

INTERCONNECTION AGREEMENT-MISSOURI

between

Southwestern Bell Telephone, L.P. d/b/a
SBC MISSOURI

and

XO COMMUNICATIONS SERVICES, INC.

TABLE OF CONTENTS

1.	Introduction	2
2.	General Responsibilities of the Parties	3
3.	Assurance of Payment.....	4
4.	Effective Date and Term of Agreement.....	6
5.	Assignment	8
6.	Confidentiality and Proprietary Information	9
7.	Liability and Indemnification	11
8.	Compliance and Certification	
9.	Payment of Rates and Charges	15
10.	Limitation on Back-billing and Credit Claims	
11.	Daily Usage File..	
12.	Alternately Billed Traffic	
13.	Dispute Resolution.....	16
14.	Non-Payment and Procedures for Disconnection	
15.	Notices	20
16.	Taxes	20
17.	Force Majeure.....	22
18.	Publicity	22
19.	Network Maintenance and Management	23
20.	Law Enforcement and Civil Process	23
21.	Changes in Subscriber Carrier Selection	
22.	Amendments and Modifications	25
23.	Intervening Law...	
24.	Authority.....	27
25.	Binding Effect.....	27
26.	Consent	27
27.	Expenses	27
28.	Headings.....	27
29.	Relationship of Parties	27
30.	Conflict of Interest.....	27
31.	Multiple Counterparts.....	28
32.	Third Party Beneficiaries.....	28
33.	Regulatory Approval	28
34.	Trademarks and Trade Names	28
35.	Regulatory Authority	28
36.	Commission Interpretation of Same or substantially Similar Language	29
37.	Tariff References	
38.	Verification Reviews.....	29
39.	Complete Terms	31
40.	Cooperation on Preventing End User Fraud	31
41.	Notice of Network Changes	31
42.	Good Faith Performance.....	31
43.	Responsibility of Each Party	32
44.	Governmental Compliance	32
45.	Responsibility for Environmental Contamination.....	33
46.	Subcontracting	34

47.	Referenced Documents	35
48.	Severability	35
49.	Survival of Obligations	35
50.	Governing Law	36
51.	Performance	37
52.	Other Obligations	37
53.	Dialing Parity; Number Portability	37
54.	Branding	37
55.	End User-Customer Inquiries.....	37
56.	Disclaimer of Warranties.....	38
57.	No Waiver	38
60.	Definitions	38
61.	Resale.....	38
62.	Unbundled Network Elements.....	38
63.	Ordering and Provisioning, Maintenance, Connectivity Billing and Reordering, and Provision of End User Usage Data	39
64.	Network Interconnection Architecture	39
65.	Compensation for Delivery of Traffic.....	39
66.	Ancillary Functions.....	39
67.	Intentionally Left Blank.....	
68.	Intentionally Left Blank.....	
69.	Intentionally Left Blank.....	
70.	Scope of Agreement	39
71.	Other Requirements and Attachments.....	40
72.	Intentionally Left Blank.....	

ATTACHMENTS

Resale

Attachment 1: Resale

- Appendix Services/Pricing
- Appendix Customized Routing-Resale
- Appendix DA-Resale
- Appendix OS-Resale
- Appendix White Pages (WP)-Resale

Attachment 2: Ordering and Provisioning-Resale

Attachment 3: Maintenance-Resale

Attachment 4: Connectivity Billing-Resale

Attachment 5: Provision of Customer Usage Data-Resale

Unbundled Network Elements

Attachment 6: Unbundled Network Elements (UNE)

Appendix Pricing- UNE

Appendix Pricing- UNE Schedule of Prices

Attachment 7: Ordering and Provisioning- UNE

Attachment 8: Maintenance- UNE

Attachment 9: Billing-Other

Attachment 10: Provision of Customer Usage Data- UNE

Network Interconnection Architecture and Compensation

Attachment 11: Network Interconnection Architecture

Appendix Interconnection Trunking Requirement (ITR)
Appendix Network Interconnection Methods (NIM)
Appendix SS7 Interconnection
Attachment 12: Intercarrier Compensation

Ancillary Functions
Attachment 13: Ancillary Functions
Appendix Collocation
Appendix Poles, Conduit, ROW

Other Requirements
Attachment 14: Location Routing Number – Permanent Number Portability
Appendix Location Routing Number - PNP
Attachment 15: E911
Attachment 16: Network Security and Law Enforcement
Attachment 17: Performance
Attachment 18: Mutual Exchange of Directory Listing Information
Attachment 19: White Pages-Other (WP-O)
Attachment 20: Clearinghouse
Attachment 21: Numbering
Attachment 22: DA-Facilities Based
Attachment 23: OS-Facilities Based
Attachment 24: Recording-Facilities Based
Attachment 25: DSL
Attachment 26: Legitimately Related Provisions

INTERCONNECTION AGREEMENT - MISSOURI

This Interconnection Agreement - Missouri (Agreement) is between XO Communications Services, Inc. ("CLEC"), a Washington corporation, having its principal office at 11111 Sunset Hills Road, Reston, Virginia 20190 and Southwestern Bell Telephone, L.P. d/b/a SBC MISSOURI, a Texas Limited Partnership, having its principal office at One SBC Plaza, 208 S. Akard, Dallas, Texas 75202, (collectively the Parties).

*WHEREAS, pursuant to the Telecommunications Act of 1996 (the Act), the Parties wish to establish terms for the resale of SBC MISSOURI services and for the provision by SBC MISSOURI of Interconnection, unbundled Network Elements, and Ancillary Functions as designated in the Attachments hereto.

*WHEREAS, the Missouri Public Service Commission ("MO- PSC", "Commission", or "Missouri Commission") recommended approval of SBC MISSOURI's application for 271 relief, based in large part on the existence of the Missouri 271 Agreement ("M2A");

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will Interconnect their networks and facilities and provide to each other services as required by the Telecommunications Act of 1996 as specifically set forth herein; and

*WHEREAS, the Parties want to Interconnect their networks pursuant to Attachment 11 and associated appendices to provide, directly or indirectly, Telephone Exchange Services and Exchange Access to residential and business end users over their respective Telephone Exchange Service facilities which are subject to this Agreement; and

*WHEREAS, SBC MISSOURI agreed to file in Missouri an Missouri 271 Interconnection Agreement ("Missouri Agreement" or "M2A") modeled on the Texas 271 Interconnection Agreement ("Texas Agreement" or "T2A"), in order to bring more of the benefits of competition to the State of Missouri, and to bring the commitments made by SBC Texas in Texas to the State of Missouri, with Missouri-specific modifications, subject to the Commission's support for SBC MISSOURI's application for in-region interLATA relief for the State of Missouri; and

WHEREAS, in Texas SBC Texas made the following representations as part of the public interest phase of the Texas collaborative process and SBC MISSOURI made these same representations in Missouri, which the Commission finds still to be necessary for SBC MISSOURI's 271 Relief to remain in the public interest:

- (1) SBC MISSOURI represented that it has already made several, and represented that it would continue, process improvements designed to foster better relationships with and provide better service to its CLEC customers (such improvements include, but are not limited to: the restructuring of its organizations and the creation of new departments to provide faster and better responses to CLECs; the improvement of communications with CLECs through a greatly expanded Internet website, internal broadcast e-mails and user group meetings; the distribution of customer satisfaction surveys; and the creation of an Internal Escalation Process Intervals Policy);
- (2) SBC MISSOURI represented that it would follow certain Commission arbitration awards and other decisions, as set forth elsewhere in this Agreement (SBC MISSOURI, however, made such commitment without waiving its right to appeal awards or decisions specifically set forth in this Section 1.2, 23.1, and 23.2 of General Terms and Conditions);

* Arbitration Result - Conformed to MO Arbitration Award T0-2005-0336.

- (3) SBC MISSOURI represented that it would continue to work with its CLEC customers, and invite their feedback, to provide them a meaningful opportunity to compete in Missouri;
- (4) SBC MISSOURI represented that it will comply with the FCC's rules and subsequent Section 271 decisions relating to the structural and nonstructural requirements for a Section 272 affiliate; and

*WHEREAS, SBC MISSOURI offered as part of the Texas collaborative process to make certain modifications to the Interconnection Agreement-Texas between Southwestern Bell Telephone Company and AT&T Communications of the Southwest, Inc. ("the AT&T Interconnection Agreement") available to other CLECs, and offered to bring those same modifications, subject to certain additional Missouri-specific modifications, to the State of Missouri, subject to the Missouri Public Service Commission's approval of SBC MISSOURI's application for in-region InterLATA relief for the State of Missouri.

WHEREAS, CLEC wishes to enter an agreement containing those terms and conditions.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement CLEC and SBC MISSOURI hereby agree as follows:

1.0 INTRODUCTION

- 1.1 This Agreement sets forth the terms, conditions and prices under which SBC MISSOURI agrees to provide (a) services for resale (hereinafter referred to as Resale services), (b) unbundled Network Elements, or combinations of such unbundled CLEC's network to SBC MISSOURI's network and Intercarrier Compensation for intercarrier telecommunications traffic exchanged between CLEC and SBC MISSOURI.
- *1.2 The unbundled Network Elements, Combinations or Resale services provided pursuant to this Agreement may be connected to other Network Elements, Combinations or Resale services provided by SBC MISSOURI or to any network components provided by CLEC itself or by any other vendor. Subject to the requirements of this Agreement, CLEC may at any time add, delete, relocate or modify the Resale services, Network Elements or Combinations purchased hereunder. Subject to the provisions of Attachment 6: Unbundled Network Elements (UNE) and upon CLEC request, SBC MISSOURI shall meet its UNE combining obligations as and to the extent required by FCC rules and orders, and Verizon Comm. Inc. v. FCC, 535 U.S. 467 (May 13, 2002) ("Verizon Comm. Inc.") and, to the extent not inconsistent therewith, the rules and orders of the relevant state Commission and any other Applicable Law.
- *1.3 Except as provided in this Agreement, during the term of this Agreement, SBC MISSOURI will not discontinue, as to CLEC, any unbundled Network Element, Combination, or Ancillary Functions offered to CLEC hereunder. During the term of this Agreement, SBC MISSOURI will not discontinue any Resale services or features offered to CLEC hereunder except as provided in this Agreement. This Section is not intended to impair SBC MISSOURI's ability to make changes in its Network, so long as such changes are consistent with the Act and do not result in the discontinuance or operational disruptions or modification of the offerings of unbundled Network Elements, Combinations, or Ancillary Functions made by SBC MISSOURI to CLEC as set forth in and during the terms of this Agreement. In the event that SBC MISSOURI denies a request to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements possessed by CLEC, SBC MISSOURI shall provide written notice to CLEC of such denial and the basis thereof in accordance with the procedures set forth in Attachment 6. Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. In any dispute resolution proceeding, SBC MISSOURI 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 2.12 of Attachment 6: Unbundled Network Elements.

