

## ***Amendment Superseding Certain Intercarrier Compensation Provisions***

This Amendment Superseding Certain Intercarrier Compensation Provisions ("Amendment") is applicable to this and any future Interconnection Agreement as provided herein between AT&T Operations, Inc. ("AT&T"), on behalf of and as agent for, Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, The Ohio Bell Telephone Company d/b/a AT&T Ohio, Wisconsin Bell Inc. d/b/a AT&T Wisconsin, Nevada Bell Telephone Company d/b/a AT&T Nevada, Pacific Bell Telephone Company d/b/a AT&T California, The Southern New England Telephone Company d/b/a AT&T Connecticut, and Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri, AT&T Oklahoma, AT&T Texas, AT&T Arkansas, and AT&T Kansas, and any of its future Affiliates or subsidiaries which are Incumbent Local Exchange Carriers (hereinafter each individually being a "AT&T ILEC," and collectively being the "AT&T ILECs") and Birch, Birch Telecom of Texas, Ltd., L.L.P., Birch Telecom of Kansas, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Ionex Communications, Inc., Ionex Communications of the South, Inc. and any of its future Affiliates or subsidiaries which are Certified Local Exchange Carriers ("Birch") in the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio, or Connecticut from the Effective Date hereof through and including the Termination Date, whether negotiated, arbitrated, or arrived at through the exercise of Section 252(i) "Most Favored Nation" ("MFN") rights. Each of the AT&T ILECs and Birch may be referred to individually as "Party," or collectively as the "Parties";

WHEREAS, prior to the Effective Date hereof, AT&T ILECs and Birch have entered into interconnection agreements pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act") that were approved by the applicable state commissions in Texas, Oklahoma, Kansas and Missouri, and may enter into further such agreements in the additional states of Arkansas, California, Connecticut, Illinois, Indiana, Michigan, Nevada, Ohio and Wisconsin after the Effective Date hereof but before the Termination Date as defined herein (such agreements, including any successors thereto, shall be referred to herein as the "Interconnection Agreements"); and

WHEREAS, AT&T ILECs and Birch agree that they would not have agreed to this Amendment except for the fact that it was entered into on a 13-State basis and included the totality of rates, terms and conditions listed herein; and

WHEREAS, the Parties wish to establish rates, terms and conditions for the exchange of ISP-Bound Traffic, Section 251(b)(5) Traffic, and other compensable traffic exchanged between the Parties, consistent with the terms set forth herein this Amendment;

NOW, THEREFORE, for and in consideration of the promises, mutual promises and covenants contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. TERM, SCOPE OF AMENDMENT AND LOCK IN**

- 1.1 The term of this Amendment shall commence on the Effective Date hereof<sup>1</sup> and shall continue until December 31, 2009 ("Termination Date"). Thereafter, provided that Birch does not MFN into or otherwise adopt an underlying Interconnection Agreement with a term ending after December 31, 2009, this Amendment will remain in full force and effect unless terminated by either Party according to the

---

<sup>1</sup> Notwithstanding anything to the contrary in the underlying Interconnection Agreements (including, as applicable, this Amendment and any other Amendments to the Agreement ("Agreement"), in the event that any other telecommunications carrier should adopt the Parties' Interconnection Agreement and this Amendment pursuant to Section 252(i) of the Act ("Adopting CLEC") after the Effective Date hereof, it is AT&T's position that such Adopting CLEC shall only be entitled to receive the rates, terms and conditions as set forth in this Amendment prospectively beginning from the date that the MFN provisions become effective between the AT&T ILECs and the Adopting CLEC, following the date the applicable public utilities commission approves or is deemed to have approved the Adopting CLEC's Section 252(i) adoption ("Section 252(i) Effective Date"). It is further AT&T's position that an Adopting CLEC is not entitled to the application of the rates, terms and conditions under its MFN Provisions to a date prior to its Section 252(i) Effective Date.

terms and conditions of the underlying Interconnection Agreement to which this Amendment applies. In the event that Birch chooses to MFN into an underlying Interconnection Agreement that expires after the Termination Date of this Amendment, the terms of this Amendment shall apply to such Interconnection Agreement until December 31, 2009, after which the terms of the underlying Interconnection Agreement shall apply.

