



SBC Telecommunications, Inc.
Four SBC Plaza, 9th Floor
311 S. Akard
Dallas, TX 75202-5398

March 11, 2004

Anne Cullather
Qwest Communications Corporation
Senior Director, Industry Affairs
4250 N. Fairfax Drive
Arlington, VA 22203

Subject: SBC¹ Lawful UNE Amendment

Dear Sir or Madam:

As you know, by letter dated October 30, 2003,² SBC invoked the change in law provision(s) of your SBC interconnection agreement(s) and provided your company notice of intent to negotiate modifications to the interconnection agreement(s) to conform it (them) to findings of the FCC's Triennial Review Order, released August 21, 2003 and effective October 2, 2003 ("TRO"), and the D.C. Circuit Court of Appeals' decision in *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*"). Following that notification, we have engaged in correspondence and/or discussion with your company regarding a negotiations schedule, and may have exchanged contract language proposals toward that end.

In order to ensure that your interconnection agreement(s) reflect only lawful obligations with regard to the provision of access to unbundled network elements, SBC encloses an amendment ("Lawful UNE Amendment") that would add language to your interconnection agreement(s) and modify it so that it reflects applicable law. This language supplements and serves to modify language that may have been previously provided to you pursuant to our October 30, 2003 notice. It is our hope that it may streamline further negotiations and facilitate a quick conclusion. It remains SBC's position that SBC has no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and another telecommunications carrier's own elements or UNEs in commingled arrangements beyond those 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. This language and any associated positions will be part of any dispute resolution proceeding that may arise out of our recent negotiations, prompted by our October 30, 2003 notice.

¹ Denotes one or more SBC ILECs (including 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), as applicable, who have previously corresponded with CLEC regarding change in law negotiations arising from the FCC's Triennial Review Order.

² On November 11, 2003, SBC sent CLEC a letter noting typographical errors in the October 30, 2003 letter, and providing corrections of those errors for CLEC's convenience.

Further, we have received many questions regarding the issuance of a recent D.C. Circuit opinion reversing, vacating and remanding various TRO rules and findings. As you are likely aware, on March 2, 2004, following remand and appeal of the D.C. Circuit's decision in *USTA I*, the D.C. Circuit issued another decision, *USTA v. FCC*, Case No. 00-1012 (D.C. Cir. 2004) ("*USTA II*"), ruling that the FCC's TRO is unlawful in many respects. Significantly, among other things, the Court vacated the FCC's nationwide impairment determination with respect to mass market switching, DS1 and DS3 dedicated transport, hi-cap loops and dark fiber loop and transport. Absent a rehearing or a grant of certiorari by the U.S. Supreme Court resulting in a different decision, the effect of the court's decision is the ultimate elimination of certain legal unbundling requirements.

Although the mandate for *USTA II* has not yet issued, *USTA II* will constitute an Intervening Law/Change in Law event. Any position taken heretofore by SBC in its TRO change in law negotiations or dispute resolution proceedings, including any contract language proposed by SBC is subject, therefore, to modification based upon *USTA II*. SBC does not waive, and reserves all rights, to make such modifications to its positions and language proposals, and to invoke Intervening Law/Change in Law or similar provisions in the interconnection agreement(s), or any amendment thereto, with regard to *USTA II*, or with respect to any future lawful and effective FCC rules and associated FCC and judicial orders. SBC expects to be providing such modified contract language to CLEC in the near future. In the interim, CLEC should not represent any SBC position or language proposal presented prior to the release of *USTA II* as a complete or accurate representation of SBC's position or language proposal.

Enclosed you will find a copy of the non signature-ready Lawful UNE Amendment, and an amendment request form which can be faxed to the number at the top of the form. Upon SBC's receipt of your completed request form, a signature-ready amendment will be prepared and sent to you via email within 24 hours.

If you do not execute a satisfactory conforming contract amendment by March 19, 2004, we will pursue dispute resolution on remaining unresolved issues.

If you have any questions, please contact Keisha Rivers at 214/464-0401.

Sincerely,

Contract Notices Manager
SBC Telecommunications, Inc.