- 1.4 SBC MISSOURI may fulfill the requirements imposed upon it by this Agreement by itself or may cause its Affiliates to take such actions to fulfill the responsibilities.
- 1.5 This Agreement includes and incorporates herein the Attachments listed immediately following the Table of Contents of this Agreement, and all accompanying Appendices, Addenda and Exhibits.
- *1.6 Unless otherwise provided in the Agreement, SBC MISSOURI will perform all of its obligations under this agreement throughout the entire operating area(s) in which SBC MISSOURI is then deemed to be the ILEC; provided, that SBC MISSOURI's obligations to provide Ancillary Functions or to meet other requirements of the Act covered by this Agreement are not necessarily limited to such service areas.
- *1.7 Intentionally left blank.
- *1.8 Intentionally left blank
- 1.9 **Successor Rates**
Certain of the rates, prices and charges set forth in the pricing appendix have been established by the Missouri Public Service Commission in cost proceedings or dockets initiated under or pursuant to the Act. If during the Term the Commission or the FCC changes a rate, price or charge in an order or docket that applies to any of the Interconnection, Resale Services, unbundled Network Elements, functions, facilities, products and services available hereunder, the Parties agree to amend this Agreement to incorporate such new rates, prices and charges, with such rates, prices and charges to be effective as of the date specified in such order or docket (including giving effect to any retroactive application, if so ordered). If either Party refuses to execute an amendment to this Agreement within ninety (90) calendar days after the date of such order or docket, the other Party may pursue its rights under Section 13.
- 1.10 SBC MISSOURI shall make no change in any policy, process, method or procedure used or required to perform its obligations under this Agreement, that, in whole or in part, could have the effect, is likely to have the effect, or has the effect of diminishing the value of any right of CLEC granted herein or term or condition included herein, or that could cause an inefficiency or expense for CLEC hereunder that did not exist at the Effective Date of this Agreement, without the prior review and written approval of CLEC, which consent may be withheld by CLEC in its sole discretion. In addition, SBC MISSOURI shall not be permitted to circumvent this obligation by the issuance of an Accessible Letter.
- 2.0 **GENERAL RESPONSIBILITIES OF THE PARTIES**
- 2.1 Each Party is solely responsible for all products and services it provides to its end users and to other Telecommunications Carriers.
- 2.2 Facilities-based carriers and UNE-based Switch Port providers are responsible for administering their end user records in a LIDB.
- 2.3 At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law:
- 2.4 For CLECs that are reselling SBC MISSOURI Resale Services and/or purchasing UNE-P under this Agreement, the minimum insurance coverage and limits are as follows:

- 2.5 Commercial General Liability insurance with minimum limits of: \$2,000,000 General Aggregate limit; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations.
- 2.6 For CLECs that are Interconnecting or purchasing any unbundled Network Elements (other than UNE-P), products or services under this Agreement, the minimum insurance coverage and limits are as follows:
 - 2.6.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$100,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$100,000 for Bodily Injury by disease-each employee.
 - 2.6.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property Damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$2,000,000 are also required if this Agreement involves collocation. The other Party must be named as an Additional Insured on the Commercial General Liability policy.
 - 2.6.3 If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property Damage, which coverage shall extend to all owned, hired and non-owned vehicles.
 - 2.6.4 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 2.4 through 2.6.7.3 of this Agreement.
 - 2.6.5 The Parties agree that companies affording the insurance coverage required under Section 2.0 shall have a rating of B+ or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.
 - 2.6.6 Each Party agrees to provide the other Party 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.
 - 2.6.7 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
 - 2.6.7.1 The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by the State of Missouri covered by this Agreement or the employee's state of hire; and
 - 2.6.7.2 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
 - 2.6.7.3 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party 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.

- 2.6.8 This Section 2.6 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.
- 2.7 Simultaneously with CLEC's execution of this Agreement, CLEC shall insert it's state-specific authorized and nationally recognized OCN/AECNs for facilities-based (Interconnection and/or unbundled Network Elements) and a separate and distinct OCN/AECN for Resale Services on the signature page of this Agreement and provide SBC MISSOURI with a copy.
- 2.8 When an end user changes its service provider from SBC MISSOURI to CLEC or from CLEC to SBC MISSOURI and does not retain its former telephone number, SBC will make available to the CLEC the ability to order and provision a Referral Announcement on the original telephone number to announce the new telephone number. The Party formerly providing service shall be responsible for furnishing the Referral Announcement Service pursuant to regulatory requirements provided such Announcement is requested for the original telephone number.
- *2.9 Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees threatens to materially delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (for example, by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.
- 2.10 This Agreement contains comprehensive OSS terms and conditions. CLEC represents, warrants and covenants that it will only use OSS furnished pursuant to this Agreement for activities related to UNEs, resold services or other services covered by this Agreement, and for which this Agreement contains explicit rates, terms, and conditions.
- 2.11 The Parties acknowledge and agree that the CLEC will not order products and services not included within this agreement. The Parties acknowledge and agree that SBC will bill the CLEC for products and services included within this Agreement in accordance with the prices included within this Agreement for the products and services. Accordingly, if this Agreement is executed and/or approved by the Commission and the Parties later discover that a product or service is included in this Agreement without an associated rate or charge, the Parties will agree upon a rate or charge to include in this Agreement for billing of said products and services. If the Parties cannot agree, either Party may pursue dispute resolution under the applicable provisions of this Agreement.
- 2.12 Intentionally Left Blank
- 2.13 SBC MISSOURI will make available any individual interconnection, service and/or network element arrangement provided under an agreement approved by a regulatory commission under Section 252 of the Act to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in accordance with Section 252(i) of the Act, as that Section has been interpreted in Applicable Law.
- 3.0 ASSURANCE OF PAYMENT
- *3.1 If CLEC can demonstrate a good payment history of one year or more with SBC MISSOURI or another ILEC, an Assurance of Payment will not be required.

- *3.2 Assurance of payment may be requested by SBC MISSOURI if:
 - *3.2.1 at the Effective Date CLEC had not already established satisfactory credit by having made a least twelve (12) consecutive months of timely payments to SBC MISSOURI for charges incurred as a CLEC.
 - *3.2.2 CLEC fails to timely pay a bill rendered to CLEC by SBC MISSOURI (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 13.4).
- *3.3 Unless otherwise agreed by the Parties, the assurance of payment will, at SBC MISSOURI's option, consist of:
 - *3.3.1 a cash security deposit in U.S. dollars held by SBC MISSOURI ("Cash Deposit") or
 - *3.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to SBC MISSOURI naming SBC MISSOURI as the beneficiary thereof and otherwise in form and substance satisfactory to SBC MISSOURI ("Letter of Credit").
- *3.4 The Cash Deposit or Letter of Credit must be in an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by SBC MISSOURI, for the Interconnection, Resale Services, unbundled Network Elements, Collocation or any other functions, facilities, products or services to be furnished by SBC MISSOURI under this Agreement.
- *3.5 To the extent that SBC MISSOURI elects to require a Cash Deposit, the Parties intend that the provision of such Cash Deposit shall constitute the grant of a security interest in the Cash Deposit pursuant to Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.
- *3.6 A Cash Deposit will accrue simple interest, however, SBC MISSOURI will not pay interest on a Letter of Credit.
- **3.7 SBC MISSOURI may, but is not obligated to, draw on the Letter of Credit or the Cash Deposit, as applicable, upon the occurrence of any one of the following events:
 - 3.7.1 CLEC owes SBC MISSOURI undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or
 - *3.7.2 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding; or
 - *3.7.3 The expiration or termination of this Agreement.
- *3.8 If SBC MISSOURI draws on the Letter of Credit or Cash Deposit, upon request by SBC MISSOURI, CLEC will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 3.3.
- *3.9 Notwithstanding anything else set forth in this Agreement, if SBC MISSOURI makes a request for assurance of payment in accordance with the terms of this Section, then SBC MISSOURI shall have no obligation thereafter to perform under this Agreement until such time as CLEC has furnished SBC

MISSOURI with the assurance of payment requested; provided, however, that SBC MISSOURI will permit CLEC a minimum of ten (10) Business Days to respond to a request for assurance of payment before invoking this Section.

- *3.9.1 If CLEC fails to furnish the requested adequate assurance of payment on or before the date set forth in the request, SBC MISSOURI may also invoke the provisions set forth in Section 14.
- *3.10 The fact that a Cash Deposit or Letter of Credit is requested by SBC MISSOURI shall in no way relieve CLEC from timely compliance with all payment obligations under this Agreement (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), nor does it constitute a waiver or modification of the terms of this Agreement pertaining to disconnection or re-entry for non-payment of any amounts required to be paid hereunder.

4.0 EFFECTIVE DATE AND TERM OF AGREEMENT

- 4.1 The Effective Date of this Agreement (the "Effective Date") shall be as follows: (i) unless this Agreement is a successor agreement to an effective interconnection agreement between the Parties under Sections 251/252 of the Act, then the Effective Date of this Agreement shall be ten (10) calendar days after the Commission approves this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act; or (ii) if this Agreement is a successor agreement to an effective interconnection agreement between the Parties under Sections 251/252, then the Effective Date shall be the date upon which the Commission approves the Agreement under the Act, or absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act.
- 4.2 The Agreement shall have a term ("Term") of three (3) years and 90 days commencing on the Effective Date. Absent the receipt by one Party of written notice from the other Party not earlier than 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term ("Notice of Expiration"), this Agreement shall remain in full force and effect, on a month to month basis, on and after the expiration of the Term until terminated by either Party.
 - 4.2.1 If either Party serves Notice of Expiration pursuant to Section 4.2, CLEC shall have twenty (20) calendar days to provide SBC MISSOURI written confirmation if CLEC wishes to pursue a successor agreement with SBC MISSOURI or alternatively, if CLEC wishes to allow the current Agreement to expire. If CLEC wishes to pursue a successor agreement with SBC MISSOURI, CLEC shall attach to its written confirmation or Notice of Expiration, as applicable, a written request to commence negotiations with SBC MISSOURI under Sections 251/252 of the Act. Upon receipt of CLEC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.
 - 4.2.1.1 If CLEC does not affirmatively state that it wishes to pursue a successor agreement with SBC MISSOURI in its, as applicable, Notice of Expiration or the written confirmation required after receipt of SBC MISSOURI's Notice of Expiration, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provided or received Notice of Expiration. Unless otherwise agreed by the Parties, if the Term of this Agreement has expired, on the ninety-first (91st) day following CLEC provided or received Notice of Expiration, the Parties shall have no further obligations under this Agreement except those described in Section 49 of this Agreement, including but not limited to the obligations described in Section 4.11 below.
- *4.3 CLEC may terminate this Agreement in whole or in part at any time for any reason upon sixty (60) days prior notice but its liabilities and obligations shall continue in accordance with Section 49 below.