- 1.2 The Parties agree that this Amendment will act to supersede, amend and modify the applicable provisions contained in all Interconnection Agreements currently in effect between the Parties. This Amendment shall also be incorporated into and become a part of, by exhibit, attachment or otherwise, any future Interconnection Agreement(s) between the Parties through the Termination Date whether negotiated, arbitrated, or arrived at through the exercise of Section 252(i) "Most Favored Nation" (MFN) rights in all states where the AT&T ILECs and Birch enter into such agreements. Any inconsistencies between the provisions of this Amendment and other provisions of any current Interconnection Agreement or future Interconnection Agreements described above, through the Termination Date, will be governed by the provisions of this Amendment, unless this Amendment is specifically and expressly superseded by a future amendment between the Parties. Provided, however, if any of the underlying Interconnection Agreements expires sooner than the Termination Date, the Parties agree that the Amendment shall not extend or otherwise alter the term and termination rights of the underlying Interconnection Agreement, but instead, the Amendment will be incorporated into any successor interconnection agreement between the Parties and this Amendment shall remain effective through the Termination Date.
- 1.3 Except as provided in Section 1.4 below, during the term of this Amendment period, the Effective Date hereof through the Termination Date, the Parties agree that neither of the Parties will seek, directly or indirectly, to obtain alternate terms and conditions to those stated in this Amendment. If, during the term of this Amendment, Birch adopts another or additional agreement pursuant to Section 252(i), it must amend the adopted interconnection agreement with this Amendment. Such Amendment shall be filed with the state Commission at the same time that the MFN agreement is filed so that this Amendment will apply uninterrupted from the Effective Date hereof through the Termination Date. If the AT&T ILECs have voluntarily entered into an interconnection agreement which is applicable to the thirteen-state region as a whole, Birch may exercise its rights under section 252(i) of the Act to obtain the rates, terms, and conditions of such agreement in its entirety provided that the agreement is otherwise available for adoption. This waiver includes, but is not limited to, any material sale of CLEC's assets, in which case Birch shall obtain the purchaser's consent to be bound by the reciprocal compensation terms and conditions set forth herein.

Notwithstanding anything herein to the contrary, during the period from the Effective Date hereof through the Termination Date, the Parties waive any rights they may have under the Intervening/Change of Law provisions, of the Parties' Interconnection Agreements in effect during the term of this Amendment with respect to any intercarrier compensation that is subject to this Amendment; provided, however, that if an FCC order related to intercarrier compensation becomes effective after the Effective Date of this Amendment, including, without limitation, orders issued in CC Docket 96-98, the FCC's rulemaking in the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket 0192, established in Notice of Proposed Rulemaking Order No. 01-132 (April 27, 2001) and/or In the Matter of IP Enabled Services, WC Docket 04-36, the affected provisions of this Amendment relating to intercarrier compensation shall be invalidated, modified, or stayed, consistent with such FCC Order, with such invalidation, modification, or stay becoming effective only upon the date of the written request of either Party once the FCC Order has become effective (the "Written Request"). In such event, upon receipt of the Written Request, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Interconnection Agreements and Amendment (including any separate amendments to such agreements). If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such FCC Order shall be resolved pursuant to the dispute resolution process provided for in the Interconnection Agreements; provided, however, that the rates, terms and

conditions ultimately ordered by a state commission in the complaint proceeding or negotiated by the Parties during the dispute resolution process shall be retroactive to the effective date of the Written Request following such FCC Order. Except as to matters pertaining to intercarrier compensation, in addition to the change of law rights more fully set forth in this Section 1 with respect to intercarrier compensation, provisions, during the time period from Effective Date through and including the Termination Date, each Party shall have full intervening law rights under this Amendment and any intervening law rights in the underlying Interconnection Agreement, and may invoke such intervening law/change in law rights as to any provisions in the Interconnection Agreements impacted by any regulatory, legislative or judicial action.

**2. LONG TERM BILL AND KEEP ARRANGEMENTS FOR TERMINATION OF IN-BALANCE SECTION 251(b)(5) TRAFFIC, ISP-BOUND TRAFFIC, FX TRAFFIC AND OPTIONAL EAS TRAFFIC**

- 2.1 Section 251(b)(5) Traffic shall mean telecommunications traffic in which the originating End User of one Party and the terminating End User of the other Party are:
- a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or
  - b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes.
- 2.2 For purposes of this Agreement, and without waiving their respective positions with regard to the appropriate interpretation of the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April, 27, 2001) ("FCC ISP Compensation Order"), the Parties agree that "ISP-Bound Traffic" shall mean telecommunications traffic exchanged between Birch and AT&T-13STATE in which the originating End User of one Party and the ISP served by the other Party are:
- a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC's Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or
  - b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS) or other types of mandatory expanded local calling scopes.
- 2.3 Foreign Exchange (FX) services are retail service offerings purchased by FX customers that allow such FX customers to obtain exchange service from a mandatory local calling area other than the mandatory local calling area where the FX customer is physically located, but within the same LATA as the number that is assigned. FX service enables particular end user customers to avoid what might otherwise be toll calls between the FX customer's physical location and customers in the foreign exchange. FX Telephone Numbers are those telephone numbers with rating and routing point that are different from those of the geographic area in which the end user is physically located. FX Telephone Numbers that deliver second dial tone and the ability for the calling party to enter access codes and an additional recipient telephone number remain classified as Feature Group A (FGA) calls, and are subject to the originating and terminating carrier's tariffed Switched Exchange Access rates (also known as "Meet Point Billed" compensation). There are two types of FX service:
- 2.3.1 "Dedicated FX Traffic" shall mean those calls routed by means of a physical, dedicated circuit delivering dial tone or otherwise serving an end user's station from a serving Central Office (also known as End Office) located outside of that station's mandatory local calling area. Dedicated FX Service permits the end user physically located in one exchange to be assigned telephone

numbers resident in the serving Central (or End) Office in another, "foreign," exchange, thereby creating a local presence in that "foreign" exchange.

