

**AMENDMENT SUPERSEDING CERTAIN 251/252 MATTERS
TO INTERCONNECTION AGREEMENTS UNDER
SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996**

This Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996 (the "**Amendment**") is being entered into by and between the SBC ILECs (as defined herein), and Sage Telecom, Inc. and Sage Telecom of Texas, L.P. ("CLEC", as further defined below).

This Amendment is applicable to this and any future Interconnection Agreements between Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin (hereinafter each individually being a "SBC ILEC," and collectively being the "SBC ILECs"), and CLEC and any of its current and future Affiliates which are a certified/certificated provider of local exchange telecommunications services (as used herein, "CLEC" refers to the above named carrier(s) and such current and future Affiliates "CLEC"), in the States of Illinois, Indiana, Michigan, Nevada, Ohio, California, Connecticut, Arkansas, Kansas, Missouri, Oklahoma, Texas and Wisconsin from July 1, 2004, through and including July 31, 2011, whether negotiated, arbitrated, or arrived at through the exercise of Section 252(i) "Most Favored Nation" ("MFN") rights or otherwise. Each of the SBC ILECs and CLEC may be referred to individually as "Party," or collectively as the "Parties."

WHEREAS, SBC ILECs and CLEC entered into interconnection agreements pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act") that were approved by the applicable state commissions (the "ICAs"); and

WHEREAS, the Parties have mutually agreed to amend the current ICAs, as well as condition any future ICAs between them to this Amendment.

NOW, THEREFORE, for and in consideration of the premises, mutual promises and covenants contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Scope of Amendment

- 1.1 The Parties agree that this Amendment will act to supersede, amend and modify the applicable provisions currently contained in the ICAs. This Amendment shall also be incorporated into and become a part of, by exhibit, attachment or otherwise, and shall supersede, amend, and modify the applicable provisions of, any future interconnection agreement(s) between the Parties for the period from July 1, 2004, up through and including July 31, 2011, whether negotiated, arbitrated, or arrived at through the exercise of Section 252(i) MFN rights or otherwise.
- 1.2 Any inconsistencies between the provisions of this Amendment and other provisions of the current ICAs or future interconnection agreement(s) described above between the SBC ILECs and CLEC for the period from July 1, 2004, through and including July 31, 2011, will be governed by the provisions of this Amendment, unless this Amendment is specifically and expressly superseded by a future amendment between the Parties that references this Amendment, and then only to the extent of any such future amendment.
- 1.3 If the underlying ICAs or any future interconnection agreement(s) expire sooner than July 31, 2011, the Parties agree that the Amendment shall not extend or otherwise alter the term and termination rights of the underlying ICAs or any future interconnection agreement(s), but instead, the Amendment will be incorporated into any successor interconnection agreement(s) between the Parties through July 31, 2011. Also, the Parties recognize that an MFN interconnection agreement often receives quicker state public utility commission ("PUC") approval than the negotiated Amendment which will be affixed to that

interconnection agreement. To the extent that the date of state PUC approval of the underlying MFN interconnection agreement precedes the date of state PUC approval of the Amendment, the Parties agree that the rates, terms and conditions of the Amendment will, upon state PUC approval of the Amendment, apply retroactively to the date of such state PUC approval of the underlying interconnection agreement so that the rates, terms and conditions contained herein will apply uninterrupted from July 1, 2004 up through and including July 31, 2011.

- 1.4 Up to and through July 31, 2011, and with respect to each of the SBC ILECs, CLEC hereby irrevocably waives its Section 252(i) MFN rights, and SBC ILECs' obligations to CLEC under 47 U.S.C. §§ 251 and 252, for any reciprocal compensation and/or any unbundled network elements ("UNEs") that are subject to this Amendment. This waiver includes, but is not limited to, any lease, transfer, sale or other conveyance by CLEC of all or a substantial portion of its assets, in which case CLEC shall obtain the purchaser's agreement to be bound by the terms and conditions set forth herein, but only as to that portion of purchaser's operations resulting from the purchase of CLEC.
- 1.5 Up to and through July 31, 2011, and with respect to the SBC ILECs, CLEC hereby irrevocably waives any right it may have to purchase from, or claim the application of, any SBC ILEC tariff for or otherwise involving reciprocal compensation and/or any of the UNEs subject to this Amendment.
- 1.6 For purposes of this Amendment, "Affiliate" means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified. "Control" (including the terms "**controlling**", "**controlled by**" and "**under common control with**") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise. For purposes of this Amendment and this definition, "control" shall be deemed to exist if a person or entity owns an equity interest (or the equivalent thereof) or a voting interest of more than fifty percent (50%).

