

INTERIM ORDER EXCLUSION TEMPORARY RIDER

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

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

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

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

WHEREAS, on August 20, 2004, the FCC released its Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel. Aug. 20, 2004), which became effective on September 13, 2004 by publication in the Federal Register ("*Interim Order*"); and

WHEREAS, as of the date the parties executed the Agreement to which this Temporary Rider is attached, the *Interim Order* was still in effect, and its interim time period(s) had not yet expired;

NOW, THEREFORE, the parties attach the following temporary terms and conditions to the Agreement:

- 1.1 Pursuant to the *TRO* and to the decision in *USTA II*, ***except as provided in Paragraph 2.1***, nothing in the Agreement requires [SBC ILEC] to provide to CLEC any of the following items, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality:

- (i) entrance facilities; (ii) dedicated transport, at any level, including but not limited to DSO, OCn, DS1, DS3, or dark fiber transport; (iii) local circuit switching [or any other form of circuit

switching]; (iv) OCn loops, DS1 or DS3 loops, or dark fiber loops; (v) the feeder portion of the loop; (vi) the “high frequency portion of the loop” (including as used in line sharing); (vii) any call-related database (other than the 911 and E911 databases), that is not provisioned in connection with CLEC’s use of **[SBC ILEC]**’s unbundled local circuit switching (as local circuit switching is no longer, or is no longer to be, provided under this Agreement on an unbundled basis, **[SBC ILEC]** is not obligated to provide, and CLEC shall not request such call-related databases, other than the 911 and E911 databases, under this Agreement); (viii) SS7 signaling that is not provisioned in connection with CLEC’s use of **[SBC ILEC]**’s unbundled local circuit switching (as local circuit switching is no longer, or is no longer to be, provided under this Agreement on an unbundled basis, **[SBC ILEC]** is not obligated to provide, and CLEC shall not request, SS7 signaling under this Agreement); (ix) packet switching, including routers and DSLAMs; (x) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over hybrid loops (as defined in 47 C.F.R. § 51.319(a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier (“DLC”) systems or equipment used to provide passive optical networking (“PON”) capabilities; (xi) fiber-to-the-home Loops (as defined in 47 C.F.R. § 51.319(a)(3)) (“FTTH Loops”), except to the extent that **[SBC ILEC]** has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case **[SBC ILEC]** will provide nondiscriminatory access to a transmission path capable of voice grade service over the FTTH loop on an unbundled basis to the extent required by terms and conditions in the Agreement.

1.2 For purposes of this Temporary Rider, the following elements shall be referred to as the “**USTA II Elements**”:

- 1.2.1 local circuit switching for “mass market” customers (as used in the *TRO*) (per vacatur of 47 C.F.R. § 51.319(d)(2),(5));
- 1.2.2 DS1 and DS3 dedicated transport (per vacatur of 47 C.F.R. § 51.319(e)); and
- 1.2.3 DS1 and DS3 loops (per vacatur of 47 C.F.R. § 51.319(a)(4),(5),(7)), and dark fiber loops and transport (per vacatur of 47 C.F.R. § 51.319(e) and 47 C.F.R. § 51.319(a)(6)).

2.1 **USTA II Elements.** **[SBC ILEC]** shall provide the **USTA II Elements** in accordance with and only to the extent permitted by the terms and conditions set forth

in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX] until the earlier of (a) the effective date of final unbundling rules adopted by the FCC in the proceeding opened by the *Notice of Proposed Rulemaking* appended to the *Interim Order*; or (b) the date that is six months after Federal Register publication of the Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel. Aug. 20, 2004) (“*Interim Order*”); or (c) if the *Interim Order* is withdrawn, vacated or stayed, or is otherwise determined to be invalid, the date it is withdrawn, vacated or stayed, or is otherwise determined to be invalid (“**Interim Order Exclusion**”). Pursuant to the *Interim Order*, the continuation of the rates, terms and conditions applicable to the **USTA II Element** may be superseded by (1) voluntarily negotiated agreements between [SBC ILEC] and CLEC, (2) an intervening FCC order affecting specific unbundling obligations (e.g., an order addressing a pending petition for reconsideration), or (3) (with respect to rates only) a state public utility commission order raising the rates for network elements.

2.1.1 To the extent the Agreement is still in effect following the occurrence of the earlier of (a), (b) or (c), above, the following shall occur:

2.1.1.1 If (a) -- The **Interim Order Exclusion** shall expire, and the general rule of Paragraph 1.1 shall become fully applicable and effective as to each of the **USTA II Elements** (subject to the Notice and Transition set forth in Section 3.1, below);

2.1.1.2 If (b) -- The **Interim Order Exclusion** shall expire, and the general rule of Paragraph 1.1 shall become fully applicable and effective as to the **USTA II Elements** (subject to the Notice and Transition set forth in Section 3.1, below).

2.1.1.3 If (c) – The **Interim Order Exclusion** shall expire, and the general rule of Paragraph 1.1 shall become fully applicable and effective as to the **USTA II Elements** as of January 1, 2005 (subject to the Notice and Transition set forth in Section 3.1, below).

2.1.2 Nothing in this Paragraph 2.1 shall affect the application of Paragraph 1.1 to elements that are *not* **USTA II Elements**.

3.1 Notice and Transition The following provisions apply upon the expiration of the **Interim Order Exclusion**:

3.1.1 [SBC ILEC] will provide written notice to CLEC of the expiration of the **Interim Order Exclusion** and of the fact that one or more of the **USTA II Elements** are no longer required to be provided. During a transitional period of

thirty (30) days from the date of such notice, [SBC ILEC] agrees to continue providing such **USTA II Element(s)** under the terms of this Rider.

3.1.1.1 Upon receipt of such written notice, CLEC will cease new orders for such **USTA II Element(s)** that are identified in the [SBC ILEC] notice letter. [SBC ILEC] reserves the right to monitor, review, and/or reject CLEC orders transmitted to [SBC ILEC] and, to the extent that the CLEC has submitted orders and such orders are provisioned after this 30-day transitional period, such **USTA II Element(s)** are still subject to this Paragraph 3.1, including the CLEC options set forth in subparagraph 3.1.1.2 below, and [SBC ILEC]'s right of conversion in the event the CLEC options are not accomplished by the end of the 30-day transitional period.

3.1.1.2 During such 30-day transitional period, the following options are available to CLEC with regard to the **USTA II Element(s)** identified in the [SBC ILEC] notice, including the combination or other arrangement in which the **USTA II Element(s)** were previously provided:

(i) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the **USTA II Element(s)** and/or the combination or other arrangement in which the **USTA II Element(s)** were previously provided; or

(ii) [SBC ILEC] and CLEC may agree upon another service arrangement (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous resale service or access product or service may be substituted, if available.

Notwithstanding anything to the contrary in the Agreement, including any amendments to the Agreement, at the end of the thirty (30) day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under subparagraph 3.1.1.2(i), above, and if CLEC and [SBC ILEC] have failed to reach agreement, under subparagraph 3.1.1.2(ii), above, as to a substitute service arrangement or element, then [SBC ILEC] will convert the subject **USTA II Element(s)**, whether alone or in combination with or as part of any other arrangement to an analogous resale or access service or arrangement, if available, at rates applicable to such analogous service or arrangement.

4.1 Except as prohibited or otherwise affected by the *Interim Order*, nothing in this Temporary Rider shall affect the general application and effectiveness of the Agreement's "change of law," "intervening law", "successor rates" and/or any similarly purposed provisions. The rights and obligations set forth in this Temporary Rider apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.