

ATTACHMENT 1

**LAWFUL UNES AMENDMENT TO
INTERCONNECTION AGREEMENT
BETWEEN
SBC ILEC d/b/a SBC STATE
AND
CLEC**

This Lawful UNEs Amendment is to the Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Amendment") by and between SBC ILEC d/b/a SBC State¹ ("SBC State") and CLEC ("CLEC").

WHEREAS, SBC State and CLEC are parties to a certain Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Act"), as may have been amended prior to the date hereof (the "Agreement");

WHEREAS, pursuant to Section 252(a)(1) of the Act and the terms of their Agreement, the Parties wish to amend the Agreement to ensure that the obligations related to unbundled network elements remain consistent with applicable law; and

1. NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

The following Sections "Lawful Provision of Access to Unbundled Network Elements ("Lawful UNEs")" and "Transition Procedure" are hereby added to the Appendix, Agreement, Article or Section of the Agreement related generally to unbundled network elements, and shall apply, notwithstanding any language in the Agreement to the contrary, including, without limitation, any intervening law, change in law or other substantively similar provision. If the Agreement already contains terms and conditions generally related to SBC ILEC's obligation to provide access to unbundled network elements under the Act, then such terms and conditions shall be replaced by the following Sections in their entirety. Further, all references in the Agreement to "UNE(s)" or "unbundled network elements" shall be deemed to have been replaced or supplemented, as applicable, with the defined term "Lawful UNEs" as set forth in Section "Lawful Provision of Access to Unbundled Network Elements," below:

1. Lawful Provision of Access to Unbundled Network Elements ("Lawful UNEs")

- 1.1 This [Appendix/Agreement, Article or Section] of the Agreement sets forth the terms and conditions pursuant to which SBC ILEC will provide CLEC with access to unbundled network elements (UNEs) under Section 251(c)(3) of the Act in SBC ILEC's incumbent local exchange areas for the provision of Telecommunications Services by CLEC; provided, however, that notwithstanding any other provision of the Agreement, SBC ILEC shall be obligated to provide UNEs only to the extent required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. UNEs that SBC ILEC 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 ("Lawful UNEs"), shall be referred to in this Agreement as "Lawful UNEs."

¹ 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 and Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin.

- 1.1.1 By way of example only, if terms and conditions of this Agreement state that **SBC ILEC** is required to provide a Lawful UNE or Lawful UNE combination or other arrangement including a "Lawful UNE Dedicated Transport," and Dedicated Transport is not a Lawful UNE under lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, then **SBC ILEC** shall not be obligated to provide the item as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Agreement.
- 1.2 Nothing contained in the Agreement shall be deemed to constitute consent by **SBC ILEC** that any item identified in this Agreement as a UNE or Lawful UNE is a network element or UNE under Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, that **SBC ILEC** is required to provide to CLEC alone, or in combination with other network elements or UNEs (Lawful or otherwise), or commingled with other network elements, UNEs (Lawful or otherwise) or other services or facilities.
- 1.3 The preceding includes without limitation that **SBC ILEC** shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving **SBC ILEC** network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.
- 1.4 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 Lawful UNE in this Agreement should cease to be a Lawful UNE at any time, then the Transition Procedure defined in Section 2, below, shall govern. For purposes of the Agreement "cease to be a Lawful UNE" means any situation where **SBC ILEC** 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. The Parties agree that, notwithstanding the Effective Date of this Amendment, such situations include, but are not limited to (a) the issuance of the mandate in *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("USTA I"); or (b) by operation of the *Triennial Review Order* released by the FCC on August 21, 2003 in CC Docket Nos. 01-338, 96-98 and 98-147 (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003, including rules promulgated thereby; or (c) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; or (d) the issuance of the mandate in the D.C. Circuit Court of Appeals' decision, *United States Telecom Association v. FCC*, Case No. 00-1012 (D.C. Cir. 2004) ("USTA II"); or (e) the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that **SBC ILEC** 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.
- 1.4.1 By way of example only, an element described as an unbundled network element or Lawful UNE in this Agreement can cease to be a Lawful UNE on a categorical basis, on an element-specific, route-specific or geographically-specific basis or a class of elements basis. Under any scenario, Section 2 "Transition Procedure" shall apply.