2. UNEs

- 2.1 As of the Amendment Effective Date, any and all of the terms and conditions, including pricing, specifically relating to unbundled local switching, unbundled tandem switching, and unbundled shared transport (however denominated in any particular State in which an SBC ILEC operates, or in any ICA(s)) are hereby deleted from current ICAs or future interconnection agreement(s) described above for the period from July 1, 2004, through and including July 31, 2011. CLEC shall not use, request, order, or otherwise authorize or permit the use of any SBC-ILEC-provided unbundled local switching or unbundled shared transport in any of its serving arrangements.
- 2.2 As of the Amendment Effective Date and for each of the SBC ILECs, the monthly recurring charge for an unbundled 2-wire analog loop (however denominated in any particular State in which an SBC ILEC operates, or in any ICA(s)) (including a facility that is being used to provide the equivalent transmission capacity) shall be \$20.00 under the current ICAs or future interconnection agreement(s) described above for the period from July 1, 2004, through and including July 31, 2011.
- 2.3 As of the Amendment Effective Date and with respect to each of the SBC ILECs, CLEC hereby irrevocably waives any right it may have to Commingle any SBC-ILEC-product that is not contained in an ICA(s) or tariff that exists as of March 31, 2004 ("Commercial Product"), and shall not request, order, authorize, or otherwise permit any Commercial Product it purchases to be Commingled.
 - 2.3.1 "Commingling" means, in this context, the connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to any Commercial Product or the combining of a UNE, or a combination of UNEs, with any Commercial Product. "Commingling" means the act of commingling.
 - 2.3.2 "Commingled Arrangement" means the arrangement created by Commingling.

3. Reciprocal Compensation

- 3.1 Notwithstanding anything contrary in the current ICAs or future interconnection agreement(s) described herein, as of the Amendment Effective Date, all Section 251(b)(5) Traffic and ISP-bound Traffic exchanged between the Parties shall be subject to a bill and keep arrangement if such Traffic originates from and/or terminates to an end office switch used by CLEC when SBC ILEC is the entity providing the use of the end office switch (e.g., switching capacity) to CLEC.
- 3.1.1 **"Section 251(b)(5)"** is telecommunications traffic that is originated by an end user of one Party and terminated to the end user of the other Party that are (i) both physically located within the same SBC ILEC's Local Exchange Areas as defined by the SBC ILEC's respective state Local (or General) Exchange Tariff or (ii) both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area.
- 3.1.2 **"ISP-bound Traffic"** is traffic that is originated by an end user(s) of one Party and terminated to an ISP serviced by the other Party that are (i) both physically located within the same SBC ILEC's Local Exchange Areas as defined by the SBC ILEC's respective state Local (or General) Exchange Tariff or (ii) both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area.
- 3.2 In states in which SBC ILEC has offered to exchange traffic pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan ("FCC Plan") pursuant to the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Compensation Order"), the Parties hereby agree that the rates, terms and conditions set forth in the FCC Plan will not apply to any Section 251(b)(5) Traffic and/or ISP-Bound Traffic exchanged between the Parties if such Traffic originates from and/or terminates to an end office switch used by CLEC when SBC ILEC is the entity providing the use of the end office switch (e.g., switching capacity) to CLEC. The traffic exchanged between the Parties that originates from and/or terminates to an end office switch used by CLEC when SBC ILEC is the entity providing the use of the end office switch (e.g., switching capacity) to CLEC, shall not be included in any calculation under the FCC Plan for determining growth caps or determining amounts of traffic to be compensated, if any, at the FCC's interim rates as set forth in the FCC's ISP Compensation Order.

4. Intervening Law/Change of Law

- 4.1 In entering into this Amendment and carrying out the provisions herein, and except as may be inconsistent with Sections 2 and 3 of this Amendment and the term of its effectiveness, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into the current ICAs or which may be the subject of further government review: the United States Supreme Court's opinion in *Verizon v. FCC, et al*, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al ("USTA") v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in *USTA v. FCC*, Case No. 00-1012 (D.C. Cir. 2004); the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced, in its Triennial Review Order, is scheduled to commence in 2004; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand

and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally, issued in the Matter of Developing a Unified Intercarrier Compensation Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001 (collectively "Government Actions"). Notwithstanding anything to the contrary in the current ICAs (including this and any other amendments to any of them), SBC ILECs shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Notwithstanding anything to the contrary in the current ICAs and this Amendment and except to the extent that SBC ILEC has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an SBC ILEC state in which the current ICAs is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into the current ICAs, these rights also include but are not limited to SBC ILEC's right to exercise its option at any time to adopt on a date specified by SBC ILEC the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to the current ICAs except Section 3 of this Amendment shall apply with respect to Traffic that originates from and/or terminates to an end office switch used by CLEC when SBC ILEC is the entity providing the use of the end office switch (e.g., switching capacity) to CLEC. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the current ICAs and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the current ICAs and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the current ICAs. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in the current ICAs or future interconnection agreement(s).