- 4.4 If either Party desires to negotiate a successor agreement to this Agreement, such Party must provide the other Party with a written request to negotiate such successor agreement (Request to Negotiate / Notice of Expiration or "Request / Notice") not earlier than 365 calendar days prior to the expiration and not later than 180 calendar days prior to the expiration of this Agreement.
- 4.5 If a Request/Notice is not received pursuant to Section 4.2 then this Agreement shall remain in full force and effect on and after the expiration of the Term on a month-to-month basis until terminated pursuant to this Section or Section 4.9 or 4.10. During any month-to-month extension of this Agreement, the rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act; or (ii) the date that is ten (10) months after the date on which SBC MISSOURI received CLEC's Section 252(a)(1) Request to Negotiate.
- *4.6 If CLEC submits a Request under Sections 251/252(i) of the Act for a successor agreement or SBC MISSOURI submits a Notice, the Request/Notice does not activate the negotiation timeframe set forth in this Agreement. If CLEC's Request is pursuant to Section 252(a)(1), CLEC will delineate the items desired to be negotiated. Not later than 45 days from receipt of said Request/Notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. The Parties will begin negotiations not later than 135 days prior to expiration of this Agreement. If CLEC's Request is made pursuant to Section 252(i), the Agreement selected for adoption will be prepared for execution by the Parties.
- 4.7 If at any time during the Section 252(a)(1) negotiation process (whether prior to or after the expiration date or termination date of this Agreement), CLEC withdraws its Section 252(a)(1) request, CLEC must include in its notice of withdrawal either a request to adopt a successor agreement under Section 252(i) of the Act or an affirmative statement that CLEC does not wish to pursue a successor agreement with SBC MISSOURI for the state of Missouri. The rates, terms and conditions of this Agreement shall continue in full force and effect until the later of: 1) the expiration of the term of this Agreement, or 2) the effective date of the successor agreement being adopted under Section 252(i) as set forth above.
- 4.8 If the CLEC fails to timely respond to SBC MISSOURI's Section 4.2 Notice, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of: 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provided its Request or received SBC MISSOURI's Notice. If the Term of this Agreement has expired, on the ninety-first (91st) day following CLEC's Request or receipt of SBC MISSOURI's Notice, the Parties shall have no further obligations under this Agreement except those set forth in Section 4.10 of this Agreement.
- *4.9 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, unbundled Network Elements, functions, facilities, products or services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement, and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof. Any termination of this Agreement pursuant to this Section 4.9 shall take effect immediately upon delivery of written notice to the other Party that it failed to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof.
- *4.10 If pursuant to Section 4.2 this Agreement continues in full force and effect on a month-to-month basis after the expiration of the Term, either Party may terminate this Agreement by delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 4.4, and 4.5. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 4.10 other than its obligations under Sections 4.4 and 4.5.

*4.11 Upon termination or expiration of this Agreement:

*4.11.1 Each Party shall continue to comply with its obligations set forth in Section 49 Survival of Obligations; and

*4.11.2 Each Party shall promptly pay all amounts owed under this Agreement.

*4.12 As long as a non-paying Party has disputed unpaid amounts in good faith and pursuant to the terms of this Agreement, non-payment is not to be deemed, nor should it be construed as, a material breach of this Agreement.

*4.13 In the event of expiration or termination of this Agreement other than pursuant to Section 4.9 herein, SBC MISSOURI and CLEC shall cooperate in good faith to effect an orderly and timely transition of service provided under this Agreement to CLEC or to another vendor but in any event not later than the 91st day after the expiration or termination of this Agreement. So long as CLEC fulfills said obligation to effect an orderly and timely transition of service, and continues to pay SBC MISSOURI for the charges incurred during the transition of service, SBC MISSOURI shall not terminate service to CLEC's end users and such service shall be provided pursuant to the terms of the interconnection agreement during this transition period. In the event CLEC withdraws from providing local service, it shall not prevent (from an operational or administrative standpoint) its end users from being transitioned to a new LEC. SBC MISSOURI and CLEC shall continue their responsibilities under the terms and conditions of the terminated or expired Agreement for any order submitted to SBC MISSOURI in connection with this transition of service.

*4.14 Should CLEC opt to incorporate any provision for interconnection, service, or unbundled Network Element from another Commission-approved interconnection agreement into this Agreement pursuant to Section 252(i) of the Act and 47 C.F.R. § 51.809, such incorporated provision shall expire on the date it would have expired under the interconnection agreement from which it was taken. Should CLEC opt to incorporate any provision for interconnection, service or unbundled Network Element from this Agreement into another Commission-approved interconnection agreement pursuant to Section 252(i) of the Act, the provision from this Agreement shall expire on the date specified in Section 4.1 above and shall not control the expiration date of any other provisions of the other interconnection agreement. All monetary obligations of the Parties to one another under the immediately previous interconnection agreement between the Parties shall remain in full force and effect and shall constitute monetary obligations of the Parties under this Agreement.

5.0 ASSIGNMENT

5.1 Assignment of Contract

5.1.1 CLEC may not assign or transfer this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, to a non-affiliated third party without the prior written consent of SBC MISSOURI. Any attempted assignment or transfer that is not permitted is void *ab initio*.

5.1.2 CLEC may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to its Affiliate by providing sixty (60) calendar days' advance written notice of such assignment or transfer to SBC MISSOURI; provided that such assignment or transfer is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, CLEC may not assign or transfer this Agreement, or any rights or obligations hereunder, to its Affiliate if that Affiliate is a party to a separate agreement with SBC MISSOURI under Sections 251 and 252 of the Act. Any attempted assignment or transfer that is not permitted is void *ab initio*.

5.2 Corporate Name Change and/or change in "d/b/a" only

*5.2.1 Any assignment or transfer of an Agreement wherein only the CLEC name is changing, and which does not include a change to a CLEC OCN/ACNA, constitutes a CLEC Name Change. For a CLEC Name Change, CLEC will incur a record order charge for each CLEC CABS BAN. For resale or any other products not billed in CABS, to the extent a record order is available, a record order charge will apply per end user record. Rates for record orders are contained in the Appendix Pricing, Schedule of Prices. CLEC shall also submit a new Operator Service Questionnaire (OSQ) to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement.

*5.2.2 Company Code Change

*5.2.2.1 Any assignment or transfer of an interconnection agreement associated with the transfer or acquisition of "assets" provisioned under that interconnection agreement, where the OCN/ACNA formerly assigned to such "assets" is changing constitutes a CLEC Company Code Change. For the purposes of this "assets" means any Interconnection, Resale Service, unbundled Network Element, function, facility, product or service provided under that interconnection agreement. CLEC shall provide SBC MISSOURI with ninety (90) calendar days advance written notice of any assignment associated with a CLEC Company Code Change and obtain SBC MISSOURI's consent. SBC MISSOURI shall not unreasonably withhold consent to a CLEC Company Code Change; provided, however, SBC MISSOURI's consent to any CLEC Company Code Change is contingent upon cure of any outstanding charges owed under this Agreement and any outstanding charges associated with the "assets" subject to the CLEC Company Code Change. In addition, CLEC acknowledges that CLEC may be required to tender additional assurance of payment if requested under the terms of this Agreement.

*5.2.2.2 For any CLEC Company Code Change, CLEC must submit a service order changing the OCN/ACNA for each end user record and/or a service order for each circuit ID number, as applicable. CLEC shall pay the appropriate charges for each service order submitted to accomplish a CLEC Company Code Change; such charges are contained in the Appendix Pricing, Schedule of Prices. In addition, CLEC shall submit a new OSQ to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement. In addition, CLEC shall pay any and all charges required for re-stenciling, re-engineering, changing locks, new signage and any other work necessary with respect to Collocation, as determined on an individual case basis.

*5.2.3 Assignment of any Interconnection, Resale Service, unbundled Network Element, function, facility, product or service.

5.2.3.1 Any assignment or transfer of any Interconnection, Resale Service, unbundled Network Element, function, facility, product or service provisioned pursuant to this Agreement without the transfer or the assignment of this Agreement shall be deemed a CLEC to CLEC Mass Migration. The CLEC that is a Party to this Agreement shall provide SBC MISSOURI with ninety (90) calendar days advance written notice of any CLEC to CLEC Mass Migration. CLEC's written notice shall include the anticipated effective date of the assignment or transfer. The acquiring CLEC must cure any outstanding charges associated with any Interconnection, Resale Service, unbundled Network Element, function, facility, product or service to be transferred. In addition, the acquiring CLEC may be required to tender additional assurance of payment if requested under the terms of the acquiring CLEC's agreement.

*5.2.3.2 Both CLECs involved in any CLEC to CLEC Mass Migration shall comply with all Applicable Law relating thereto, including but not limited to all FCC and state Commission rules relating to notice(s) to end users.

The acquiring CLEC shall be responsible for issuing all service orders required to migrate any Interconnection, Resale Service, unbundled Network Element, function, facility, product or service provided hereunder. The appropriate service order charge or administration fee (for interconnection) will apply as specified in the Appendix Pricing, Schedule of Prices to the acquiring CLEC's interconnection agreement. The acquiring CLEC shall also submit a new OSQ to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to the acquiring CLEC's agreement. In addition, the acquiring CLEC shall pay any and all charges required for re-stenciling, re-engineering, changing locks, new signage and any other work necessary with respect to Collocation, as determined on an individual case basis.

***5.2.4 Project Coordination**

***5.2.4.1** SBC MISSOURI will provide project management support to effectuate changes of the types identified in Section 5.2.4.2.

***5.2.4.2** SBC MISSOURI will provide project management support to minimize any possible service outages during any CLEC to CLEC Mass Migration. Should SBC MISSOURI's most current version of LSOR or ASOR guidelines not support the required order activity, SBC MISSOURI will issue service orders at the manual rate, as specified in the Appendix Pricing, Schedule of Prices to this Agreement, based upon type of service provided, and on the condition that CLEC provides to SBC MISSOURI any and all information SBC MISSOURI reasonably requests to effectuate such changes.

6.0 CONFIDENTIALITY AND PROPRIETARY INFORMATION

6.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business information given by the Discloser to the Recipient. All such information which is disclosed by one party to the other in connection with this Agreement, during negotiations and the term of this Agreement, will automatically be deemed proprietary to the Discloser and subject to this Agreement, unless otherwise confirmed in writing by the Discloser. In addition, by way of example and not limitation, all orders for Resale Services, Network Elements or Combinations placed by CLEC pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of CLEC's customers pursuant to the Act and the rules and regulations of the Federal Communications Commission (FCC), and call records and Recorded Usage Data as described in Attachment 24, whether disclosed by CLEC to SBC MISSOURI or otherwise acquired by SBC MISSOURI in the course of the performance of this Agreement, will be deemed Confidential Information of CLEC for all purposes under this Agreement. Unless otherwise agreed, if a Party is required to submit information about one or more CLECs to a regulatory or judicial body, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Confidential Information that is so commingled with the Receiving Party or a third party's information such that disclosure could not possibly reveal the underlying proprietary or confidential information.

6.2 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such disclosure must be agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosure and nonuse comparable in scope to the terms of this Section.

- 6.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.
- 6.4 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it will notify such other party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
- 6.5 The Recipient will have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser, (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state, or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, so long as, in the absence of an applicable protective order, the Discloser has been promptly notified by the Recipient and so long as the Recipient undertakes all lawful measures to avoid disclosing such information until Discloser has had reasonable time to negotiate a protective order with any such mediator, arbitrator, state or regulatory body or a court, and complies with any protective order that covers the Confidential Information.
- 6.6 The Parties acknowledge that an individual customer may simultaneously seek to become or be a customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from customers or sources other than the Disclosing Party.
- 6.7 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.
- 6.8 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied solely by virtue of the disclosure of any Confidential Information.
- 6.9 Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.
- 7.0 LIABILITY AND INDEMNIFICATION
- 7.1 Limitation of Liabilities
- 7.1.1 Except as specifically provided in Attachment 25 DSL the Parties' liability to each other during any Contract Year resulting from any and all causes, other than as specified below in Section 7.3.3 following, and for willful or intentional misconduct (including gross negligence), will not exceed the total of any

amounts charged to CLEC by SBC MISSOURI under this Agreement during the Contract Year in which such cause accrues or arises. For purposes of this Section, the first Contract Year commences on the first day this Agreement becomes effective and each subsequent Contract Year commences on the day following that anniversary date.

7.2 No Consequential Damages

7.2.1 EXCEPT AS OTHERWISE PROVIDED IN ATTACHMENT 17, NEITHER CLEC NOR SBC MISSOURI WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT THE LIABILITY OF EITHER SBC MISSOURI OR CLEC TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY THE NEGLIGENT ACT OR OMISSION OF EITHER PARTY HERETO OR THE NEGLIGENT ACT OR OMISSION OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW.