- 2.3.2 "Virtual Foreign Exchange (FX) Traffic" and "FX-type Traffic" shall refer to those calls delivered to telephone numbers that are rated as local to the other telephone numbers in a given mandatory local calling area, but where the recipient end user's station assigned that telephone number is physically located outside of that mandatory local calling area. Virtual FX Service also permits an end user physically located in one exchange to be assigned telephone numbers resident in the serving Central (or End) Office in another, "foreign," exchange, thereby creating a local presence in the "foreign" exchange. Virtual FX Service differs from Dedicated FX Service, however, in that Virtual FX end users continue to draw dial tone or are otherwise served from a Central (or End) Office which may provide service across more than one Commission-prescribed mandatory local calling area, whereas Dedicated FX Service end users draw dial tone or are otherwise served from a Central (or End) Office located outside their mandatory calling area.
- 2.4 *Optional Calling Area (OCA) Traffic, (also known as Optional Extended Area Service and Optional EAS) is traffic that originates from and terminates to Commission approved one-way or two-way optional exchanges(s) and the associated metropolitan area except mandatory extended traffic as defined in the Parties underlying Agreement.***
- 2.4.1 In the context of this Amendment, Optional Calling Areas (OCAs) exist only in the states of Arkansas, Kansas and Texas, and are outlined in the applicable state Local Exchange tariffs. This terminating compensation arrangement between the Parties for such traffic rate is independent of any retail service arrangement established by either Party. Birch and AT&T ARKANSAS, AT&T KANSAS, and AT&T TEXAS are not precluded from establishing their own local calling areas or prices for purposes of retail telephone service; however, the terminating rates to be used for any such offering will be those set forth in this Amendment.
- 2.5 Long-Term Local Bill and Keep Arrangements for Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic. For Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic, the following compensation arrangements apply:
- 2.5.1 *For traffic that originates from, or terminates to, End Users served by a Local Wholesale Complete Access Line or Local Wholesale Complete telephone numbers associated with Local Switching provided by AT&T-13STATE on a wholesale basis:* All Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic, Mandatory EAS Traffic, Optional EAS Traffic, and MCA Traffic that originates from, or terminates to, End Users served by Local Wholesale Complete Access Lines or Local Wholesale Complete telephone numbers associated with Local Switching provided by AT&T-13STATE on a wholesale basis, will be compensated on a long-term Bill and Keep basis regardless of whether such traffic remains in balance. The Parties specifically acknowledge that Long-term Bill and Keep applies only to Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic, Mandatory EAS Traffic, Optional EAS Traffic as defined in Sections 2.1 through 2.4.1 of this Amendment, and MCA Traffic, and does not include IntraLATA Toll Traffic or Meet Point Billing Traffic.
- 2.5.2 *For traffic that originates from, or terminates to, End Users served by Birch using its own facilities:* All Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic that originates from, or terminates to, End Users served by Birch using its own facilities will be compensated on a long-term Bill and Keep basis, so long as qualifying traffic between the parties remains in balance in accordance with Section 2.5.2.1 through 2.5.2.3 hereof. The Parties specifically acknowledge that Long-term Bill and Keep applies only to Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic as defined in Sections 2.1 through 2.4.1 of this Amendment and does not include, IntraLATA Toll Traffic, Meet Point Billing Traffic, or MCA Traffic.