2. Transition Procedure

2.1 **SBC ILEC** shall only be obligated to provide Lawful UNEs under this Agreement. To the extent an element described as a Lawful UNE or an unbundled network element in this Agreement should cease to be a Lawful UNE, **SBC ILEC** may discontinue the provision of such element, whether previously provided alone or in combination with or as part of any other arrangement with other Lawful UNEs or other elements or services. Accordingly, in the event one or more elements described as Lawful UNEs or as unbundled network elements in this Agreement should cease to be Lawful UNEs, **SBC ILEC** will provide written notice to CLEC of its discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period

of thirty (30) days from the date of such notice, **SBC ILEC** agrees to continue providing such element(s) under the terms of this Agreement. During such 30-day transitional period, the following options are available to CLEC with regard to such element(s), including the combination or other arrangement in which the element(s) were previously provided:

- (a) CLEC will cease ordering new UNE that are identified as not lawful in the SBC ILEC notice letter referenced in paragraph 2.1 within 30 days of the date of such notice letter. SBC reserves the right to audit the CLEC orders transmitted to SBC and to the extent that the CLEC has processed orders and such orders are provisioned after this 30 day period, SBC ILEC also reserves the right to default the rates for such to market-based rates.
- (b) 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
- (c) **SBC ILEC** 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.
 - i. In the case of UNE-P, the substitute product or service shall be Resale; and
 - ii. In the case of loops and transport, the substitute product or service shall be the analogous access product, if available.

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

2.2 The provisions set forth in this Section 2 "Transition Period" are self-effectuating, and the Parties understand and agree that no amendment shall be required to this Agreement in order for the provisions of this Section 2 "Transition Period" to be implemented or effective as provided above. Further, Section 2 "Transition Period" governs the situation where an unbundled network element or Lawful UNE under this Agreement ceases to be a Lawful UNE even where the Agreement may already include an intervening law, change in law or other substantively similar provision. The rights and obligations set forth in Sections 1 and 2, above, apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.

2. This Amendment may require that certain sections of the Agreement shall be replaced and/or modified by the provisions set forth in Paragraph 1, above (for example, all references in the Agreement to "UNE(s)" or "unbundled network elements" shall be deemed to have been replaced or supplemented, as applicable, with the defined term "Lawful UNEs" as set forth in Section "Lawful Provision of Access to Unbundled Network Elements," above). The Parties agree that such replacement and/or modification shall be accomplished without the necessity of physically removing and replacing or modifying such language throughout the Agreement.
3. Nothing in this Amendment shall be deemed to amend or extend the term of the Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement.
4. Upon written request of either Party, the Parties will amend any and all Agreement pricing schedules to accurately reflect the terms and conditions of this Amendment.
5. Notwithstanding any contrary provision in the Agreement, this Amendment, or any **SBC ILEC** tariff, nothing contained in the Agreement, this Amendment, or any **SBC ILEC** tariff shall limit **SBC ILEC's** right to appeal, seek

reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the State Commission, the FCC, any court or any other governmental authority related to, concerning, or that may affect SBC ILEC's obligations under the Agreement, this Amendment, any SBC ILEC tariff, or Applicable Law.

6. Any performance measures and remedies identified in the Agreement apply solely to UNEs which SBC ILEC is obligated to offer under Section 251(c)(3) of the Act. If an unbundled network element or Lawful UNE under this Agreement ceases to be a Lawful UNE, SBC ILEC will have no obligation to report on or pay remedies for any measures associated with such element, notwithstanding any language to the contrary in the Agreement.
7. 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: the United States Supreme Court's opinion in *Verizon v. FCC*, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al ("USTA") v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in *USTA v. FCC*, Case No. 00-1012 (D.C. Cir. 2004); the FCC's Triennial Review Order, released on August 21, 2003, in the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced, in its Triennial Review Order, is scheduled to commence in 2004; 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 Rod 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 on the topic of Intercarrier Compensation generally, issued in the Matter of Developing a Unified Intercarrier Compensation Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001 (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including this and any other amendments to the Agreement), SBC ILEC 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. Notwithstanding anything to the contrary in the Agreement and this Amendment and except to the extent that SBC ILEC has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an SBC ILEC 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 SBC ILEC's right to exercise its option at any time to adopt on a date specified by SBC ILEC 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.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this ____ day of _____, 2004, by SBC ILEC, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

CLEC

**SBC ILEC d/b/a SBC State by SBC
Telecommunications, Inc., its authorized agent**

By: _____

By: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title: ^{For} President - Industry Markets

Date: _____

Date: _____

FACILITIES-BASED OCN # _____

ACNA _____

YOUR VIEW