7.3 Obligation to Indemnify

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7.3.3 Each Party will and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents (each, an Indemnitee) against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, account or otherwise) (collectively, Damages) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third party (a Claim) (i) alleging any omissions, breach of any representation, warranty, or covenant made by such indemnifying Party (the Indemnifying Party) in this Agreement, (ii) based upon injuries or damages to any person or property or the environment arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or the actions, omissions or status of its employees, agents, and subcontractors and with regard to Operation Support Systems (OSS), in addition to the foregoing, any actions or claims relating to a) any unauthorized entry or access into, or use or manipulation of SBC MISSOURI's OSS from CLEC systems, workstations or terminals or by CLEC employees, agents, or any third party gaining access through information and/or facilities obtained from or utilized by CLEC; b) failure to perform accurate and correct ordering including Resale and lawful UNE services, rates, and charges, subject to the terms of this Agreement c) any claim made by an end user customer of CLEC or other third parties against SBC MISSOURI caused by or related to CLEC's inaccurate use of any SBC MISSOURI OSS. Indemnification for OSS shall also include any necessary and reasonable labor expenses incurred by SBC related to such inaccurate or improper use of OSS.

- 7.3.3.1 In the case of any loss alleged or made by an end user of either Party, the Party whose end user alleged or made such loss (Indemnifying Party) shall defend and indemnify the other Party (Indemnified Party) against any and all such claims or loss by its end users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the gross negligence or intentional or willful misconduct or breach of applicable law of the other (Indemnified) Party.
- 7.3.4 CLEC acknowledges that its right under this Agreement to interconnect with SBC MISSOURI's network and to unbundle and/or combine SBC MISSOURI's unbundled network elements (including combining with CLEC's network elements) may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of third parties.
- 7.3.5 Intentionally Left Blank.
- 7.3.6 Intentionally Left Blank.
- 7.3.7 Intentionally Left Blank.
- 7.3.8 CLEC acknowledges that services and facilities to be provided by SBC MISSOURI hereunder may use or incorporate products, services or information proprietary to third party vendors and may be subject to third party intellectual property rights. In the event that proprietary rights restrictions in agreements with such third party vendors do not permit SBC MISSOURI to provide to CLEC, without additional actions or costs, particular unbundled Network Element(s) otherwise required to be made available to CLEC under this Agreement, then, as may be required by applicable state or federal law:
- 7.3.8.1 SBC MISSOURI agrees to provide written notification to CLEC, directly or through a third party, of such restrictions that extend beyond restrictions otherwise imposed under this Agreement or applicable Tariff restrictions; and
- 7.3.8.2 For any new agreements that SBC MISSOURI enters into or existing agreements that it renews, SBC MISSOURI shall use its best efforts to procure rights or licenses to allow SBC MISSOURI to provide to CLEC the particular unbundled Network Element(s), on terms comparable to terms provided to SBC MISSOURI, directly or on behalf of CLEC ("Additional Rights/Licenses").
- 7.3.8.3 For any new agreements that SBC MISSOURI enters into or existing agreements that it renews, in the event that SBC MISSOURI, after using its best efforts, is unable to procure Additional Rights/Licenses for CLEC, SBC MISSOURI will promptly provide written notification CLEC of the specific facilities or equipment (including software) that it is unable to provide pursuant to the license, as well as any and all related facilities or equipment; the extent to which it asserts CLEC's use has exceeded (or will exceed) the scope of the license; and the specific circumstances that prevented it from obtaining the revised provisions.
- 7.3.8.4 In the event CLEC provides in writing within thirty (30) calendar days of written notice in Section 7.3.8.3 above that SBC MISSOURI has not exercised such best efforts, CLEC may seek a determination through an expedited petition to the Missouri Public Service Commission as to whether SBC MISSOURI has exercised such best efforts.
- 7.3.8.5 If and to the extent SBC MISSOURI is unable to make all warranties required pursuant to this agreement without additional costs, including payment of additional fees, in renegotiating with its vendors or licensors, SBC MISSOURI may seek recovery of such costs as are reasonable. Such additional costs shall be shared among all requesting carriers, including SBC MISSOURI, provided, however, all costs associated

with the extension of Intellectual Property rights to CLEC pursuant to Section 7.3.8.2, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing the unbundled network element to which the Intellectual Property rights relate and apportioned to all requesting carriers using that unbundled network element including SBC MISSOURI.

7.3.9 Both Parties agree to promptly inform the other of any pending or threatened Intellectual Property Claims of third parties that may arise in the performance of this Agreement.

7.3.10 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party. Notwithstanding the exclusive ownership of Intellectual Property originated by a Party, the Party that owns such Intellectual Property will not assess a separate fee or charge to the other Party for the use of such Intellectual Property to the extent used in the provision of a product or service, available to either party under this Agreement, that utilizes such Intellectual Property to function properly.

7.4 Obligation to Defend; Notice; Cooperation

Whenever a Claim will arise for indemnification under this Section, the relevant Indemnitee, as appropriate, will promptly notify the Indemnifying party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party will have the right to defend against such liability or assertion in which event the Indemnifying Party will give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee will give the Indemnifying Party full authority to defend, adjust, compromise, or settle such Claim with respect to which such notice will have been given, except to the extent that any compromise or settlement might prejudice the Intellectual Property Rights of the relevant Indemnities. The Indemnifying Party will consult with the relevant Indemnitee prior to any compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee will have the right to refuse such compromise or settlement and, at the refusing Party's cost, to take over such defense, provided that in such event the Indemnifying Party will not be responsible for, nor will it be obligated to indemnify the relevant Indemnitee against any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee will be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnitee and also will be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee will have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim.

8.0 COMPLIANCE AND CERTIFICATION

8.1 Each Party shall comply at its own expense with all Applicable Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.

8.2 Each Party warrants that it has obtained all necessary state certification required in Missouri prior to ordering any Interconnection, Resale Services, unbundled Network Elements, functions, facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.

- 8.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.
- 8.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.
- 9.0 PAYMENT OF RATES AND CHARGES
- *9.1 Except as otherwise specifically provided elsewhere in this Agreement, the Parties will pay all undisputed rates and charges due and owing under this Agreement within thirty (30) days of receipt of an invoice properly delivered according to the primary medium defined by CLEC. Except as otherwise specifically provided in this Agreement interest on overdue invoices will apply at the six (6) month Commercial Paper Rate applicable on the first business day of each calendar year.
- 9.2 All billing disputes between the Parties shall be governed by this Section and Section 13.
- *9.3 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the specific details and reasons for disputing each item that is listed in Section 13.4.1. The Non-Paying Party should utilize any existing and preferred form provided by the Billing Party to provide written notice of disputes to the Billing Party. The Non-Paying Party must pay when due: (i) all undisputed amounts to the Billing Party.
- 9.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 13.
- 9.5 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties shall cooperate to ensure that all of the following actions are completed:
- 9.5.1 the Billing Party shall credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto, no later than the second Bill Due Date after resolution of the Dispute;
- 9.6 If the Non-Paying Party disputes any charges and the entire dispute is resolved in favor of the Billing Party, the Parties will cooperate to ensure that all of the actions required by Section 9.5.1 completed within the times specified therein.
- *9.7 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the times specified in Section 9.5 shall be grounds for termination of the Interconnection, Resale Services, unbundled Network Elements, Collocation, functions, facilities, products and services provided under this Agreement.
- *9.8 If either Party requests one or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.

*9.8.1 Each additional copy of any bill provided for billing from SBC MISSOURI's Carrier Access Billing System (CABS) billing system will incur charges as specified in Access Service Tariff FCC No. 73 Section 13 Alternate Bill Media.

*9.8.2 Bills provided to CLEC from SBC MISSOURI's CRIS system through Bill Plus will incur charges as specified in Appendix Pricing.

10. LIMITATION ON BACK-BILLING AND CREDIT CLAIMS:

10.1 Any "back-billed" charges or "back-credits" will be placed as an Other Charges and Credits (OCC) on the bill or will be listed on the Detail of Adjustment page. The Billing Party will, upon request of the Billed Party, separately provide the billed Party with documentation in the way of detailed work papers to substantiate the entry.

10.2 Intentionally Left Blank.

*10.3 Intentionally Left Blank.

*10.4 Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to back-bill for or claim credit for any charges for services provided pursuant to this Agreement that are found to be unbilled, under-billed or over-billed, but only when such charges appeared or should have appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party provided written notice to the Billed Party of the amount of the back-billing or the Billed Party provided written notice to the Billing Party of the claimed credit amount. The Parties agree that the twelve (12) month limitation on back-billing and credit claims set forth in the preceding sentence shall be applied prospectively only after the Effective Date of this Agreement, meaning that the twelve month period for any back-billing or credit claims may only include billing periods that fall entirely after the Effective Date of this Agreement and will not include any portion of any billing period that began prior to the Effective Date of this Agreement.

*10.5 Back-billing and credit claims, as limited above, will apply to all Interconnection, Resale Services, unbundled Network Elements, Collocation, facilities, functions, product and services purchased under this Agreement. Reciprocal Compensation is specifically excluded from this Section 10 and is addressed separately in the Reciprocal Compensation Attachment.

11. DAILY USAGE FILE

The Parties agree that Attachment 10: Provision of Customer Usage Data – Unbundled Network Elements and SBC MISSOURI' obligation to provide Usage Data under this Agreement shall remain in effect only until March 11, 2006. Additional terms and conditions are contained in Attachment 10.

12.0 ALTERNATELY BILLED TRAFFIC (ABT)

12.1 As used herein, Alternately Billed Traffic (ABT) shall mean calls made by an end user and billed to an account not associated with the originating line. There are three types of ABT: Calling card, collect, and third number calls. Billing and compensation for intraLATA ABT will be handled as described below.

12.2 When CLEC serves its end user via switch-based service, both Parties will settle tariffed ABT charges for calls accepted by each Party's end users, including ABT charges passed through by a Third Party. The originating Party will pay the Party that has the billable end user a Billing and Collection (B&C) fee per billed message as set forth in the pricing schedule.

12.3 Additional terms and conditions concerning ABT may be found in Attachment 20: Clearinghouse.

13.0 DISPUTE RESOLUTION

*13.1 Finality of Disputes

- 13.1.1 Except as otherwise specifically provided in this Agreement, no claims will be brought for disputes arising from this Agreement more than 24 months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

13.2 Alternative to Litigation

- 13.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this Dispute Resolution process, the Parties agree to use the following Dispute Resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

- *13.2.2. Notwithstanding any other section of this agreement, the Parties each reserve the right to utilize any available regulatory process available to them at the Commission for the resolution of disputes as an alternative to litigation.

13.3 Informal Resolution of Disputes

- *13.3.1 In the case of any dispute other than one covered by Section 9.3, and at the written request of a Party, each Party will appoint a knowledgeable, responsible representative with authority to resolve the dispute. To initiate the informal dispute process, a Party must provide to the other Party, written notice of the dispute that includes both a detailed description of the dispute and the name of an individual who will serve as the initiating Party's representative. The other Party shall have five (5) business days to designate its own representatives. The location, form, frequency, and conclusion of these discussions will be left to the discretion of the representatives. Notwithstanding the foregoing, the informal dispute process must conclude within sixty (60) days from the receipt of written notice of dispute unless otherwise agreed to in writing by the Parties. Upon agreement, the representatives may utilize other alternative informal dispute resolution procedures such as mediation to assist in the negotiations. Settlement offers by both Parties are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both parties. All other documents related to the dispute, not prepared for purposes of the settlement offer, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

13.3.2 Customer- Affecting Disputes

Notwithstanding the other dispute resolution procedures set forth in this Agreement, a Party may seek emergency relief from the Commission for the resolution of any problem that interrupts or threatens to interrupt the service of either Party's customers. In such instance, the Parties agree to provide all filings and submissions required by the Commission on an expedited basis, in accordance with the practices and rules of the Commission.