- 2.5.2.1 The Parties agree that Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic exchanged between the Parties will be subject to Bill and Keep as the method of intercarrier compensation provided that Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic exchanged between the Parties is "In-Balance". In-Balance shall mean that Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic exchanged between the Parties will be within +/-5% of equilibrium (50%).
- 2.5.2.1.1 The calculation for determining whether traffic is in balance will be based on the difference between the total Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic originated by each Party's End Users terminated to the other Party's End Users, divided by the sum of both Parties' End Users' terminated Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic multiplied by 100.
- 2.5.2.2 The Parties agree that where Section 251(b)(5) Traffic and ISP-Bound Traffic is determined to be out-of-balance by more than 5% per month for three (3) consecutive months, then upon notice by either Party, the terms and conditions set forth in Section 3 of this Amendment shall apply to all Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic, beginning with the billing cycle following receipt of such notice.
- 2.5.2.3 Once the terms and conditions set forth in Section 3 of this Amendment apply to CLEC's Section 251(b)(5)Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic, the compensation arrangements set forth in Section 3 will apply for the remaining term of this Agreement.
- 2.5.2.3.1 In the event that either Party disputes whether its Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic is in balance, the Parties agree to work cooperatively to reconcile the inconsistencies in their usage data.
- 2.5.2.3.2 Should the Parties be unable to agree on the amount and balance of Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic exchanged between their End Users, either Party may invoke the dispute resolution procedures under this Agreement. In the event that dispute resolution procedures results in the calculations being delayed, the Intercarrier Compensation rates will apply retroactively to the date such Intercarrier Compensation rates were applicable under Section 3 of this Amendment.
- 2.5.2.4 Upon reasonable belief that traffic other than Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic as defined in Sections 2.1 through 2.4 of this Amendment is being terminated under this long-term local Bill and Keep arrangement, either Party may request a meeting to confirm the proper classification under the terms of this Amendment of traffic delivered as Bill and Keep. The Parties will consult with each other to attempt to resolve issues without the need for an audit. Should no resolution be reached within 60 days, an audit may be requested and will be conducted by an independent auditor under an appropriate non-disclosure agreement. Only one audit may be conducted by each Party within a six-month period.
- 2.5.2.5 The auditing Party will pay the audit costs unless the audit reveals the delivery of a substantial amount of traffic originating from a party in this Agreement is other than Section 251(b)(5) Traffic and ISP-Bound Traffic for termination to the other party under the long term local Bill and Keep arrangement. In the event the audit reveals a substantial amount of traffic other than Section 251(b)(5) Traffic and ISP-Bound Traffic,

the Party delivering such traffic will bear the cost of the audit and will pay appropriate compensation for such traffic with interest at the commercial paper rate as referenced in of the General Terms and Conditions of the Interconnection Agreements.

2.5.2.6 The Parties will consult and negotiate in good faith to resolve any issues of accuracy or integrity of data collected, generated, or reported in connection with audits or otherwise.

2.5.2.7 The audit provisions set out in Sections 2.5.2.4 through 2.5.2.6 above do not alter or affect audit provisions set out in the Parties' underlying Interconnection Agreements.

### 3. **COMPENSATION ARRANGEMENTS FOR TERMINATION OF OUT-OF-BALANCE SECTION 251(b)(5) TRAFFIC, ISP-BOUND TRAFFIC, FX-TRAFFIC AND OPTIONAL EAS TRAFFIC**

3.1 "Out-of-Balance" shall mean that Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS exchanged between the Parties has not met the In-Balance qualifiers as defined in Section 2.5.2 above and has exceeded the specified thresholds set forth in Sections 2.5.2.1 and 2.5.2.1.1. This Section 3 applies to Out-of-Balance traffic.

3.1.1 For Section 251(b)(5) Traffic, ISP-Bound Traffic, FX Traffic and Optional EAS Traffic, the Party whose End User originates such traffic shall compensate the Party who terminates such traffic to its End User for the transport and termination of such traffic at the applicable rate(s) provided in this Amendment and Appendix Pricing to the Interconnection Agreements. In AT&T CONNECTICUT, when Birch purchases Local Switching from AT&T CONNECTICUT on a wholesale basis to provide service to its End Users, all Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic, and IntraLATA Toll Traffic originated by CLEC's end users are not subject to intercarrier compensation as addressed in Section 3.8.3 below.

3.2 AT&T-12STATE made an offer (the "Offer") to all telecommunications carriers to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic on and after the designated dates provided below pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan of the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Compensation Order") which was remanded but not vacated in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002).

AT&T-13STATE and Birch agree to comply with the FCC's interim ISP terminating compensation plan on the date designated by AT&T-13STATE in a particular state without waiving, and expressly reserving, all appellate rights to contest FCC, judicial, legislative, or other regulatory rulings regarding ISP-Bound traffic, including but not limited to, appeals of the FCC's ISP Compensation Order. By agreeing to this Amendment, both Parties reserve the right to advocate their respective positions before courts, state or federal commissions, or legislative bodies.

3.2.1 Should a regulatory agency, court or legislature change or nullify the AT&T-13STATE's designated date to begin billing under the FCC's ISP terminating compensation plan, then the Parties also agree that any necessary billing true ups, reimbursements, or other accounting adjustments shall be made symmetrically and to the same date that the FCC terminating compensation plan was deemed applicable to all traffic in that state exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to the extent they are ordered by Intervening Law, to apply uniformly to all traffic among AT&T-13STATE, Birch and Commercial Mobile Radio Service (CMRS) carriers in the state where traffic is exchanged as Local Calls within the meaning of this Amendment and the underlying Interconnection Agreements.

