

# INTERCONNECTION AGREEMENT-MISSOURI

between

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

and

BIG RIVER TELEPHONE COMPANY, LLC

Schedule H-3

00001

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## INTERCONNECTION AGREEMENT - MISSOURI

This Interconnection Agreement - Missouri (Agreement) is between Big River Telephone Company, LLC ("CLEC"), a Delaware corporation, having its principal office at 24 S. Minnesota Ave, Cape Girardeau, Missouri 63703, 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);

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\* 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 Inter-carrier Compensation for inter-carrier 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 its 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 91<sup>st</sup> 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

7.3.1 Intentionally Left Blank

7.3.2 Intentionally Left Blank.

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.