- *13.3.3 If CLEC files a dispute and seeks interim relief from the Commission, then SBC MISSOURI may not disconnect CLEC or suspend order acceptance over any open issues involved in the dispute until the Commission has finally ruled on the interim relief request.

- *13.3.4 Issues that may be disputed under this Section include but are not limited to: (1) ordering and provisioning and maintenance and repair issues not resolved as provided for in the routine escalations processes; (2) parity issues; and, (3) adherence to and interpretation of this Agreement's terms and conditions. Billing Disputes will be handled pursuant to Section 13.4 of this Agreement.

13.4 Billing Disputes

- *13.4.1 In order to resolve a billing dispute, the disputing Party shall furnish written notice which shall include sufficient detail of and rationale for the dispute, including to the extent available, the (i) date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number(s) in question, (iv) circuit ID number or trunk number in question, (v) any USOC information relating to the item(s) questioned, (vi) amount billed, (vii) amount disputed, (viii) the reason the disputing Party disputes the billed amount, (ix) minutes of use disputed by jurisdictional category, and (x) the contact name, email address and telephone number.

- 13.4.1.1 If the disputing Party is not satisfied by the resolution of the billing dispute under this Section 13.4, the disputing Party may notify the Billing Party in writing that it wishes to invoke the formal Resolution of Disputes afforded pursuant to Section 13.5.

- 13.4.1.2 Unless otherwise specified or prescribed by Commission order, all billing true-ups will be administered by the billing Party for all components of the true-up, which shall be provided on the same bill invoice. True-up charges shall be separated from other charges on an invoice. True-ups will be implemented in a reasonable and timely manner and must provide sufficient detail for the billed Party to audit the bill.

- *13.4.2 Each Party agrees to notify the other Party of a billing dispute by using the standard document, if any, made available by the Billing Party and may invoke the informal dispute resolution process described in Section 13.3. The Parties will endeavor to resolve the dispute within thirty (30) to sixty (60) calendar days after receipt of the Non-Paying Party's written notice. In order to resolve a billing dispute, the Non-Paying Party shall furnish the Billing Party written notice of (i) the date of the bill in question, (ii) CBA or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed (vi) amount in question (vii) the reason that the Non-Paying Party disputes the billed amount and (viii) PON. To be deemed a "dispute" under this Section 13.4, the Non-Paying Party must provide evidence that it has paid the disputed amount.

- *13.4.3 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party receives notice of such dispute.

13.5 Formal Resolution of Disputes

- *13.5.1 Except as otherwise specifically set forth in this Agreement, for all disputes arising out of or pertaining to this Agreement, including but not limited to matters not specifically addressed elsewhere in this Agreement require clarification, renegotiation, modifications or additions to this Agreement, either party may invoke dispute resolution procedures available pursuant to the complaint process of the MO-PSC. Upon mutual agreement, the Parties may seek commercial binding arbitration as specified in Section 13.6.

- 13.5.2 The Parties agree that the Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the complaint process pursuant to MO-PSC rules with regard to procedures for the resolution of disputes arising out of this Agreement.

13.6 Arbitration

When both Parties agree to binding arbitration, disputes will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. Arbitration will be held in St. Louis, Missouri, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within 60 days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within 30 days after the close of hearings. The Parties agree that, notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary the arbitrator has no authority to order punitive, consequential damages or any other Damages not measured by the prevailing Party's actual Damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures. The Parties will equally split the fees of the arbitration and the arbitrator. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

14.0 NON-PAYMENT AND PROCEDURES FOR DISCONNECTION

- *14.1 Failure to pay all or any portion of any amount required to be paid may be grounds for disconnection of Resale Services, unbundled Network Elements under this Agreement. If a Party fails to pay any charges billed to it under this Agreement, including but not limited to any Late Payment Charges or miscellaneous charges ("Unpaid Charges"), and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Resale Services, unbundled Network Elements furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.
 - *14.1.1 SBC MISSOURI will also provide any written notification to the Missouri Public Service Commission as required by applicable law.
 - *14.2 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges:
 - 14.2.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("Disputed Amounts") and the specific details listed in Section 13.4.1 of this Agreement, together with the reasons for its dispute; and
 - 14.2.2 pay all undisputed Unpaid Charges to the Billing Party; and
- *14.3 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 13.
- *14.4 After expiration of the written notice furnished pursuant to Section 14.1 hereof, if CLEC continues to fail to comply with Section 14.2.1 through 14.2.4, inclusive, or make payment(s) in accordance with the terms of any mutually agreed payment arrangement, SBC MISSOURI may, in addition to exercising any other rights or remedies it may have under Applicable Law, furnish a second written demand to CLEC for payment within five (5) Business Days of any of the obligations enumerated in Section 14.2.1. On the day that SBC

MISSOURI provides such written demand to CLEC, SBC MISSOURI may also exercise any or all of the following options:

- *14.4.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or
- *14.4.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement.
- *14.5 Notwithstanding anything to the contrary in this Agreement, SBC MISSOURI's exercise of any of its options under Section 14.4, 14.4.1 and 14.4.2:
 - 14.5.1 will not delay or relieve CLEC's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date, and
 - 14.5.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.
- *14.6 A copy of the demand provided to CLEC under Section 14.4 will be provided to the Commission.
- 14.7 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 14, will be made in writing and will be delivered by certified mail, and sent to the addresses stated in Section 15 and to the following:

To SBC :

Manager of Collections and Credit
722 N. Broadway, 11th Floor
Milwaukee, Wisconsin 53202

To CLEC:

Gegi Leeger
Director - Regulatory Contracts
XO Communications, Inc.
11111 Sunset Hills Road
Reston, VA 20190
Phone: 703-547-2109
Fax: 703-547-2300
Email: Gegi.Leeger@xo.com

With a copy to:

Kristin U. Shulman
Executive Director - Regulatory Affairs
XO Communications, Inc.
810 Jorie Blvd., Suite 200
Oak Brook, IL 60523
Phone: 630 371 3311

Fax: 469 461 7159
Email: Kris.Shulman@xo.com

Either Party may from time-to-time designate another address or addressee by giving notice in accordance with the terms of this Section. Any notice or other communication will be deemed to be given when received.

- *14.8 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand letter provided under Section 14.4 of this Agreement, the Billing Party may, provided that the undisputed amount of the Unpaid Charges exceeds five percent (5%) of the aggregate amount billed by SBC MISSOURI to CLEC for the immediately preceding month under this Agreement, in addition to exercising any other rights or remedies it may have under Applicable Law:
 - 14.8.1 cancel any pending application, request or order for new or additional Interconnection, Resale Services, unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and
 - *14.8.2 disconnect any Resale Services, unbundled Network Elements and/or Collocation furnished under this Agreement.
 - *14.8.2.1 Notwithstanding any inconsistent provisions in this Agreement, disconnection of service by SBC MISSOURI will comply with Missouri Public Service Commission rules.
- *14.9 Within five (5) calendar days following any such disconnection, SBC MISSOURI will notify each Resale end user that because of CLEC's failure to pay SBC MISSOURI, the end user's local service will continue for an additional thirty (30) calendar days and that the end user has thirty (30) calendar days from the disconnection date to select a new Local Service Provider.
- *14.10 If any Resale end user fails to select a new Local Service Provider within thirty (30) calendar days of the disconnection, SBC MISSOURI may terminate the Resale end user's service.
- *14.11 SBC MISSOURI will notify the Commission of the names of all Resale end users whose local service was terminated pursuant to Section 14.9.
- *14.12 CLEC shall be responsible for all charges for any service furnished by SBC MISSOURI to any end user pursuant to Section 14.8 hereof.
- *14.13 Nothing in this Agreement shall be interpreted to obligate SBC MISSOURI to continue to provide local service to any Resale end user beyond the thirty (30) calendar day selection period. Nothing herein shall be interpreted to limit any and all disconnection rights SBC MISSOURI has with regard to such Resale end users under Applicable Law.
- 15.0 NOTICES
 - 15.1 In the event any notices are required to be sent under the terms of this Agreement, they must be made in writing (unless specifically provided otherwise herein) they may be sent by mail, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested and are deemed to have been received five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service. Notice may also be given by personal delivery, or by overnight courier, and will be deemed given upon receipt of personal delivery; or by overnight courier and will be deemed given the next Business Day. Notice may also be provided by facsimile, provided a paper copy is also sent by another method described

in this Section, which will be deemed given on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone. The Parties will provide the appropriate telephone and facsimile numbers to each other. Unless otherwise specifically provided in this Agreement, notice will be directed as follows:

15.2 If to CLEC:

Gegi Leeger
Director - Regulatory Contracts
XO Communications, Inc.
11111 Sunset Hills Road
Reston, VA 20190
Phone: 703-547-2109
Fax: 703-547-2300
Email: Gegi.Leeger@xo.com

With a copy to:

Kristin U. Shulman
Executive Director - Regulatory Affairs
XO Communications, Inc.
810 Jorie Blvd., Suite 200
Oak Brook, IL 60523
Phone: 630 371 3311
Fax: 469 461 7159
Email: Kris.Shulman@xo.com

15.3 If to SBC MISSOURI:

Contract Management
ATTN: Notices Manager
Four SBC Plaza, 9th Flr.
311 S. Akard St.
Dallas, TX 75202-5398

Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving ten (10) calendar days' prior written notice to the other Party in compliance with this Section. Any notice or other communication will be deemed given when received.

- 15.4 SBC MISSOURI communicates official information to CLECs via its Accessible Letter notification process. This process covers a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues.
- 15.5 SBC MISSOURI Accessible Letter notification will be via electronic mail ("e-mail") distribution. Accessible Letter notification via e-mail will be deemed given as of the transmission date set forth on the e-mail message.
- 15.6 CLEC may designate up to a maximum of ten (10) recipients for Accessible Letter notification via e-mail.