3.2.2 The Parties further acknowledge that federal or state court challenges could be sustained against the FCC's ISP Compensation Order in particular, or against ISP intercarrier compensation generally. In particular, a court could order an injunction, stay or other retroactive

ruling on ISP compensation back to the effective date of the FCC's ISP Compensation Order. Alternatively, a court could vacate the underlying Order upon which the compensation was based, and the FCC (either on remand or on its own motion) could rule that past traffic should be paid at different rates, terms or conditions. Because of these possibilities, the Parties agree that should the ISP Compensation Order be modified or reversed in such a manner that prior intercarrier compensation was paid under rates, terms or conditions later found to be null and void, then the Parties agree that, in addition to negotiating appropriate amendments to conform to such modification or reversal, the Parties will also agree that any billing true ups, reimbursements, or other accounting adjustments on past traffic caused by events enumerated in this section shall be made uniformly and on the same date as for all traffic exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to apply to all traffic among AT&T-13STATE, CLEC, and CMRS carriers in the state where traffic is exchanged as Local Calls within the meaning of this Amendment and the underlying Interconnection Agreements.

- 3.3 In AT&T-12STATE the rates, terms and conditions for compensation of Section 251(b)(5) Traffic, as defined in Section 2.1 and ISP-Bound Traffic, as defined in Section 2.2 will be compensated at the FCC's interim ISP terminating compensation rate as set forth in Section 3.9 below in a specific state on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in a particular state. The Parties acknowledge that AT&T-12STATE has made such offer in its respective states of (i) Indiana, Ohio, Texas and Wisconsin effective on and after June 1, 2003; (ii) Arkansas and Michigan effective on and after July 6, 2003; (iii) California effective on and after August 1, 2003; (iv) Illinois effective on and after September 1, 2003; and (v) Kansas, Missouri, Oklahoma and Nevada on and after June 1, 2004. Until and unless AT&T CONNECTICUT chooses to offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic on and after a designated date pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan, the compensation set forth below in Section 3.8 will apply to all Section 251(b)(5) Traffic and ISP-Bound Traffic as for that particular state.
- 3.4 Tandem Serving Rate Elements are applicable to Tandem Routed Traffic on a terminating MOU basis and includes compensation for the following sub-elements:
  - 3.4.1 Tandem Switching - compensation for the use of tandem switching only consisting of a duration (per minute) rate element.
  - 3.4.2 Tandem Transport - compensation for the transmission of traffic between the local tandem and the end offices subtending that tandem consisting of a transport termination (per minute) rate element and transport facility mileage (per minute, per mile) rate element.
  - 3.4.3 End Office Switching in a Tandem Serving Arrangement - compensation for the local end office switching and line termination necessary to complete the transmission in a tandem-served arrangement. It consists of a call set-up rate (per message) and a call duration (per minute) rate.
- 3.5 End Office Serving Rate Elements:
  - 3.5.1 End Office Switching - compensation for the local end office switching and line termination necessary to complete the transmission in an end office serving arrangement. It consists of a call set-up rate (per message) and a call duration (per minute) rate.
- 3.6 Birch shall only be paid End Office Serving Rate Elements.
- 3.7 All ISP-Bound Traffic for a given usage month shall be due and owing at the same time as payments for Section 251(b)(5) under this Amendment and the underlying Interconnection Agreements. The parties agree that all terms and conditions regarding disputed minutes of use, nonpayment, partial payment, late payment, interest on outstanding balances, or other billing and payment terms shall apply to ISP-Bound Traffic the same as for Section 251(b)(5) Traffic under this Amendment and the underlying Interconnection Agreements.

- 3.8 Intercarrier Compensation for Wholesale Local Switching Traffic
- 3.8.1 Where Birch purchases Local Switching from AT&T-12STATE on a wholesale basis, Birch will deal directly with third party carriers for purposes of reciprocal compensation for calls originated by or terminated to the end users served by such arrangements. AT&T-12STATE is required to provide Birch with timely, complete and correct information to enable Birch to meet the requirements of this section.
- 3.8.2 The following reciprocal compensation terms shall apply to all traffic exchanged between AT&T-12STATE and CLECs when Birch purchases Local Switching from AT&T-12STATE on a wholesale basis:
- 3.8.2.1 For intra-switch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between AT&T-12STATE and CLEC, the Parties agree to impose no call termination charges pertaining to reciprocal compensation on each other.
- 3.8.2.2 For interswitch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between AT&T-12STATE and Birch where Birch's end user originates a call that is terminated to a AT&T-12STATE End User, such traffic shall be paid for reciprocally at the FCC Plan rate set forth in Section 3.9 for the transport and termination of Section 251(b)(5) Traffic, and ISP-Bound Traffic.
- 3.8.3 In AT&T CONNECTICUT, when Birch purchases Local Switching from AT&T CONNECTICUT on a wholesale basis. To provide service to its End Users, AT&T CONNECTICUT will be solely responsible for compensating the terminating third party carrier for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from CLEC's End Users. When Birch purchases Local Switching from AT&T CONNECTICUT on a wholesale basis, Birch can not seek intercarrier compensation from AT&T CONNECTICUT for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from either an AT&T CONNECTICUT End User or a third party carrier's End User.
- 3.9 The Parties hereby agree that the following rates, terms and conditions set forth in Section 3.9 shall apply to the termination of all Section 251(b)(5) Traffic and all ISP-Bound Traffic exchanged between the Parties in each of the applicable state(s) AT&T-13STATE has made an offer as described in Section 3.2 above effective on the later of (i) the Effective Date of this Amendment and (ii) the effective date of the offer in the particular state and that all ISP-Bound Traffic is subject to the rebuttable presumption.
- 3.9.1 Intercarrier Compensation for all ISP-Bound Traffic and Section 251(b)(5) Traffic
- 3.9.1.1 The rates, terms and conditions in Section 3.9 apply to the termination of all Section 251(b)(5) Traffic as defined in Section 2.1 and ISP-Bound Traffic as defined in Section 2.2 and ISP-Bound Traffic is subject to the rebuttable presumption.
- 3.9.1.2 The Parties agree to compensate each other for the transport and termination of all Section 251(b)(5) and ISP-Bound Traffic and traffic on a minute of use basis, at \$.0007 per minute of use.
- 3.9.1.3 Payment of Intercarrier Compensation on ISP-Bound Traffic and Section 251(b)(5) Traffic will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch.
- 3.9.2 ISP-Bound Traffic Rebuttable Presumption
- 3.9.2.1 In accordance with Paragraph 79 of the FCC's ISP Compensation Order, the Parties agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties exceeding a 3:1 terminating to originating ratio is presumed to be ISP-Bound Traffic. Either Party has the right to rebut the 3:1 ISP-Bound Traffic presumption by identifying the actual ISP-



Bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to Section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission approval. During the pendency of any such proceedings to rebut the presumption, the Parties will remain obligated to pay the rates set forth in Section 3.9.1.2 for Section 251(b)(5) Traffic and ISP-Bound Traffic.

- 3.9.3 Each party will invoice the other party on a monthly basis for such traffic at the rate set forth in Section 3.9.1.2 for Section 251(b)(5) Traffic and ISP-Bound Traffic.
- 3.10 FX Traffic is not Section 251(b)(5) Traffic and instead the transport and termination compensation for FX Traffic is subject to a Bill and Keep arrangement in AT&T-2STATE, AT&T MIDWEST REGION 5-STATE, AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI and AT&T TEXAS.
- 3.10.1 To the extent that ISP-Bound Traffic is provisioned via an FX-type arrangement, such traffic is subject to a Bill and Keep arrangement. "Bill and Keep" refers to an arrangement in which neither of two interconnecting parties charges the other for terminating FX traffic that originates on the other party's network.
- 3.10.2 Pursuant to the Oklahoma Commission Arbitration Award in Docket 449960, the originating Party will bill the terminating Party the appropriate originating access charges for all traffic that is terminated to a number that is provisioned as a Virtual FX, Dedicated FX or FX-type service as defined in Section 2.3 above.
- 3.10.3 Pursuant to the Connecticut Commission Arbitration Award in Docket. 01-01-29RE01, the originating Party will bill the terminating Party the appropriate originating access charges for all traffic except ISP-Bound Traffic that is terminated to a number that is provisioned as a Virtual FX, Dedicated FX or FX-type service as defined in Section 2.3 above in AT&T CONNECTICUT. In such circumstances, for ISP-Bound Traffic the appropriate compensation mechanism is bill and keep.
- 3.10.4 Segregating and Tracking FX Traffic
- 3.10.4.1 For AT&T-12STATE, the terminating carrier is responsible for separately identifying IntraLATA Virtual FX, Dedicated FX, and FX-type Traffic from other types of Intercarrier traffic for compensation purposes. The terminating carrier will be responsible for providing the originating carrier with an FX Usage Summary which includes a ten (10) digit telephone number level detail of the minutes of use terminated to FX Telephone Numbers on its network each month (or in each applicable billing period, if not billed monthly), or by any means mutually agreed by the Parties.
- 3.10.4.2 Terminating carrier will not assess compensation charges to the Voice FX MOU and ISP FX MOU in AT&T-2STATE, AT&T MIDWEST REGION 5-STATE, AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI and AT&T TEXAS where such traffic is subject to a Bill and Keep arrangement.
- 3.10.4.2.1 Originating carrier will apply the appropriate originating access charges to both the Voice FX MOU and ISP FX MOU in AT&T OKLAHOMA.
- 3.10.4.3 For AT&T CONNECTICUT, FX traffic must be identified as voice FX and ISP FX. AT&T CONNECTICUT will work with Birch in reviewing its data to determine the volume of IntraLATA FX traffic being exchanged for an agreed-upon period of time. The parties may agree to use traffic studies, retail sales of Dedicated FX lines, or any other agreed method of estimating the FX traffic to be assigned a factor. Once the data review is completed, the Parties will estimate the percentage of minutes of use that is

attributable to FX traffic. For AT&T CONNECTICUT ISP FX percentage will be assigned ("PIFX") and voice FX percentage will be assigned ("PVFX"). The PIFX and PVFX ("FX factor") will be used in lieu of providing the actual minutes of use data. This plan will be applied on an individual CLEC basis.