- 4.2 In the event that any intervening law rights in the current ICAs or any future interconnection agreement(s) inconsistent or conflict with this Section 4, Intervening Law/Change of Law, for the time period from July 1, 2004 up through and including July 31, 2011, this Section 4, Intervening Law/Change of Law, shall supersede and control as to any such inconsistency and/or conflict(s) as to all rates, terms and conditions in the current ICAs and any future interconnection agreement(s) for such time period.
- 4.3 Notwithstanding anything else herein, during the period from July 1, 2004 up through and including July 31, 2011, the Parties waive any rights they may have under the Intervening Law/Change of Law provisions in this Amendment, the Parties' current ICAs or any future interconnection agreement(s) to which this Amendment is added, or any other amendments thereto, with respect to the matters that are subject to this Amendment. The Parties specifically acknowledge their awareness of various pending judicial and regulatory actions which may affect the nature and treatment of the reciprocal compensation and unbundled network elements addressed in this Amendment. Each Party specifically acknowledges that this Amendment is intended to be a binding agreement, without regard to the standards set forth in subsections (b) and (c) of Section 251 of the Act, and each Party further acknowledges that this Amendment is intended to and shall remain unaffected by and survive any regulatory, legislative or judicial actions which may affect any of the matters set forth herein during the period from July 1, 2004 up through and including July 31, 2011 including, without limitation, the United States Court of Appeals for the District Court of Columbia's decision in *USTA v. FCC*, 290 F.3d 415

(D.C. Cir. 2002) ("USTA I") and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in USTA v. FCC, Case No. 00-1012 (D.C. Cir. 2004) ("USTA II"), and the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36). Except as set forth herein, during the time period from July 1, 2004 up through and including July 31, 2011, each Party shall otherwise have full intervening law rights under Section 4.1 of this Amendment and any intervening law rights in the underlying ICAs or future interconnection agreement(s), and may invoke such intervening law/change in law rights as to any provisions in such ICAs or future interconnection agreement(s) (including any separate amendments) impacted by any regulatory, legislative or judicial action.

- 4.4 Notwithstanding anything else herein, during the period from July 1, 2004 and up through and including July 31, 2011, the Parties waive any rights they may have under the Intervening/Change of Law provisions in this Amendment, the Parties' current ICAs or any future interconnection agreement(s) to which this Amendment is added, or any other amendments thereto with respect to the subject matters that are subject to this Amendment. During the time period from July 1, 2004 up through and including July 31, 2011, each Party shall have full intervening law rights under Section 4.1 of this Amendment and any intervening law rights in the underlying ICAs or future interconnections agreement(s), and may invoke such intervening law/change in law rights as to any provisions in the ICAs or future interconnections agreement(s) (including any separate amendments) impacted by any regulatory, legislative or judicial action.

5. Amendment Effective Date

- 5.1 This Amendment shall be effective as of July 1, 2004 ("Amendment Effective Date"). In the event that after the Amendment Effective Date all or any portion of this Amendment as agreed-to and submitted is rejected and/or modified by the Commission, this Amendment shall be automatically suspended and, unless otherwise mutually agreed, the Parties shall expend diligent efforts to arrive at mutually acceptable new provisions to replace those rejected and/or modified by the Commission.

6. Additional Terms and Conditions

- 6.1 This Amendment contains provisions that have been negotiated as part of an entire Amendment and integrated with each other in such a manner that each provision is material to every other provision.
- 6.2 The Parties agree that each and every rate, term and condition of this Amendment is legitimately related to, and conditioned on, and in consideration for, every other rate, term and condition in this Amendment. The Parties agree that they would not have agreed to this Amendment except for the fact that it was entered into on a 13-State basis and included the totality of rates, terms and conditions listed herein, and that it is an indivisible whole, intended to bind the SBC ILECs and CLEC (including, as defined, its current and future Affiliates) under the current ICA(s) and any future interconnection agreement(s), unless the Parties expressly agree otherwise in accordance with Section 1.2 of this Amendment.
- 6.3 Except as specifically modified by this Amendment with respect to their mutual obligations herein and subject to Section 4, neither Party relinquishes, and each Party instead fully reserves, any and all legal rights that it had, has and may have to assert any position with respect to any of the matters set forth herein before any state or federal administrative, legislative, judicial or other legal body.
- 6.4 This Amendment is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.
- 6.5 The terms contained in this Amendment constitute the agreement with regard to the superseding, modification, and amendment of the ICAs and incorporation into future interconnection agreement(s) through July 31, 2011, and shall be interpreted solely in accordance with their own terms.

- 6.6 Contemporaneously with this Amendment, the Parties are entering into a Private Commercial Agreement for Local Wholesale Complete ("LWC Agreement"). The LWC Agreement contains provisions that may render it inoperative in one or more states. Should the LWC Agreement become inoperative in any one or more state(s), this Amendment shall immediately become null and void for all purposes in such state(s) and the Parties agree to submit a further amendment immediately to the Commission so reflecting this fact. Such further amendment will be effective retroactively to the time that the LWC Agreement became inoperative. In addition, in the event that at the time that the LWC Agreement becomes inoperative in any state(s), CLEC does not have in effect any agreement in such state pursuant to 47 U.S.C. § 252, CLEC may adopt such agreement pursuant to § 252(i) or may purchase under tariff or SGAT or enter into any other arrangement of CLEC's choosing available to it under 47 U.S.C. § 251 and/or 252 at that time, and such arrangement will be deemed effective as of the time that the LWC Agreement became inoperative in such state(s) and the SBC ILECs shall cooperate fully in CLEC's exercise of its rights under this Section, provided that the Parties shall have no retroactive monetary true-up compensation obligation to each other for the provision of products and other offerings from the date from July 1, 2004 until the date that the LWC Agreement became inoperative.