- 15.7 CLEC shall submit a completed Accessible Letter Recipient Change Request Form to the individual specified on that form to designate in writing each individual's e-mail address to whom CLEC requests Accessible Letter notification be sent. CLEC shall submit a completed Accessible Letter Recipient Change Request Form to add, remove or change recipient information for any CLEC recipient of SBC MISSOURI's Accessible Letters. Any completed Accessible Letter Recipient Change Request Form shall be deemed effective ten (10) calendar days following receipt by SBC MISSOURI. SBC MISSOURI may, at its discretion, change the process by which the CLEC provides Accessible Letter recipient information. Changes to this process will be developed through the CLEC User Forum process and will be implemented only with the concurrence of the CLEC User Forum Global Issues group.
- 15.8 SBC MISSOURI shall provide a toll free facsimile number to CLEC for the submission of requests for Resale Services and unbundled Network Elements under this Agreement; CLEC shall provide SBC MISSOURI with a toll free facsimile number for notices from SBC MISSOURI relating to requests for Resale Services and unbundled Network Elements under this Agreement.
- 16.0 TAXES
- 16.1 Each Party purchasing Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either party's corporate existence, status, or income or (b) any corporate franchise Taxes. Whenever possible, these Taxes shall be billed as a separate item on the invoice.
- 16.2 With respect to any purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement if any Tax is required or permitted by applicable law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. The following provisions govern the backbilling of Taxes by the providing Party:
- 16.2.1 Taxes for which the purchasing Party is liable: with respect to Taxes for which the purchasing Party is liable, the providing Party shall use reasonable best efforts to bill the purchasing Party for such Tax simultaneously with the bill for service to which the Tax relates; however, the purchasing Party shall remain responsible for such Tax for the applicable statute of limitations period.
- 16.2.2 Taxes for which the providing Party is liable: With respect to Taxes for which the providing Party is liable, the providing Party may backbill the purchasing Party for any surcharges based on such Taxes and permitted by Applicable Law, subject to the same time limits that apply to the services to which the Taxes relate.
- 16.2.3 Notwithstanding Section 16.2.2 above, if as a result of a notice of proposed adjustment by a taxing authority, the taxing authority imposes a Tax on the providing party, the providing party may back bill the Tax to the purchasing party for a period, not to exceed four years from the date of the notice of proposed adjustment. In order for the providing party to be permitted to backbill a tax under this Section, the purchasing party must be notified of the audit determination from which the surcharge results, within 30 days of the notice of proposed adjustment but in no event less than ten days before the last day, under

applicable law, for the purchasing party to exercise any rights it might have to contest the notice of proposed adjustment.

- 16.3 With respect to any purchase hereunder of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement that are resold to a third party, if any Tax is imposed by applicable law on the end user in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the end user; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.
- 16.4 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax to the extent provided in Section 16.2 above and all subsections thereunder; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.
- 16.5 If the purchasing Party fails to impose and/or collect any Tax from end users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from end users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.
- 16.6 If either Party is audited by a taxing authority or other governmental entity, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 16.7 To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If applicable law excludes or exempts a purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the applicable law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 16.8 With respect to any Tax or Tax controversy covered by this Section 16, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to applicable law and at its own expense, any a Tax that it previously billed, or was billed that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The

purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.

- 16.9 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 16 shall be sent in accordance with Section 15 hereof.

17.0 FORCE MAJEURE

Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement 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, labor disputes such as strikes and lockouts, 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, 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 conditions will give prompt notice to the other Party, whereupon such Party's obligation or performance shall be suspended to the extent that the Party is affected by such Force Majeure Event. The other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations are hindered by the Force Majeure event. Upon cessation of such Force Majeure condition, the Party whose performance fails or is delayed because of such Force Majeure conditions will give like notice and commence performance hereunder as promptly as reasonably practicable.

18.0 PUBLICITY

- 18.1 The Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters, any endorsements, direct or indirect quotes or pictures implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all such publicity endorsement matters that mention or display the other's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.
- 18.2 Neither Party will offer any services using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of the other Party or its affiliates without the other Party's written authorization.

19.0 NETWORK MAINTENANCE AND MANAGEMENT

- 19.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, etc.) to achieve this desired reliability.
- 19.2 Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center. A facsimile (FAX) number must also be provided to facilitate event notifications for planned mass calling events. Additionally, both Parties agree that they will work cooperatively to ensure that all such events will attempt to be conducted in such a manner as to avoid disruption or loss of service to other end users. Each party maintains the right to implement basic protective controls such as "Cancel To" or "Call Gap."

19.3 Neither Party will use any service provided under this Agreement in a manner that impairs the quality of service to other carriers nor is to either Party subscribers. Either Party will provide the other Party notice of said impairment at the earliest practicable time.

20.0 LAW ENFORCEMENT AND CIVIL PROCESS

20.1 Intercept Devices

*20.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with a end user of the other Party, the receiving Party will refer such request to the appropriate Party, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's own facilities, in which case that Party will comply with any valid request, to the extent the receiving party is able to do so; if such compliance requires the assistance of the other Party such assistance will be provided if technically and legally feasible.

20.2 Subpoenas

*20.2.1 If a Party receives a subpoena for information concerning an end user the Party knows to be an end user of the other Party, the receiving Party will refer the subpoena to the requesting entity with an indication that the other Party is the responsible company. Provided, however, if the subpoena requests records for a period of time during which the receiving Party was the end user's service provider, the receiving Party will respond to any valid request, to the extent the receiving party is able to do so; if response requires the assistance of the other party such assistance will be provided if technically and legally feasible.

20.3 Law Enforcement Emergencies

*20.3.1 If a Party receives a request from a law enforcement agency to implement at its switch a temporary number change, temporary disconnect, or one-way denial of outbound calls for an end user of the other Party, the receiving Party will comply so long as it is a valid emergency request. Neither Party will be held liable for any claims or damages arising from compliance with such requests, and the Party serving the end user agrees to indemnify and hold the other Party harmless against any and all such claims.

21.0 CHANGES IN SUBSCRIBER CARRIER SELECTION

21.1 Each Party must obtain end user authorization prior to requesting a change in the end users' provider of local exchange service (including ordering end user specific unbundled Network Elements) and must retain such authorizations pursuant to FCC and state rules. The Party submitting the change request assumes responsibility for applicable charges as specified in Subscriber Carrier Selection Changes at 47 CFR 64.1100 through 64.1170 and any applicable state regulations.

21.2 When an end user authorizes a change in his selection of local service provider or discontinues service, each party shall release the customer specific facilities. SBC MISSOURI shall be free to connect the end user to any local service provider based upon the local service provider's request and assurance that proper end user authorization has been obtained. Further, when an end user abandons a premise (i.e., vacates a premise without disconnecting service), SBC MISSOURI is free to reclaim the facilities for use by another customer and is free to issue service orders required to reclaim such facilities per the local service provider's request. When an CLEC resale end user has abandoned a premise (i.e. vacates a premise without disconnecting service, CLEC will cooperate with the new local service provider to confirm that the premise is abandoned by providing a timely response to the new local service provider.

- 21.3 Neither Party shall be obligated by this Agreement to investigate any allegations of unauthorized changes in local exchange service ("slamming") on behalf of the other Party or a third party other than as required by federal or state law. At CLEC's written request, SBC MISSOURI will investigate an alleged incidence of slamming involving CLEC, and only in such CLEC authorized instances shall SBC MISSOURI charge CLEC; providing such charge shall be a cost-based or mutually agreed fee for providing the investigation.

22.0 AMENDMENTS AND MODIFICATIONS

- 22.1 Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement will be construed as a waiver of such term, right, or condition.
- 22.2 In order to execute an amendment to this Agreement, a Party shall request such amendment in writing. Such request shall include details regarding the section or sections to be amended and shall include the proposed language changes. Within 30 days from its receipt of the request, the other Party shall accept the proposed amendment in writing or shall deliver written notice to the other party either rejecting the requested amendment in its entirety, or inviting the prompt commencement of good faith negotiations to arrive at mutually acceptable terms. If the non-requesting Party rejects the requested amendment in its entirety, the requesting Party may request the prompt commencement of good faith negotiations to arrive at mutually acceptable terms, but there shall be no obligation on either Party to continue such negotiations longer than a period of 45 days if the Parties cannot arrive at mutually acceptable amendment terms. If mutually acceptable terms are not agreed upon with 45 days after the delivery of the written notice requesting the commencement of negotiations, or if at any time during this period (or a mutually agreed upon extension of this period,) the Parties have ceased to negotiate (other than by mutual agreement) for a period of 10 consecutive days, the amendment shall be resolved in accordance with the Dispute Resolution provisions set forth in Section 13 of this Agreement. Nothing in this Section 22.2 shall affect the right of either Party to pursue an amendment to this Agreement pursuant to Section 23 (Intervening Law), or Section 252(i) of the Act.

23.0 INTERVENING LAW

- 23.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the following, as of October 20, 2004: the Act, the applicable rules, regulations and Orders promulgated under the Act by the FCC, and applicable Missouri statutes, rules, regulations and Commission orders, and judicial decisions by courts of competent jurisdiction interpreting and applying said federal and Missouri statutes, rules, regulations and Orders. In entering into this Agreement and any Amendments to such Agreement 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) that are issued, rendered, or adopted after October 20, 2004. Additionally, each Party expressly reserves its intervening law rights relating to the following actions: Verizon v. FCC, et al, 535 U.S. 467 (2002); USTA, et. al v. FCC, 290 F.3d 415 (D.C. Cir. 2002); the impairment proceedings that will be heard before the Commission and any pending appeals (and following remand and appeal, USTA v. FCC, 359 F.2d 554 (D.C. Cir. 2004), that relate to, or arise from, the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36) (the "TRO"), including, without limitation, the FCC's MDU Reconsideration Order (FCC 04-191) (rel. August 9, 2004) and the FCC's Order on Reconsideration (FCC 04-248) (rel. Oct. 18, 2004), 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 Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking 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 and the FCC's Order *In the Matter of Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. §160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171 (Order No. FCC 04-241) (rel. October 18, 2004) (collectively "Government Actions"). Except to the extent that SBC-13STATE has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an SBC-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 SBC-13STATE's right to exercise its option at any time to adopt on a date specified by SBC-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. For purposes of this Agreement, "Change in Law" shall be defined as any legally binding judicial decision by a court of competent jurisdiction, amendment of the Act or applicable Missouri statute, or legislative, federal or state regulatory action, rule, regulation or other legal action that is issued, rendered or adopted after October 20, 2004 and that (i) materially revises, reverses, modifies or clarifies the meaning of the Act, an applicable Missouri statute or any of said rules, regulations, Orders, or judicial decisions, (ii) invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationales for any rate(s), terms(s) and/or condition(s) of the Agreement, (iii) and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement specifically including but not limited to those arising with respect to the Government Actions. For purposes of this section, "legally binding" means that the relevant legal action has not been stayed, no request for a stay is pending and if any deadline for requesting a stay is designated by statute or regulation, such deadline has passed. If either Party believes that a Change in Law within the meaning of this section has occurred, that Party may request renegotiation by written notice to the other Party. The Parties shall thereafter renegotiate the affected provisions in this Agreement in good faith and amend this Agreement to reflect such Change in Law. For avoidance of any doubt, this section shall also apply to situations where this Agreement defines the rights or obligations of either Party solely by reference to Applicable Law or similar reference. In the event that any renegotiation under this Section 23.0 is not concluded within ninety (90) days after one Party gives the other notice that it demands renegotiation pursuant to this provision, or if at any time during such ninety (90) day period the Parties shall have ceased to negotiate such terms for a continuous period of fifteen (15) business days or if the non-requesting Party refuses to engage in such renegotiation on the ground that there has been no Change in Law sufficient to require renegotiation under this Section, the dispute shall be resolved as provided in Section 13 of this Agreement. During the negotiation or arbitration of any such Change in Law, the Parties shall remain obligated to perform under the terms set forth in this Agreement.

- 23.2 The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights to participate in any proceedings regarding the proper interpretation and/or application of the Act, applicable rules and regulations nor does it waive any rights, remedies, or arguments with respect to any provisions of this Agreement or any rules, regulations, Orders or laws upon which it is based, including its right to seek legal review or a stay pending appeal.
- 24.0 AUTHORITY
- 24.1 SBC MISSOURI represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation or formation. SBC MISSOURI represents and warrants that SBC Telecommunications, Inc. has full power and authority to

execute and deliver this Agreement as agent for SBC MISSOURI. SBC MISSOURI represents and warrants that it has full power and authority to perform its obligations hereunder.