3.10.4.3.1 The FX factor will be applied to the measured local usage minutes of use ("MOU") and result in the following billing adjustments:

- (i) Terminating carrier will multiply the measured local MOU by the FX factor to calculate the IntraLATA FX traffic.
- (ii) Terminating carrier will subtract both the voice FX MOU and ISP FX MOU from the measured local MOU.
- (iii) Terminating carrier will apply the appropriate compensation rate to the adjusted local MOU for Section 251(b)(5) Traffic, and ISP-Bound Traffic, as set forth in Section 3.3.2 above.
- (iv) Terminating carrier will not assess compensation charges to the ISP FX MOU in AT&T CONNECTICUT where such traffic is subject to a Bill and Keep Arrangement.
- (v) Originating carrier will apply the appropriate originating access charges only to the Voice FX MOU in AT&T CONNECTICUT.

3.10.4.3.2 The FX factor may be adjusted by the Parties on a quarterly basis.

3.10.5 Either Party may request an audit of the FX Usage Summary or the FX Factor on no fewer than thirty (30) business day's written notice and any audit shall be accomplished during normal business hours at the office of the Party being audited. Such audit must be performed by a mutually agreed-to auditor paid for by the Party requesting the audit. Such audits shall be requested within six months of having received the FX Usage Summary or the FX Factor and associated usage from the other Party and may not be requested more than twice per year, once per calendar year, unless the audit finds there has been a 20% or higher net error or variance in calculations, in which case a subsequent audit is required. Based upon the audit, previous compensation, billing and/or settlements will be adjusted for the past six (6) months.

3.10.5.1 If the FX factor is adjusted based upon the audit results, the adjusted FX factor will apply for the six (6) month period following the completion of the audit. If, as a result of the audit, either Party has overstated the FX factor or underreported the FX Usage by twenty percent (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit and will pay for the cost of a subsequent audit which is to happen within nine (9) months of the initial audit.

3.11 Compensation for Optional Calling Area (OCA) Traffic is for the termination of intercompany traffic to and from the Commission approved one-way or two-way optional exchanges(s) and the associated metropolitan area except mandatory extended traffic as addressed in Sections 2.1 and 2.2 above. The transport and termination rate applies when AT&T ARKANSAS, AT&T KANSAS or AT&T TEXAS transports traffic and terminates it at its own switch.

3.11.1 The state specific OCA Transport and Termination rates are outlined in Appendix Pricing.

#### 4. Reservation of Rights

4.1 Neither Party will argue or take the position before any state or federal regulatory body that this agreement constitutes an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the

- FCC's Order In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (rel. April 21, 2004) and the FCC's Notice of Proposed Rulemaking In the Matter of IP-Enabled Services, WC Docket 04-36 (rel. March 10, 2004). The Parties reserve the right to raise the appropriate treatment of Voice Over Internet Protocol (VOIP) traffic during the term of this Amendment. The Parties further agree that this Amendment shall not be construed against either Party as a "meeting of the minds" that VOIP traffic is or is not local traffic subject to reciprocal compensation. By entering into the Amendment, both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Sec. 252 of the Act, commission established rulemaking dockets, or in any legal challenges stemming from such proceedings.
- 4.2 The Parties continue to disagree as to whether ISP calls are subject to reciprocal compensation obligations under their Interconnection Agreements and Section 251(b)(5) of the Act. By entering into this Amendment neither Party waives its right to advocate its view with respect to these issues, however neither Party will attempt in any way to overturn the provisions of this Amendment during its term. Similarly, the Parties agree that nothing in this Amendment shall be construed as an admission that ISP traffic is, or is not, subject to reciprocal compensation obligations under their ICAs and Interconnection Agreements or Section 251(b)(5). Therefore, ILEC payments to Birch under this Amendment or the underlying Interconnection Agreements shall not be construed as agreement by the AT&T ILECs that calls to ISPs constitute local traffic subject to reciprocal compensation obligations, provided, however, notwithstanding anything to the contrary, the Parties agree that for purposes of this Amendment compensation is payable as set forth in this Amendment.
- 4.3 Except as specifically modified by this Amendment with respect to their mutual obligations herein, neither Party relinquishes, and each Party instead fully reserves, any and all legal rights that it had, has and may have to assert any position with respect to any of the matters set forth herein before any state or federal administrative, legislative, judicial or other legal body.
- 4.4 In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: Verizon v. FCC, et. al, 535 U.S. 467 (2002); USTA v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36) including, without limitation, the FCC's MDU Reconsideration Order (FCC 04-191) (rel. Aug. 9, 2004) and the FCC's Order on Reconsideration (FCC 04-248) (rel. Oct. 18, 2004), and the FCC's Biennial Review Proceeding; the FCC's Order on Remand (FCC 04-290), WC Docket No. 04-313 and CC Docket No. 01-338 (rel. Feb. 4, 2005) ("TRO Remand Order"); the FCC's Report and Order and Notice of Proposed Rulemaking (FCC 05-150), CC Docket Nos. 02-33, 01-337, 95-20, 98-10 and WC Docket Nos. 04-242 and 05-271 (rel. Sept. 23, 2005) ("Title I Order"); the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including this and any other amendments to the Agreement), AT&T-13STATE shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an

agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (rel. April 21, 2004). Notwithstanding anything to the contrary in the Agreement and this Amendment and except to the extent that AT&T-13STATE has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an AT&T-13STATE state in which this Agreement is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to AT&T-13STATE's right to exercise its option at any time to adopt on a date specified by AT&T-13STATE the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

## 5. Additional Terms and Conditions

- 5.1 This Amendment contains provisions that have been negotiated as part of an entire amendment and integrated with each other in such a manner that each provision is material to every other provision. The Parties recognize and agree that this Amendment applies to specified periods of time over the course of the full term of this Amendment, and is intended to be date specific. The Parties stipulate that they would not have mutually agreed to this entire Amendment if a third party carrier could later opt into this Amendment under section 252 (i) of the Act and enjoy higher rates than are in effect at that point other than as set forth in this Amendment. By entering into this Amendment, the AT&T ILECs do not agree that they are obligated to permit, nor do they waive their rights to contend that they are not obligated to permit, their tandem switching and common transport facilities to be used without compensation for the carriage of Virtual FX traffic.
- 5.2 The Parties agree that each and every rate, term and condition of this Amendment is legitimately related to, and conditioned on, and in consideration for, every other rate, term and condition in the underlying Interconnection Agreements. The Parties agree that they would not have agreed to this Amendment except for the fact that it was entered into on a 13-State basis and included the totality of rates, terms and conditions listed herein.
- 5.3 This Amendment is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.
- 5.4 The terms contained in this Amendment constitute the entire agreement with regard to the modification and amendment of the Interconnection Agreements through the Termination Date, and shall be interpreted solely in accordance with its own terms.

- 5.5 The headings of the Sections of this Amendment are strictly for convenience and shall not in any way be construed to define, modify or restrict the meaning or interpretation of the terms, provisions or conditions of this Amendment.
- 5.6 This Amendment may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.
- 5.7 This Amendment shall be filed by the Parties with the commissions in each state listed in the introductory paragraph above as may be required as of the Effective Date of this Amendment, and as may be required from time to time thereafter. Neither Party may seek a stay of a commission's approval of this Amendment or in any way seek to delay, postpone or interfere with a particular commission's approval of this Amendment. If any part of this Amendment is rejected or modified by a state commission, this amendment will become null, void and of no further effect as to that specific state.
- 5.8 AT&T Operations, Inc. hereby represents and warrants that it is authorized to act as agent for, and to bind in all respects as set forth herein, the individual AT&T ILECs.
- 5.9 This Further Amendment is subject to the approval of various state commissions. Upon approval by the state commission having jurisdiction in the operating territory of a specific AT&T ILEC, this Further Amendment shall be construed as having been in effect as of June 14, 2006 (the "Effective Date").

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed on the dates shown below by their respective duly authorized representatives and hereby agree that this Amendment shall be effective between the Parties, as set forth herein.

<p>Birch Telecom of Texas, Ltd., L.L.P., Birch Telecom of Kansas, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Ionex Communications, Inc., Ionex Communications of the South, Inc. and any of its future Affiliates or subsidiaries which are Certified Local Exchange Carriers ("Birch") in the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio, or Connecticut</p>	<p>AT&amp;T Operations, Inc. as authorized agent for Southwestern Bell Telephone, L.P. d/b/a AT&amp;T Oklahoma, AT&amp;T Missouri, AT&amp;T Kansas, AT&amp;T Arkansas and AT&amp;T Texas, The Southern New England Telephone Company d/b/a AT&amp;T Connecticut, Nevada Bell Telephone Company, d/b/a AT&amp;T Nevada, Pacific Bell Telephone Company d/b/a AT&amp;T California, Illinois Bell Telephone Company d/b/a AT&amp;T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&amp;T Indiana, Michigan Bell Telephone Company d/b/a AT&amp;T Michigan, The Ohio Bell Telephone Company d/b/a AT&amp;T Ohio and Wisconsin Bell, Inc. d/b/a AT&amp;T Wisconsin.</p>
<p>By: <u>John Iwawiska</u></p>	<p>By: <u>Rebecca L Sparks</u></p>
<p>Title: <u>Vice President</u></p>	<p>Title: Executive Director-Regulatory</p>
<p>Name: <u>John IWAWSKA</u></p>	<p>Name: <u>Rebecca L. Sparks</u></p>
<p>Date: <u>June 22, 2006</u></p>	<p>Date: <u>6/26/06</u></p>