE will condition xDSL loops and xDSL subloops in accordance with the lawful and effective requirements of 47.C.F.R. §51.319(a)(1)(iii); provided, however: (i) If load coils, repeaters or Excessive Bridged Tap are present on a loop less than 12,000 feet in actual loop length, conditioning to remove these elements will be performed without request and at no charge to CLEC; (ii) if the loop qualification indicates conditioning is available on a loop that is 12,000 feet in actual loop length or greater, CLEC may request that no conditioning be performed or that SBC-12STATE perform some or all of the available loop conditioning to remove Excessive Bridged Tap, load coils and/or repeaters at the rates set forth in Appendix Pricing.

4.2 Removal of All or Non-Excessive Bridged Tap ("RABT"):

4.2.1 CLEC may request RABT conditioning via a trouble ticket after its service order for the xDSL Loop or xDSL Subloop has been completed; provided, however, CLEC shall assist in trouble isolation for RABT-related initial trouble tickets by obtaining and providing to SBC-12STATE interferer information on the loop at the time of opening the trouble ticket. CLEC should utilize its testing equipment to determine the following: the number and location of load coil(s), repeater(s) and bridged tap(s), including the length of individual sections. If an RABT trouble ticket is opened, and it is later determined by SBC-12STATE that the requested conditioning is not available because no such bridged tap was on the loop, the trouble ticket will be closed as a 'No Trouble Found' (NTF) and CLEC shall pay the Maintenance of Service charges referenced in Section 7.2 below.

4.2.2 CLEC may open an RABT trouble ticket via one of the following two methods: (i) by calling the LOC and opening a manual ticket with its specific RABT conditioning request; or (ii) by opening an electronic bonding ticket and in such case, shall identify its specific RABT conditioning request in the remarks field. If the specific RABT conditioning request is not documented on the CLEC trouble ticket, the trouble ticket will be returned to CLEC for specific information. Upon CLEC's request, the LOC will also investigate and address any SBC-12STATE non-conditioning related reasons for any No Sync situation, or ensure CLEC's RABT request is appropriate by verifying the subject bridged tap is located on the loop, but SBC-12STATE does not guarantee the synchronization of any loop. SBC-12STATE in either case, when Excessive Bridged Tap is present on the loop, CLEC may request the removal of All Bridged Tap; and when Excessive Bridged Tap is not present on the loop, the removal of Non-Excessive Bridged Tap. If and when All Bridged Tap has been removed, any future trouble tickets concerning bridged tap will require a vendor meet with the SBC-12STATE LOC. SBC-12STATE LOC will notify CLEC as soon as the trouble is closed, whether conditioning has been performed or not. In those instances where SBC-12STATE removes All or Non-Excessive Bridged Tap upon receipt of an RABT trouble ticket from CLEC under the provisions set forth herein, CLEC shall pay the applicable RABT conditioning charges set forth in Appendix Pricing for such conditioning work.

4.2.3 A trouble ticket opened by CLEC for RABT conditioning will be assigned a zero plus five (0+ 5) business day interval or in parity with the repair intervals SBC-12STATE provides to its advanced services affiliate. When SBC-12STATE determines it is not possible to perform RABT e.g., in those situations in which (i) municipalities will not grant rights of way to certain areas; or (ii) there are other issues associated with access to the subject facilities; or (iii) events, actions or circumstances exist or arise that are outside the sole control of SBC-12STATE, SBC-12STATE has no obligation to perform such conditioning.

4.2.4 To the extent that CLEC would like the option to request that a loop be conditioned by SBC-12STATE to remove any device other than Excessive Bridged Taps, load coils and/or repeaters, or Non-excessive or All Bridged Tap, to make a loop xDSL capable, the Parties shall first meet to negotiate rates, terms and conditions for any such conditioning. In the event the loop over which