- 24.2 CLEC represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation or formation and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. CLEC represents and warrants that it has been or will be certified as a LEC by the Commission(s) prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such Service.

24.3 Each person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

25.0 BINDING EFFECT

This Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

26.0 CONSENT

Where consent, approval, or mutual agreement is required of a Party, it will not be unreasonably withheld or delayed.

27.0 EXPENSES

Except as specifically set out in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

28.0 HEADINGS

The headings in this Agreement are inserted for convenience and identification only and will not be considered in the interpretation of this Agreement.

29.0 RELATIONSHIP OF PARTIES

This Agreement will 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 will have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Agreement, is provided. Nothing in the Agreement will 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 will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party.

30.0 CONFLICT OF INTEREST

The Parties represent that no employee or agent of either Party has been or will be employed, retained, paid a fee, or otherwise received or will receive any personal compensation or consideration from the other Party, or any of the other Party's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents.

31.0 MULTIPLE COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which will together constitute but one, and the same document.

32.0 THIRD PARTY BENEFICIARIES

Except as may be specifically set forth in this agreement, this Agreement does not provide and will not be construed to provide third parties with any remedy, Claim, liability, reimbursement, cause of action, or other privilege.

33.0 REGULATORY APPROVAL

Each Party agrees to cooperate with the other and with any regulatory agency to obtain regulatory approval. During the term of this Agreement, each Party agrees to continue to cooperate with each other and any regulatory agency so that the benefits of this Agreement may be achieved.

34.0 TRADEMARKS AND TRADE NAMES

Except as specifically set out in this Agreement, nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever, absent written consent of the other Party. Nothing in this Agreement shall be construed as preventing either Party from publicly stating that it has executed this Agreement with the other Party.

35.0 REGULATORY AUTHORITY

*35.1 SBC MISSOURI will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. CLEC will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to CLEC end users contemplated by this Agreement.

*35.2 SBC MISSOURI will provide CLEC with direct notice of any tariff or filing which concerns the subject matter of this Agreement in the same manner and for the same term as set forth in Section 15.4 for the subjects listed therein.

36.0 COMMISSION INTERPRETATION OF SAME OR SUBSTANTIVELY SIMILAR LANGUAGE

Any ruling by the Commission interpreting the same or substantively similar language in another Interconnection Agreement is applicable to the same or substantively similar language in this Agreement.

37.0 TARIFF REFERENCES

- *37.1 To the extent a tariff provision or rate is incorporated or otherwise applies between the Parties due to the provisions of this Agreement, it is understood that any changes to said tariff provision or rate are also automatically incorporated herein or otherwise hereunder, effective hereunder on the date any such change is effective.
- *37.2 Wherever the term "Customer" is used in connection with SBC MISSOURI's retail tariffs, the term "Customer" means the ultimate "consumer" or the "End User" of any tariffed service.

38.0 VERIFICATION REVIEWS

- 38.1 Subject to each Party's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, either Billed (auditing) Party may audit the Billing Party's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of the Billing (audited) Party's billing and invoicing. The Billing Party may audit the Billed Party's books, records and other documents once in each Contract Year for verification of the accuracy of information that the Billing (auditing) Party is entitled, under this Agreement, to rely on in billing and invoicing for services provided to the Billed (audited) Party hereunder. The Parties may employ other persons or firms for this purpose. Such audit will take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof.
- 38.2 The Billing Party will promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by the Billed Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. The credit shall include interest on the overpayment, which interest shall be computed in accordance with Section 9.1 of this Agreement. Any disputes concerning audit results will be resolved pursuant to the Dispute Resolution procedures described in Section 13 of this Agreement.
- 38.3 Each Party will cooperate fully in any audit performed pursuant to 38.1, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the accuracy of the Billing Party's bills. The audit will be conducted during normal business hours at an office designated by the Party being audited. The Parties agree to retain records of call detail for two years from when the calls were initially reported to the other Party.
- 38.4 Either Party may audit the other Party's books, records and documents more than once during any Contract Year if the audit pursuant to Section 38.1 found previously uncorrected net variances or errors in invoices in the other Party's favor with an aggregate value of at least two percent (2%) of the amounts payable by the Billed Party for Resale services, Network Elements, Combinations or usage based charges provided during the period covered by the audit.
- 38.5 Except as may be otherwise provided in this Agreement, audits will be at the auditing Party's expense.
- 38.6 This Section 38 also applies to the audit by the Billing Party of the Billed Party's books, records, and other documents related to the development of the percent local usage (PLU) used to measure and settle jurisdictionally unidentified traffic, including but not limited to calls for which calling party number (CPN) is not transmitted, in connection with Attachment 12: Inter-carrier Compensation. If the PLU is adjusted based upon the audit results, the adjusted PLU will apply for the remainder of current quarter and for the subsequent quarter following the completion of the audit. If the PLU is adjusted based upon the audit results, the Billing Party may audit the Billed Party again during the subsequent nine (9) month period, notwithstanding any other provisions in the Agreement. If as a result of the audit, either Party has

overstated the PLU or underreported the call detail 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 the subsequent audit which is to happen within nine (9) months of the initial audit.

38.7 Information obtained or received by either Party in connection with Sections 38.1 through 38.6 will be subject to the confidentiality provisions of Section 6 of this Agreement.

39.0 COMPLETE TERMS

39.1 This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

39.2 Neither Party will be bound by an amendment, modification or additional term unless it is reduced to writing signed by an authorized representative of the party sought to be bound. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the Commission.

40.0 COOPERATION ON PREVENTING END USER FRAUD

40.1 Each Party shall be liable for any fraud associated with that Party's end user's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Service (ABS). ABS is a service that allows end users to bill calls to account(s) that might not be associated with the originating line. There are three types of ABS calls: calling card, collect, and third number billed calls.

40.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.

40.3 In cases of suspected fraudulent activity by an end user, at a minimum, the cooperation referenced in the above paragraph will include providing to the other Party, upon request, information concerning end users who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the end user's permission to obtain such information.

41.0 NOTICE OF NETWORK CHANGES

*41.1 SBC MISSOURI agrees to provide CLEC reasonable notice consistent with applicable rules, of changes in the information necessary for the transmission and routing of services using SBC MISSOURI's facilities or networks, as well as other changes that affect the interoperability of those respective facilities and networks. This Agreement is not intended to limit SBC MISSOURI's ability to upgrade its network through the incorporation of new equipment, new software or otherwise nor to limit CLEC's access to UNEs provided over those facilities.

41.2 Intentionally Left Blank.

41.3 General Change Management

*41.3.1 SBC MISSOURI will provide timely advance notification of changes to be in accordance with industry standards, based on the type of change, ranging from network or systems changes to process changes. Notification will be provided via email to designated CLEC contacts. SBC MISSOURI shall designate a qualified person who can be contacted by CLEC to provide clarification of the scope of the change and timeline for implementation. Either Party may request the assignment of project team resources for

implementation of the change. Notwithstanding the foregoing, CLEC reserves its right to request changes to be delayed or otherwise modified where there is an adverse business impact on CLEC, with escalation through the dispute resolution process.

- *41.3.2 To the extent their resources permit, the Parties agree to participate in Industry User and Change Management forum and to work cooperatively to implement change with minimum disruption to established interfaces. Notwithstanding the foregoing, resolution and processes established in the User and Change Management forums which change the way the Parties operate under the Agreement are valid only when incorporated by amendment to the Agreement or as otherwise mutually agreed in writing by the Parties.

42.0 GOOD FAITH PERFORMANCE

In the performance of their obligations under this Agreement the Parties will act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action will not be unreasonably delayed, withheld or conditioned.

43.0 RESPONSIBILITY OF EACH PARTY

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations or, (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party will be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of the Party's obligations hereunder.

44.0 GOVERNMENTAL COMPLIANCE

CLEC and SBC MISSOURI each will comply at its own expense with all Applicable Law applicable law related to i) its obligations under or activities in connection with this Agreement; or ii) its activities undertaken at, in connection with or relating to work locations. CLEC and SBC MISSOURI each agree to indemnify, defend, (at the other party's request) and save harmless the other, each of its officers, directors and employees from and against any Losses, Damages, Claims, demands, suits, liabilities, fines, penalties, and expenses (including reasonable attorneys' fees) that arise out of or result from i) its failure or the failure of its contractors or agents to so comply or ii) any activity, duty or status of it or its contractors or agents that triggers any legal obligation to investigate or remediate environmental contamination. SBC MISSOURI, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary for SBC MISSOURI to provide the network elements and Resale services pursuant to this Agreement.

45.0 RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION

- 45.1 Disclosure of Potential Hazards: When and if CLEC notifies SBC MISSOURI that CLEC intends to enter or perform work pursuant to this Agreement in, on, or within the vicinity of any particular SBC MISSOURI building, manhole, pole, duct, conduit, right-of-way, or other facility (hereinafter "work location"), SBC MISSOURI shall timely notify CLEC of any Environmental Hazard at that Work Location of which SBC MISSOURI has actual knowledge, except that this duty shall not apply to any Environmental Hazard (i) of which CLEC already has actual knowledge or (ii) was caused solely by CLEC or (iii) would be obvious and apparent to anyone coming to the work location. For purposes of this Agreement, "Environmental Hazard" shall mean (i) the presence of petroleum vapors or other gases in hazardous concentrations in a manhole or other confined space, or conditions reasonably likely to give rise to such concentrations; (ii) the presence of electrical cable in a conduit system; (iii) asbestos-containing materials; (iv) emergency exit routes and warning systems, if and to the extent owned or operated by SBC MISSOURI; and (v) any potential hazard that would not be obvious to an individual entering the work location or detectable using work practices standard in the industry.
- 45.2 Evaluation of Potential Hazards: Without limiting the foregoing, after providing prior notice to SBC MISSOURI, CLEC shall have the right to inspect, test, or monitor any work location for possible Environmental Hazards as necessary or appropriate to comply with law or to protect its employees, contractors or others from the possible effects of Environmental Hazards. CLEC shall be responsible for conducting such inspections, testing or monitoring in a way that does not unreasonably interfere with SBC MISSOURI's business operations after consultation with SBC MISSOURI, and shall return SBC MISSOURI's property to substantially the same condition as it would have been without such inspections, testing or monitoring.
- 45.3 Managing Disturbed Materials and Media: If and to the extent that CLEC's activity at any work location involves the excavation, extraction, or removal of asbestos or other manmade materials or contaminated soil, groundwater, or other environmental media, then CLEC rather than SBC MISSOURI shall be responsible in the first instance for the subsequent treatment, disposal, or other management of such materials and media.
- 45.4 Indemnification:
- 45.4.1 Each Party shall indemnify, on request defend, and hold harmless the other Party and each of its officers, directors and employees from any and all suits, claims, demands, Losses, damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, to the extent any of them arise 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 this Section 45.0 or any federal, state, or local environmental statute, rule, regulation, ordinance, or other Applicable Law or provision of this Agreement dealing with hazardous substances or protection of human health or the environment.
- 45.4.2 CLEC shall indemnify, on request defend, and hold harmless SBC MISSOURI and each of its officers, directors and employees from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, to the extent any of them arise out of or in connection with (i) 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 CLEC, or by any person acting on CLEC's behalf, while at a work location or (ii) the removal or

disposal of any hazardous substances by any employee of CLEC or by any person acting on CLEC's behalf, or the subsequent storage, processing or other handling of such hazardous substances by any person or entity, after such substances have thus been removed from a work location or (iii) any environmental contamination or Environmental Hazard or release of a hazardous substance caused or created by CLEC or its contractors or agents.

- 45.4.3 SBC MISSOURI shall indemnify, on request defend, and hold harmless CLEC and each of its officers, directors and employees from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), asserted by any government agency or other third party on account of or in connection with any injury, loss or damage to any person or property, or to the environment, to the extent any of them arise out of or in connection with (i) 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 SBC MISSOURI or by any person acting on SBC MISSOURI's behalf, at a work location or (ii) the removal or disposal of any hazardous substances by any employee of SBC MISSOURI or by any person acting on SBC MISSOURI's behalf, or the subsequent storage, processing or other handling of such hazardous substances by any person or entity, after such substances have thus been removed from a work location or (iii) any environmental contamination or Environmental Hazard or release of a hazardous substance either (x) existing or occurring at any Work Location on or before the date of this agreement or (y) caused or created by SBC MISSOURI or its contractors or agents.

46.0 SUBCONTRACTING

If any obligation is performed through a subcontractor, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors, and each Party will be solely responsible for payments due the Party 's subcontractors. No contract, subcontract or other Agreement entered into by either Party with any third party in connection with the provision of Resale services or network elements hereunder will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party. No subcontractor will be deemed a third party beneficiary for any purposes under this Agreement. Any subcontractor who gains access to CPNI or confidential information covered by this Agreement will be required by the subcontracting Party to protect such CPNI or confidential information to the same extent the subcontracting Party is required to protect the same under the terms of this Agreement.

47.0 REFERENCED DOCUMENTS

Whenever any provision of this Agreement refers to a technical reference, technical publication, CLEC Practice, SBC MISSOURI Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, CLEC Practice, SBC MISSOURI Practice, or publication of industry standards.

48.0 SEVERABILITY

If any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement will be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party will be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties will promptly negotiate a replacement provision or provisions. If impasse is reached, the Parties will resolve said impasse under the dispute resolution procedures set forth in Section 13.

49.0 SURVIVAL OF OBLIGATIONS

Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, will survive cancellation or termination thereof.

50.0 GOVERNING LAW

The validity of this Agreement, 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 the State of Missouri other than as to conflicts of laws, except insofar as federal law may control any aspect of this Agreement, in which case federal law will govern such aspect. The Parties submit to personal jurisdiction in Jefferson City, Missouri and waive any and all objections to a Missouri venue.

51.0 PERFORMANCE

Specific provisions governing Performance Measures are contained in Attachment 17.

52.0 OTHER OBLIGATIONS

Allowance for Interruption of Service. A service interruption period begins when an out of service condition of Interconnection or unbundled Network Element is reported by the CLEC to SBC MISSOURI designated maintenance and repair contact point and ends when the service is restored and reported by SBC MISSOURI to the CLEC's designated contact. No allowance for a service outage will be provided where the outage is due to the actions of the CLEC, its agents or Customers. A credit allowance will be made to the CLEC where the service outage is isolated to SBC MISSOURI network. When a credit allowance does apply, the credit will be determined based on the monthly recurring rates applicable to the service affected; however, the credit allowance for a service outage or for a series of outages for a specific service shall not, except where otherwise provided in this Agreement, exceed the applicable monthly recurring rate for the service(s) involved. For calculating credit allowances, every month is considered to have thirty (30) days.

53.0 DIALING PARITY; NUMBER PORTABILITY

SBC MISSOURI will ensure that all CLEC customers experience the same dialing parity as similarly-situated customers of SBC MISSOURI services, such that, for all call types: (i) an CLEC customer is not required to dial any greater number of digits than a similarly-situated SBC MISSOURI customer; (ii) the post-dial delay (time elapsed between the last digit dialed and the first network response), call completion

rate and transmission quality experienced by an CLEC customer is at least equal in quality to that experienced by a similarly-situated SBC MISSOURI customer; and (iii) the CLEC Customer may retain its local telephone number. SBC MISSOURI further agrees to provide Number Portability in accordance with the requirements of the Act. Specific requirements concerning Interim Number Portability are set forth in Attachment 14: Number Portability.

54.0 BRANDING

Specific provisions concerning the branding of services provided to CLEC by SBC MISSOURI under this Agreement are contained in the following Attachments and Appendices to this Agreement: Attachment 1: Resale; Appendix OS-Resale; Appendix DA-Resale; Attachment 2: Ordering & Provisioning-Resale; Attachment 3: Maintenance-Resale; Attachment 7: Ordering & Provisioning unbundled Network Elements; Attachment 8: Maintenance- Unbundled Network Elements-, and 23: OS-Facilities Based, UNE and UNE-P.

55.0 END USER-CUSTOMER INQUIRIES

Each Party will use its best efforts to ensure that all of its representatives who receive inquiries regarding the other Party's services: (i) refer repair inquiries to the other Party at a telephone number provided by that Party; (ii) for other inquiries about the other Party's services or products, refer callers to telephone number(s) provided by that Party; and (iii) do not in any way disparage or discriminate against the other Party or its products or services.

56.0 DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, RESALE SERVICES, UNBUNDLED, FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

57.0 NO WAIVER

Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and duly executed on behalf of the Party against whom the waiver or consent is claimed. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement will be construed as a waiver of such term, right, or condition. By entering into this Agreement neither Party waives any rights granted to them pursuant to the Act.

60.0 DEFINITIONS

For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and

neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and/or "but not limited to". The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used and its definition can be found in the Definitions Appendix.

*61.0 RESALE

At the request of CLEC, and pursuant to the requirements of the Act, any telecommunications service that SBC MISSOURI currently provides or hereafter offers to any end user in the geographic area where SBC MISSOURI is the incumbent LEC will be made available to CLEC by SBC MISSOURI for Resale in accordance with the terms, conditions and prices set forth in this Agreement. Specific provisions concerning Resale are addressed in Attachment 1: Resale, and other applicable Attachments.

62.0 UNBUNDLED NETWORK ELEMENTS

At the request of CLEC and pursuant to the requirements of the Act, SBC MISSOURI will offer in the geographic area where SBC MISSOURI is the incumbent LEC, network elements to CLEC on an unbundled basis on rates, terms and conditions set forth in this Agreement that are just, reasonable, and non-discriminatory. Specific provisions are addressed in Attachment 6: Unbundled Network Elements, and other applicable Attachments.

63.0 ORDERING AND PROVISIONING, MAINTENANCE, CONNECTIVITY BILLING AND RECORDING, AND PROVISION OF CUSTOMER USAGE DATA

63.1 In connection with its Resale of services to CLEC, SBC MISSOURI agrees to provide to CLEC Ordering and Provisioning Services, Maintenance services, Connectivity Billing and Recording services and Provision of Customer Usage Data services pursuant to the terms specified in Attachments 2, 3, 4 and 5, respectively.

63.2 In connection with its furnishing Unbundled Networks Elements to CLEC, SBC MISSOURI agrees to provide to CLEC Ordering and Provisioning Services, Maintenance services, Connectivity Billing and Recording services and Provision of Customer Usage Data services pursuant to the terms specified in Attachments 7, 8, 9 and 10, respectively.

64.0 NETWORK INTERCONNECTION ARCHITECTURE

Where the Parties interconnect their networks, for purposes of exchanging traffic between their networks, the Parties agree to utilize the interconnection methods specified in Attachment 11: Network Interconnection Architecture. SBC MISSOURI expressly recognizes that this provision and said Attachment are in no way intended to impair in any way CLEC's right to interconnect with unbundled network elements furnished by SBC MISSOURI at any technically feasible point within SBC MISSOURI's network, as provided in the Act.

65.0 COMPENSATION FOR DELIVERY OF TRAFFIC

The Parties agree to compensate each other for the transport and termination of traffic as provided in Attachment 12: Compensation.

66.0 ANCILLARY FUNCTIONS

Ancillary Functions may include, but are not limited to, Collocation, Rights-of-Way, Conduit and Pole Attachments. SBC MISSOURI agrees to provide Ancillary Functions to CLEC as set forth in Attachment 13: Ancillary Functions.

67.0 INTENTIONALLY LEFT BLANK.

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*69.0 INTENTIONALLY LEFT BLANK.

70.0 SCOPE OF AGREEMENT

70.1 Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement described in the Act that is not expressly provided herein.

70.2 Intentionally Left Blank

71.0 OTHER REQUIREMENTS AND ATTACHMENTS

71.1 This Agreement incorporates a number of listed Attachments which, together with their associated Appendices, Exhibits, and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Attachments have been grouped under the following broad headings: Resale; unbundled Network Elements; Network Interconnection Architecture; Ancillary Functions; and Other Requirements. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability which any particular Attachment may otherwise have.

71.2 Appended to this Agreement and incorporated herein are the Attachments listed below. To the extent that any definitions, terms or conditions in any given Attachment differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Attachment. In particular, if an Attachment contains a term length that differs from the term length in the main body of this Agreement, the term length of that Attachment will control the length of time that services or activities are to occur under the Attachment, but will not affect the term length of the remainder of this Agreement, except as may be necessary to interpret the Attachment.

72.0 INTENTIONALLY LEFT BLANK

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

XO Communications Services, Inc.

**Southwestern Bell Telephone, L.P. d/b/a
SBC MISSOURI
By SBC Operations, Inc.,
Its authorized agent**

Signature: _____

Signature: _____

Name:

Name:

Title:

Title: AVP – Local Interconnection Marketing

Date: _____

Date: _____

Intercarrier Compensation Option Choice:

Designate Choice with X	Option Number	Description
	Option 1	Contract Rates for Section 251(b)(5) Traffic and FCC's Interim ISP Terminating Compensation Plan rate for ISP-Bound Traffic
	Option 2	All ISP-Bound Traffic and All Section 251(b)(5) Traffic at the FCC's ISP Terminating Compensation Plan Rate
	Option 3	Long-term local Bill and Keep as the reciprocal compensation arrangement for Section 251(b)(5) Traffic and ISP-Bound Traffic

Arbitration Result - Conformed to MO Arbitration Award T0-2005-0336.

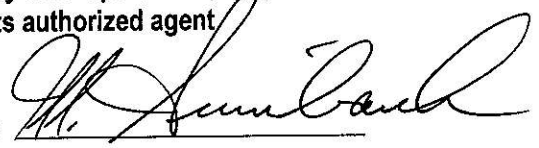
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THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

XO Communications Services, Inc.

Southwestern Bell Telephone, L.P. d/b/a
SBC MISSOURI
By SBC Operations, Inc.,
Its authorized agent

Signature: _____

Signature: 

Name:

Name: Mike Auinbauh

Title:

Title: AVP – Local Interconnection Marketing

Date: _____

Date: August 9, 2005

Intercarrier Compensation Option Choice:

Designate Choice with X	Option Number	Description
	Option 1	Contract Rates for Section 251(b)(5) Traffic and FCC's Interim ISP Terminating Compensation Plan rate for ISP-Bound Traffic
	Option 2	All ISP-Bound Traffic and All Section 251(b)(5) Traffic at the FCC's ISP Terminating Compensation Plan Rate
	Option 3	Long-term local Bill and Keep as the reciprocal compensation arrangement for Section 251(b)(5) Traffic and ISP-Bound Traffic

Arbitration Result - Conformed to MO Arbitration Award T0-2005-0336.

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